



Ground & 1st Floors
23 FREDMAN
Cnr. Fredman Drive & Sandown Valley Crescent
Sandown
SANDTON
2196

P.O. Box 651826, **BENMORE**, 2010
Tel: 087 942 2700; 011 783 4134 □ Fax: 087 942 2644
E-Mail: enquiries@pfa.org.za
Website: www.pfa.org.za

Please quote our ref: **PFA/GA/9076/2011/LPM**

PER REGISTERED POST

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): JC VENTER (“complainant”) v SOUTH AFRICAN RETIREMENT ANNUITY FUND (“first respondent”) AND OLD MUTUAL LIFE ASSURANCE COMPANY (SOUTH AFRICA) LIMITED (“second respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the imposition of causal event charges on a retirement annuity policy.
- 1.2 The complaint was received by this Tribunal from the Office of the Ombudsman for Financial Services Providers on 3 November 2011. A letter acknowledging receipt thereof was forwarded to the complainant on 27 January 2012. On 26 January 2012, letters were dispatched to the respondents giving them until 6 March 2012 to file their responses. A response was received from the second respondent on 2 February 2012. The response was forwarded to the complainant on

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)

16 August 2012. No further submissions were received from the parties.

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

[2] FACTUAL BACKGROUND

- 2.1 The complainant applied for and was admitted to membership of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 1 July 1999. Retirement annuity policy number 11912160 (“policy”) was issued to the first respondent by the second respondent for the complainant’s benefit. The second respondent is the first respondent’s underwriting insurer and administrator.
- 2.2 The policy was to endure until his chosen retirement date of 1 July 2023. It was invested in the World Balanced portfolio. The complainant paid an initial lump sum contribution of R121 874.68 and undertook to pay monthly contributions of R250.00 per month. On 1 August 2003, the complainant ceased paying contributions to the second respondent and the policy became paid-up on 1 December 2003. The complainant’s fund value immediately before the policy became paid-up was R120 075.32 (“pre-causal event fund value”).
- 2.3 As a result of the policy becoming paid-up, the second respondent imposed a causal event charge of R1 770.56. However, due to the positive performance of the underlying portfolio at the time, the complainant’s fund value after the imposition of the causal event charge was R126 166.27 (“post-causal event fund value”). In

February 2012, the complainant requested that the policy be terminated in order for him to transfer the proceeds thereof to another approved retirement annuity fund. His fund value immediately before his decision to terminate the policy was R210 177.18. As a result of his decision to terminate the policy, the second respondent imposed a causal event charge of R6 305.32, resulting in his fund value decreasing to R203 871.86.

- 2.4 With effect from 1 December 2006, the Minister of Finance, in terms of section 54 read with section 72 of the Long-term Insurance Act, no. 52 of 1998 ("LTI Act") amended the regulations under the LTI Act ("the regulations") to make provision for maximum limits regarding the values and charges that may be imposed on long-term policies such as the complainant's policy. Pursuant thereto, the second respondent evaluated the complainant's pre- and post-causal event fund values and concluded that no adjustment to his fund value was required because it fell within the permissible range stipulated in the regulations.

[3] COMPLAINT

- 3.1 The complainant is dissatisfied with the causal event charge of R6 305.32 that was imposed on his policy value by the second respondent when he sought to transfer to another retirement annuity fund. He submits that he has already paid a causal event charge when he made the policy paid-up. For this reason, he should not be penalised with another causal event charge. He also submits that the policy contract makes no provision for imposition of a causal event charge upon transferring out of the first respondent.
- 3.2 He seeks an order directing the second respondent to waive the causal event charge imposed when he requested to transfer his fund value to another approved retirement annuity fund.

[4] RESPONSE

4.1 The second respondent confirmed that the policy commenced on 1 July 1999 and became paid-up on 1 December 2003. It further confirmed that it levied a causal event charge of R1 770.56 when the policy became paid up and a further causal event charge of R6 305.32 when the complainant requested that the policy be terminated. In terms of the Statement of Intent, causal event charges levied prior to 1 December 2006 may be no more than 35% of the fund value. Those levied after 1 December 2006 may not exceed 30% of the fund value.

