

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/GA/1184/00/NJ

In the complaint between:

G Thomas

Complainant

and

Furman Glass Provident Fund

First Respondent

Furman Glass (Pty) Ltd

Second Respondent

INTERIM RULING IN TERMS OF SECTION 30J OF THE PENSION FUNDS ACT OF 1956

1. This is a complaint lodged with the Office of the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act 24 of 1956 ("**the Act**"). The complaint relates to the failure by the first respondent to pay the complainant her early withdrawal benefit upon being dismissed from service by the second respondent.
2. An informal and preliminary investigation was conducted by my investigators, Mr Ian McDonald and Ms N van Coller, with a view to resolving and settling this matter without a formal ruling by myself. However, these negotiations did not yield a settlement agreement. Thereafter, despite several requests by my investigators, the second respondent failed to respond to the complaint. Therefore, the matter was handed to me for a formal ruling. In handing down this interim ruling, I have relied on the documentary evidence and written submissions gathered during the course of our investigation.
3. The complainant is Ms G Thomas, and adult female, of Kiasha Park, Gauteng. The complainant is unrepresented in this matter.

4. The first respondent is Furman Glass Provident Fund, a pension fund duly registered under the Act (“**the fund**”). No response was received from the fund. However, Mr Steve Naylor of Liberty Life Corporate Benefits, the administrators of the fund, submitted a response to the complaint. Mr Naylor indicated that the participating employer in the fund (second respondent), despite numerous requests by the administrator to amend the rules in terms of section 7A of the Act, and appoint a board of management, it has failed to do so. Therefore, at present there is no board of management to manage the affairs of the fund. It appears as if the fund is managed by the second respondent.
5. The second respondent is Furman Glass (Pty) Ltd, a company duly incorporated in terms of the company laws of South Africa (“**the employer**”). The employer is represented by Mr Keith Feldman, a director within the organization.
6. The complainant commenced employment with the employer on 1 August 1979. However, the fund only came into existence in about June 1983 at which point the complainant became a member of the fund. On 6 December 1999 she was dismissed from service.
7. The relevant rule regulating the payment of her benefit, was section 5, which insofar as relevant, reads:

Subject to the provisions of Section 6:

(a) A Member who is a director shall receive his Share of the Fund.

(b) Any other Member shall be entitled to receive the following,

- (i) In the case of a Member aged under 45 at his Entry Date into the Fund, an amount equal to the total contributions he has made to the Fund and the Previous Fund, increased by 2% for each completed year of membership of the Fund and the

Previous Fund,
(ii) ...

8. The complainant was under the age of 45 years at the time of entering the fund. According to Mr Naylor, the administrator has received no notice from the fund nor the employer in respect of the termination of the complainant's membership and therefore no benefit has been paid. However, he provided an approximate calculation of the withdrawal benefit in terms of section 6, as follows:

On the basis that the member ceased membership on 30th November 1999 her benefit would be a return of the member's own contributions plus 2%per annum for each completed year of service.

Date became a member 1 June 1983

Date ceased membership 30 November 1999 (assumed from correspondence)

Years of completed membership, 16 years

Growth factor at 2% per completed year 32%

Total own contributions 1/6/1983-30/11/1999 as per our records R28,488.22

Growth of 32% over the period R9,116.23

Gross amount due R37,604.45

We have rolled up this gross amount with actual investment returns for the period 1/12/1999 to 28/2/2001 to give a present value of a "Paid up" withdrawal benefit which now amounts to R45,931.45.

Therefore, as at 28 February 2001, the complainant's withdrawal benefit amounted to R45,931.45 (including interest).

9. As stated, no reasons were submitted by the fund nor the employer as to why the benefit has not been paid. From the complaint and our informal investigation, it appears as if the employer is under the impression that it is entitled to deduct monies from the pension benefit in terms of section 37D of the Act.

10. In terms of section 6 of the rules, the complainant is entitled to an early withdrawal benefit. Section 37D of the Act allows a pension fund to deduct monies from a pension benefit in respect of amounts owing to the employer, subject to specific conditions laid down in the section itself. Nevertheless, if the employer wished to deduct an amount based on the provisions in section 37D, it bears the onus to establish that the requirements contained in the section have been met. Despite several requests by my investigators addressed to Mr Feldman, he has failed to provide any evidence showing that the fund was entitled to deduct monies from the benefit.
11. Therefore, I am satisfied that the complainant is *prima facie* entitled to an early withdrawal benefit as regulated by section 6 of the rules. However, in the interest of procedural fairness, it would be prudent to allow the fund and the employer one final opportunity to advance arguments on the merits of this case.
12. Accordingly, a rule *nisi* is hereby issued, in terms of which, all parties are called upon to show cause, on or before 9 May 2001, why the following order should not be granted:

The first respondent is directed to pay the complainant R45,931.45 together with interest thereon at the rate of return achieved by the fund from 1 March 2001 to the date of payment, within 6 weeks of the date of this ruling.

DATED at Cape Town this 2nd day of May 2001.

John Murphy

Pension Funds Adjudicator