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BY REGISTERED POST

Dear Sir

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act"): V M L VIEIRA ("complainant") v SOUTH AFRICAN RETIREMENT ANNUITY FUND ("first respondent") AND OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LIMITED ("second respondent")

[1] INTRODUCTION

1.1 The complaint concerns the quantum of the complainant's retirement benefit.

1.2 The complaint was received by this tribunal on 22 November 2010. On 24 January 2011 a letter acknowledging receipt thereof was sent to the complainant. On the same date a letter was dispatched to the second respondent giving it until 4 March 2011 to file a response to the complaint. A response dated 14 February 2011 was received from the respondents. On 28 February 2011 a letter was sent to the complainant requesting a reply to the response by no later than 22 March 2011. A reply dated 17 March 2011 was received from the complainant.

1.3 After reviewing the written submissions before this tribunal it is considered unnecessary to hold a hearing in this matter. This tribunal's determination and its reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant applied for and was admitted to the membership of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 1 March 1988. The second respondent is the underwriting insurer and administrator of the first respondent. The maturity date of the contract was 1 March 2009. The complainant's monthly contribution of R145.00 was set to increase automatically at each anniversary date at the rate of 10%. The complainant's policy was invested in the second respondent's Performance Profits Balanced Portfolio. The complainant's retirement benefit as at his date of retirement was R183 506.41.

[3] COMPLAINT

3.1 The complaint is dissatisfied with the quantum of his retirement benefit. During 2007 he received an illustrative maturity value indicating that his retirement benefit will be R212 345.51. However, his retirement benefit was only R183 500.00 even though the markets performed well.

[4] RESPONSE

4.1 The second respondent filed a response in its capacity as the underwriting insurer and administrator of the first respondent. It advised that the premium update facility which was added from 1 March 1996 on the policy provides for an automatic increase in the total premium under the policy on each policy anniversary. This facility enables the build-up of additional funds in the accumulation account of the policy and thereby increases the total benefits. The complainant's total contributions were

R64 086.93 and the policy's internal rate of return was 10.82% *per annum*.

4.2 The policy was taken off books on the website on 1 March 2009. It received an enquiry to extend the term of the policy by one year and increase the premium to R1 000.00. In order to produce the quotations the policy had to be coded back on books. The claim pending the movement was reversed on 13 May 2009 and the quotations faxed to the branch concerned. It did not receive written acceptance of the quotations from the complainant and the policy erroneously remained on its books. The reversal of the claim caused the funds to get the normal flexi monthly interest added to it, which would not have happened had the policy remained off books. The complainant questioned the maturity value in April 2010 and the policy was once again taken off books on 22 April 2010 with the maturity date of 1 March 2009. The interest added to the policy was reversed and the fund value as at 1 March 2009 was reflected again. When the flexi database sends the policy data to the website, it sends what is displayed on the database. The website would not recognise that the policy should have matured before the current date. This is the reason why the latest fund value on the database incorrectly displayed as R231 137.00. Due to the extension of term request, the policy was erroneously on books between 13 May 2009 and 22 April 2010. The complainant was granted access to the website in October 2009 and viewed the incorrect fund values as if the policy term was extended.

4.3 The second respondent adjusts the policy's accumulation account on the first of every month to reflect the change in the asset values within the Performance Profits Balanced Portfolio. These asset values are subject to market fluctuation in the price of assets. Between 1 May 2008 and 1 March 2009 the Johannesburg Stock Exchange All Share Index ("JSE All Share Index") declined from approximately 30 000 to 18 300, a drop of 39%, which was in line with the worldwide decline in asset values

during this period and comparable with similar declines in 1987 and 1998. Between 1 January 2009 and 1 March 2009 the JSE All Share Index dropped from approximately 21 700 to 18 300, a decline of just over 15%. As the Performance Profits Balanced Portfolio is predominantly (approximately 50%) invested in the local equity market these negative returns on the JSE fed through the negative returns experienced by the Portfolio over the period 1 May 2008 to 1 March 2009 and are reflected in the policy build-up over this period and in the last two months before the contractual retirement date.

4.4 When a policy ceases in the event of maturity, the proceeds are moved to an unclaimed claims account where the funds do not participate in the profits of the underlying investment portfolio. A claim adjustment amount is calculated in respect of the time between vesting and the date the claim is paid. The basis for calculating the claim adjustment amount rate is signed off by the statutory actuary and the basis is reviewed regularly. The claim adjustment amount was R20 373.54, calculated from 1 March 2009 until 14 February 2011, resulting in a total retirement growth up to 14 February 2011 of R203 979.68. The maturity value of R183 506.14 is a true reflection of the complainant's investments and it exceeds his contractual guaranteed maturity value of R95 257.00.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The issue that falls for determination is whether or not the complainant's vesting value was computed correctly.

5.2 The complainant's policy was invested in the second respondent's Performance Profits Balanced Portfolio. The policy operates by means of bonuses in the form of performance profits which are periodically allocated and added to the policy's accumulation account. Bonuses added to the complainant's policy are linked to the investment returns earned. If the portfolio's market investments perform well, the

complainant enjoys the benefits directly and his fund value grows accordingly. If the underlying assets in the portfolio perform poorly the complainant bears the negative returns by lower bonus declarations. During 2008 and 2009 the global financial markets experienced a severe financial recession, which had negative effects on fund investments. The losses suffered on investments were *pro rata* passed on to the complainant, resulting in reductions in policy values. This is evidenced by the complainant's fund values fluctuating from R202 248.92 in October 2008 to R196 001.68 in November 2008 and from R195 282.78 in February 2009 to R183 506.14 in March 2009.

5.3 The complainant is not entitled to the amount of R231 137.00 as this was his fund value as at 22 April 2010. He failed to extend the maturity date of 1 March 2009, so he is not entitled to fund returns from that date to 22 April 2010. The submissions indicate that the internal rate of return was 10.82% *per annum* after all expenses were deducted, which is reasonable given the poor market performance during 2008 and 2009. Further, the policy guaranteed a minimum payment on the maturity date of R95 257.00. The maturity value of the policy was R183 506.14 and by 14 February 2011 it was R203 979.68 due to the addition of a claim adjustment amount from 1 March 2009 to 14 February 2011. The complainant has not suffered any loss and the respondents correctly computed his retirement benefit.

[6] <u>ORDER</u>

1. In the result, the complaint is dismissed.

DATED AT JOHANNESBURG ON THIS 8TH DAY OF FEBRUARY 2012

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DR. E.M. DE LA REY

ACTING PENSION FUNDS ADJUDICATOR

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