

**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR**

**CASE NO: PFA/WE/339/99/NJ**

**In the complaint between:**

M C Stassen

Complainant

and

Central Retirement Annuity Fund

First Respondent

Sanlam

Second Respondent

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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF  
1956

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1. This is a complaint lodged with the Pension Fund Adjudicator in terms of section 30A(3). The complaint concerns the enforcement of a divorce order in respect of a pension benefit.
2. The complainant is Magdalena Christina Stassen, a retired female, of Durbanville, Western Cape. The complainant is represented by Mr Martin Vermeulen of Herold Gie & Broadhead attorneys.
3. The first respondent is a Central Retirement Annuity Fund (hereinafter referred to as Athe fund@).
4. The second respondent is Sanlam Personal Finance, a division of Sanlam Life Insurance Limited, registration number 08/21121/06, who is the administrator of the fund (hereinafter referred to as Athe administrator@). The fund and the

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administrator are represented by Mr P G Jonker of the legal services department of the administrator.

5. The rules of the fund allow its management committee to apply to an insurance company to issue policies in favour of the fund on the lives of the members. The fund then collects contributions from the members and in turn pays it over to the insurance company. A member may decide what contribution he/she wishes to make to the fund, subject to certain minimum amounts laid down by the insurer with whom the fund concludes the policy contract. Contributions start at the inception date of membership, and is payable as the management committee of the fund agrees with the insurance company. All monies payable by the insurance company in terms of the provisions of the policy concluded between the fund and the insurer will be payable by the insurer to the fund. The management committee then in turn deals with the payment of benefits in accordance with the rules of the fund.
6. The complainant and Mr Stassen were married in community of property. It is unclear when Mr Stassen became a member of the fund. However upon becoming a member, the fund purchased an insurance policy in Mr Stassen=s name. On 1 October 1991, Mr Stassen having attained normal retirement age, elected to receive his benefit from the fund. The fund terminated the policy and an amount of R16,628.81 became available. Mr Stassen elected to commute one-third hereof. The remaining two-thirds (R11,085.88) was utilised by the fund to purchase a compulsory 10 year annuity policy from an insurer in terms of which Mr Stassen would receive a monthly pension of R156.27 guaranteed for 10 years. The first payment was made in October 1991.
7. On 19 September 1995, after lengthy negotiations between the parties, the complainant and Mr Stassen were divorced in the High Court. The parties had negotiated a settlement agreement which was made an order of the court. The division of Mr Stassen=s pension benefit was set out as follows in the order:

Pensioenbelang

Eiseres (complainant) is na 30 September 1995 geregtig op 'n halwe aandeel in verweerder (Mr Stassen) se pensioenbelang soos omskryf in artikel 1 van die Wet op Egskeidings, Wet 70 van 1979;

Verweerder (Mr Stassen) se pensioenfonds word gelas om 'n aantekening op hulle rekords te maak van eiseres (complainant) se gemelde aandeel in verweerder (Mr Stassen) se pensioenbelang en om enige bedrag waarop eiseres (complainant) geregtig is, te same met enige opbrengs daarop, direk aan eiseres (complainant) oor te betaal, wanneer ookal verweerder (Mr Stassen) geregtig word op betaling van die voormelde pensioenbelang;...

8. Mr Jonker, has confirmed that the records of the fund were not endorsed despite the divorce order ordering the fund to do so. In this regard, Mr Vermeulen contended that during the pre-divorce negotiations between the parties, Mr Stassen was unco-operative and reluctant to disclose any information regarding his pension interest. Accordingly, counsel acting for the complainant and Mr Stassen could not identify the exact pension fund and instead used the term Apensioenbelang@ intending this term to mean as contained and defined in the Divorce Act 70 of 1979.
9. The fund only became aware of the divorce order and its contents in May 1996 when Mr Vermeulen informed the fund thereof. Hereafter there was a lengthy exchange of correspondence between the parties relating to how the divorce clause should be interpreted.
10. Mr Vermeulen contended the pension interest as defined in the Divorce Act amounted to the total amount of contributions plus simple interest of 15.5% thereon. Had the fund been instructed to calculate the pension interest on the initial policy maturing in 1991 before termination, it would have been a simple mathematical calculation of all the premiums that were paid plus interest thereon.