4.2 Life insurance companies deduct outstanding expenses from fund values of retirement annuity policies when members make contractual changes to their retirement annuities. Contractual charges refer to cessation of premiums, reduction of the contractual term and transfer to another insurer. The causal event charge is an adjustment to an account for costs/expenses already incurred but as yet unrecouped. These expenses would have been borne by other members of the fund if these were not recovered from the assured. This would contravene section 46 of the LTI Act. When a policy terminates prematurely, the insurer becomes unable to recover the unrecouped expenses from contributions that would have been paid had the policy continued. Therefore, the expenses are recouped as a lump sum. The causal event charges imposed on the complainant's policy amount to 4.48% of the policy value and are therefore, fair and reasonable.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The complainant states that the causal event charges levied by the second respondent on his fund value are substantial and unfair. He seeks the reversal of the second causal event charge of R6 305.32 levied upon transfer.

5.2 The basis for imposing a causal event charge needs to be determined and it needs to be established whether or not the causal event charges levied by the second respondent were fair and reasonable. Fourie J, in *Old Mutual Life Assurance Company (SA) Ltd v Pension Funds Adjudicator and Others* [2007] 1 BPLR 117 (C) at paragraph 35, noted that:

“The fact that the policy does not specify a formula according to which the paid-up reduced benefit is to be calculated, does not mean that Applicant has an unfettered discretion to arbitrarily determine a value in a manner that is unfair, unreasonable or capricious. In this regard, I am in agreement with Applicant’s submission that the provisions of the LTIA, referred to hereunder, dictate that the paid-up reduced benefit to which Second Respondent is entitled has to be calculated in accordance with generally accepted actuarial principles and practice.”

5.3 The provisions of section 46 of the LTI Act, read as follows:

“A long-term insurer shall not-

- (a) enter into any particular kind of long-term policy unless the statutory actuary is satisfied that the premiums, benefits and other values thereof are actuarially sound;
- (b) make a distinction between the premiums, benefits or other values of different long-term policies unless the statutory actuary is satisfied that the distinction is actuarially justified; or

award a bonus or similar benefit to a policy-holder unless the statutory actuary is satisfied that it is actuarially sound and that a surplus is available for that purpose.”

5.4 Section 52 of the LTI Act prescribes the manner in which long-term policies are to be dealt with in the event of cessation of contributions. The insurer must have rules approved by the statutory actuary that prescribe a sound actuarial basis and the method to be used to value

a long term policy in the event of a causal event occurring. Thus, the benefits and values attaching to a prematurely terminated policy, and any distinctions between it and policies that do not prematurely terminate, must be actuarially sound.

- 5.5 In addition to the requirement that causal event charges must be computed using generally accepted actuarial principles that ensure the actuarial soundness of the insurer, on 1 December 2006 the Minister of Finance promulgated regulations in terms of the LTI Act that stipulate maximum causal event charges in respect of causal events that occurred on or after January 2001.
- 5.6 This Tribunal considered the first respondent's rules, the policy terms, the provisions of the Act and LTI Act, generally accepted actuarial principles and the regulations to assess the reasonableness of the causal event charges levied on the policy. The causal event charges of R1 770.56 and R6 305.32 amounted to 4.48% of the complainant's values. Therefore, the charges were fair and reasonable. The second charge cannot be reversed because although two causal event charges were imposed, the aggregation thereof is below the permissible limit set down in the regulations.
- 5.7 Upon a careful consideration of the facts placed before this Tribunal, it has been shown that the second respondent acted in accordance with generally accepted actuarial practice, the provisions of the rules, the provisions of the policy document, the provisions of the LTI Act and the regulations. The evidence does not support the complainant's submission that the causal event charges that were imposed by the second respondent are unfair, unreasonable or capricious in nature.

[6] ORDER

1. In the result, the complaint is dismissed.

DATED AT JOHANNESBURG ON THIS 7th DAY OF NOVEMBER 2012

MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M filing: Magistrate's Court

Parties Unrepresented