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Please quote our ref: **PFA/WE/23311/2008/MR**

**REGISTERED MAIL**

Dear Madam,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956: (“The Act”): G.W. TRUEBODY (“the complainant”) v WIZARD UNIVERSAL PROVIDENT FUND (“the first respondent”) / SANLAM LIFE INSURANCE LIMITED (“the second respondent”)**

**[1] INTRODUCTION**

- 1.1 The complaint relates to the payment of a withdrawal benefit and communication by a fund.
- 1.2 The complaint was received by this office on 13 March 2008. A letter acknowledging receipt thereof was sent to the complainant on 28 March 2008. On 2 April 2008 a letter was dispatched to the first respondent giving it until 2 May 2008 to file its response to the complaint. A response was received on 7 April 2008 from the second respondent. On 30 July 2008 a letter was sent to the complainant to reply to the. On 13 August 2010 a reply was received from the complainant.

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The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 24 of 1956

-The service offered by the Pension Funds Adjudicator is free to members of the public-

- 1.3 After reviewing the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

**[2] FACTUAL BACKGROUND**

- 2.1 The complainant was employed by Baseline Civil Contractors and due to his employment he became a member of the first respondent. The complainant resigned from his employment during October 2005 and was again re-employed, after which he subsequently resigned for the second time. After exit the complainant's withdrawal benefit was paid in cash.
- 2.2 It appears that there was some confusion in relation to the payment of the complainant's withdrawal benefit.

**[3] COMPLAINT**

- 3.1 The complainant questions the reason why the benefit was paid in cash and was paid late. He also takes issue with the fact that his request for rules was never responded to and he indicates that he has no record of banking the cheque, presumably relating to his first withdrawal benefit.
- 3.2 The complainant seeks that this Tribunal investigate and provide him with honest answers to these questions.

**[4] RESPONSE**

- 4.1 The second respondent provided a response on behalf of the first respondent and confirmed that the complainant was a member of the Wizard Universal Provident Fund which is currently being administered as the Sanlam Umbrella Fund. He was a member from 1 October 2004 to 25 October 2005. It submits that the complainant received two benefits for this period as he resigned and then rejoined again and then resigned for the second time.
- 4.2 It submits that as a result the complainant had two membership numbers and it seems that the employer did not immediately submit a withdrawal form after the first withdrawal. It submits that the first benefit of R2638.14 after tax was deducted was paid on 7 December 2005. A copy of the electronic receipt was attached. The second benefit was paid on 30 October 2007 in the amount of R3394.85 after tax. It submits further it was only when the administration of the fund was transferred to another administrator that it was discovered that only one payment was made in relation to the complainant instead of two that were due. It contends that this was because of the two memberships. Hence, the late payment of the first withdrawal benefit.
- 4.3 Regarding the question of why a cash payment was made, the second respondent submitted that it was in accordance with the withdrawal forms submitted by the employer which indicated that the payment must be made in cash. In support of this contention a copy of the withdrawal benefit was attached.
- 4.4 The respondent concludes that the complaint arose out of misunderstandings due to the reasons addressed above and that the correct benefits were paid. It submits that as the complaint issues have been addressed the complaint should be dismissed.

**[5] COMPLAINANT'S REPLY**

- 5.1 The complainant submitted a rebuttal to the respondent's response in which he indicated that he was still not satisfied with the explanation provided by the respondent. He contends that the respondent still needs to prove that he got the April (no year mentioned) letter. He also challenges that payment of the first withdrawal was deposited into his account.

[6] **DETERMINATION AND REASONS THEREFOR**

- 6.1 Two issues need to be addressed: firstly, the complainant contests payment of the first withdrawal benefit and puts the respondents to the proof thereof. Secondly, he is challenging the payment of the second benefit in cash.

- 6.2 The basic principle of our law in seeking assistance from court is captured in the words of Davis AJA in the matter of *Pillay v Krishna and Another* 1946 AD 946 at 951 when he said:

'[I]f one person claims something from another in a court of law, then he has to satisfy the court that he is entitled to it.'

This he explains to mean that:

"He who asserts, proves and not he who denies, since a denial of fact cannot naturally be proved provided that it is a fact that is denied and that the denial is absolute."

- 6.3 The complainant in the present matter claims that he is entitled to a benefit from the respondent and that the benefit has not been paid. As regards the first issue there is a dispute of fact as regards whether the payment was made or not. The complainant contends that he was not paid. He submits that he does not remember ever handling the cheque relating to his first withdrawal. The respondent submitted that he was paid via electronic funds transfer and provided documentary proof

confirming the same. This would explain why the complainant does not remember handling the cheque as there was no cheque. Despite the explanation and the proof provided by the respondent the complainant remains adamant that the money was never transferred into his account.

6.4 However, under the circumstance it is not sufficient for the complainant to issue a bare denial without proof that the money was not received. The relevant proof in this instance would have been the complainant's bank statement of the week from 7 December 2005 indicating that no money was deposited into his account by the respondent. Despite the existence of sufficient opportunity, no such proof was presented. Therefore, the respondent's version that the payment was indeed made into the complainant's account, has to be accepted.

6.5 Regarding the payment of the benefit in cash, the complainant expresses his displeasure as regards this manner of payment. He does not indicate whether or not he completed a withdrawal form when he exited from the fund the first time and how he chose his benefit to be paid, even after the respondent had indicated that it received the forms from the employer selecting a cash payment. The complainant does not deny making the choice on the withdrawal form, nor does he contend that he would have preferred some other choice.

**[7] ORDER**

1. In the result, the order of this tribunal is that the complaint is dismissed.

**SIGNED IN JOHANNESBURG ON THIS 9<sup>th</sup> DAY OF FEBRUARY 2012**

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**DR EM DE LA REY**  
**ACTING PENSION FUNDS ADJUDICATOR**

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**Section 30M filing: Magistrates Court**