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However, this policy matured on 1 October 1991 rendering an amount of R16,628.81 available for disposal. This amount entails premiums plus interest as well as other growth there may have been on this policy. One-third thereof was taken in cash by Mr Stassen and the remainder was used to purchase an annuity. Thus, Mr Jonker asserts that it is impossible to determine how much of the two-thirds amount consisted of contributions towards the fund and how much thereof represents interest. He concludes that neither the fund nor the administrator can be penalised for the fact that counsel drafted the settlement paper in a way that rendered it impossible to execute.

11. However, as a practical measure to resolve the above impasse the fund decided that as at 30 November 1997, half of the annuity payment (R78.13) be paid to the complainant. Thus, from 30 November 1997 to date, the complainant has been receiving R78.13 every month.
12. The complainant (based upon the limited information available to her), seeks an order directing the fund to pay her half of Mr Stassen=s monthly annuity from date of divorce till November 1997.
13. The issue essentially for determination is the interpretation of Apensioenbelang@ (pension interest) as set out in the Divorce Act. Section 1 of this Act defines pension interest in respect of a retirement annuity fund as follows:

...(b) is a member of a retirement annuity fund which was *bona fide* established for the purpose of providing life annuities for the members of the fund, and which is a pension fund, means the total amount of that party's contributions to the fund up to the date of the divorce, together with a total amount of annual simple interest on those contributions up to that date, calculated at the same rate as the rate prescribed as at that date by the Minister of Justice in terms of section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), for the purposes of that Act.

14. The above definition of pension interest in respect of retirement annuity fund is clear and unambiguous. I cannot accept and understand Mr Jonker's argument that the definition in the Act is unworkable in the case of the complainant. In terms of the definition, pension interest is composed of the members contribution to the fund plus interest thereon. Thus, all the contributions made by Mr Stassen (up till the date of divorce) to the fund constitutes one element of the pension interest. Second element is the interest on the contributions. From the evidence, it is clear that the complainant only contributed to the fund until 1991. Hence, in terms of the definition of the term 'pension interest', which was adopted by the parties, and the court order instructing the fund to adopt it, the complainant is entitled to half of all the contributions made by Mr Stassen to the fund. In addition she is entitled to simple interest on the contributions at the rate of 15.5% from the date of contributions to the date of divorce.
15. Be that as it may, an important issue ignored by the parties is whether I have jurisdiction to determine this matter.
16. Section 1 of the Pension Funds Act defines a complaint as follows:

"complaint" means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging -

- (1) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;
- (2) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;
- (3) that a dispute of fact or law has arisen in relation to a fund between the fund and

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any person and the complainant; or

- (4) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund;

but shall not include a complaint which does not relate to a specific complainant;

17. Section 1 of the Act requires the complaint to relate to either the administration of the fund or the investment of its funds or the interpretation and application of its rules. In this matter, the complaint clearly does not relate to the investment of the fund=s funds, nor does it relate to the interpretation and application of the rules of the fund. It arguably could relate to the administration of the fund, but there are compelling structural arguments in support of a contention that my office lacks jurisdiction.
18. The complainant=s cause of action clearly relates to the interpretation and application of a divorce order granted by the Cape High Court. There is a perceived dispute amongst the parties as regards to how pension interest should be interpreted and applied. As I stated in *van der Berg v Oranje Vrystaat Gemeenskaplike Munisipale Pensioenfonds* (Case No. PFA/GA/628/99), the use of the word *Arelates@* requires there to be some (and not in its totality) connection between the complaint and the interpretation and application of the rules of the pension fund or its administration. However, on the facts of this matter this connection is too remote.
19. Further, the complainant is essentially asking me to order the fund to execute the terms of a divorce order handed down by the Cape High Court. The more appropriate remedy for the complainant is to seek rectification of the High Court or obtain a writ of execution against the fund. It is structurally and legally inappropriate for my office to act as the means of executing a High Court order.

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20. Finally, the complainant at the time of lodging her complaint had very limited (if any) knowledge of Mr Stassen=s pension benefit in the fund. The divorce order makes the complainant a beneficiary of certain benefits which would otherwise not have accrued to her. In order for her to exercise the options set out in paragraph 19 she needs information regarding Mr Stassen=s pension benefit and contributions to the fund.

21. Accordingly, I make the following order:

The fund is ordered to provide the complainant with all material information relating to Mr Stassen=s benefit and contributions made to the fund until the date of divorce, within six (6) weeks of the date of this determination.

Dated at **CAPE TOWN** this **12<sup>th</sup>** day of **OCTOBER** 1999.

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**John Murphy**

Pension Funds Adjudicator