

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

CASE NO:PFA/GA/1480/00CN

In the complaint between:

**James Botha**

**Complainant**

and

**Academy Brushware Retirement Fund**

**First Respondent**

**Sanlam Life Insurance Limited**

**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 in terms of Section 30A(3) of the Pension Funds Act of 1956, which concerns two issues, namely the calculation of a withdrawal benefit payable to a member whose services are terminated in circumstances other than retrenchment or redundancy, and the deduction, by the fund, of a debt owed by the member to his employer from the member's withdrawal benefit.
2. No hearing has been held, and in coming to my decision, I have had regard to the documentary evidence compiled in the course of the investigation conducted by my Assistant Adjudicator, Cikizwa Nkuhlu, and the submissions of the parties to the complaint.
3. The complainant is James G. Botha, an adult male residing at Primrose, Johannesburg, in the Gauteng province. He is unrepresented in this matter.

4. The first respondent is the Academy Brushware Retirement Fund (“the retirement fund”), a pension fund duly registered in terms of the Pension Funds Act.
5. The second respondent is Sanlam Life Insurance Limited (“Sanlam”), the administrators of the retirement fund, whose principal place of business is at 2 Strand Road, Bellville,
6. The complainant was employed as a labourer by Academy Brushware (Pty) Limited, and was by virtue of such employment, a contributor to and member of the retirement fund. Although his date of appointment was the 22 October 1997, his membership of the retirement fund only commenced on 1 July 1999.
7. Prior to his membership of the retirement fund, the complainant had been a member of the Meneghelli Pension Fund, until its business was amalgamated with that of the retirement fund in terms of section 14 of the Act.
8. With the section 14 transfer, an amount of R1 412-00, representing member contributions and employer contributions, was received from the pension fund in respect of the complainant. A further amount of R209-45, in respect of a surplus distribution, was later received.
9. On 13 June 2000, the complainant was dismissed from service by his employer, apparently after being found guilty of fraud. He thus became entitled to a withdrawal benefit in terms of rule 8.2 of the rules of the retirement fund, which reads as follows:

**Voluntary termination of service and dismissal, other than owing to retrenchment or redundancy**

If a member's service with the employer is terminated before the normal retirement date, either voluntarily by the member or by dismissal, except dismissal owing to retrenchment or redundancy, and he/she is then not entitled to retirement benefits from the fund, he/she may exercise the following options:

**Cash benefit:**

(a) The member may choose that a cash benefit be paid to him/her.

(i) In the case of an old fund member this cash benefit is equal to-

(A) the member transfer credit with fund interest, if any; and

(B) the optional contributions which the member, during his/her period of membership, contributed to the fund in respect of past periods, with fund interest; and

(C) the compulsory contributions which the member made to the fund during his/her period of membership, with fund interest, subject to rule 8.1(2); and

(D) a percentage according to the following scale of the employer transfer credit and the employer contributions for retirement benefits made to the fund in respect of the member, with fund interest, subject to rule 8.1(2).

10. The scale referred to sets out the member's entitlement to the employer transfer credit and the employer contributions for retirement benefits made in respect of the member, as a percentage, on a sliding scale depending on the number of completed years in the benefit-generating period. The lowest number of benefit-generating years is less than one year, and the percentage to which a member who has completed a benefit-generating period of less than one year is 0%. The highest number of benefit-generating years is five and more years, with a corresponding entitlement of 100%.

11. The benefit-generating period completed by the complainant was just over two years,

but less than three years; thus on the scale referred to in rule 8.2 (D), he was entitled to 40% of the employer transfer credit, and the employer contributions towards retirement funding, which is an amount of R 1041-50.

12. The second option available to a member who withdraws from the fund in terms of the rule is to transfer his withdrawal benefit to another fund.
13. The complainant, on his dismissal, opted for a cash benefit, and the fund paid him a nett withdrawal benefit of R931-17, from which tax and a debt owed to his previous employer had been deducted.
14. The complainant challenges the amount of the benefit paid to him, and also the legality of the deduction by the fund, of a debt owed to his employer, from his withdrawal benefit.
15. In its response on behalf of the fund, Sanlam gave a detailed breakdown of how the withdrawal benefit was calculated, thus:

Own contributions	R 2009-25
Plus interest	R 102-06
Plus transfer credit	R 834-75
Plus interest	R 103-25
Subtotal	R 3058-31
Plus 40% of <b>R2 603-74</b>	R 1041-50

**(employer transfer credit and employer contributions for retirement benefits)**

(Calculation of the employer transfer credit and the employer contributions for retirement benefits made to the fund in respect of the member: Rule 8.2 (D))

Transfer credit-employer's contribution	R 568-25
Plus interest	R 69-54
Subtotal	R 637-79
Transfer credit-surplus contribution	R 209-45

Employer's contributions	R 3214-80
Less costs	R 1543-22
Plus interest	R 84-92
Subtotal	R 1756-50
<b>Total</b>	<b>R 2603-74)</b>

<b>Withdrawal benefit as on 30 June 2000</b>	<b>R 4099-81</b>
Less tax	R 437-00
Less amount owing to previous employer	R 2731-64
Nett withdrawal benefit	R 931-17

16. Insofar as the first leg of the complaint is concerned, I am satisfied that the complainant's withdrawal benefit has been correctly calculated in terms of the rules of the fund. Accordingly, the complaint relating to the calculation of the benefit is dismissed.
17. Neither the complaint, nor the fund's response, set out the exact nature of the debt owed by the complainant to his employer. Miss Nkuhlu has subsequently established from the complainant that the loan that had been advanced to him by his former employer was for the purpose of purchasing a motor-bike. He also owed his former employer the balance of the purchase price of certain brush-ware that he had purchased from the former employer on credit. It is common cause that the debt owed by the complainant to his employer does not fall into any one of the categories set out in section 37D(b)(i) and (ii) of the Pension Funds Act. That much has also been conceded on behalf of the fund.
18. The relevant section reads as follows:

A registered fund may-

(b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of-

- (i) (aa) a loan granted by the employer to the member for any purpose referred to in section 19(5)(a); or
  - (bb) any amount for which the employer is liable under a guarantee furnished in respect of a loan by some other person to the member for any purpose referred to in section 19(5)(a), to an amount not exceeding the amount which in terms of the Income Tax Act, 1962, may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act; or
- (ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb) in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud, or misconduct by the member, and in respect of which-
  - (aa) the member has in writing admitted liability to the employer; or
  - (bb) judgment has been obtained against the member in any court, including a magistrate's court,

from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund; and pay such amount to the employer concerned.

19. As the loan does not fall within the scope of section 37D(b), the fund was not authorized to deduct the amount of R2 731-64 from the complainant's withdrawal benefit, and its conduct in so doing is, accordingly, unlawful.

20. The second leg of the complaint is upheld, and the relief granted is as follows:

The first respondent is ordered to pay to the complainant, within six weeks of the date of this order, an amount of R2 731-64, together with interest calculated in terms of the Prescribed Rate of Interest Act from 1 July 2000 to the date of payment thereof.

DATED AT CAPE TOWN ON THIS 9<sup>TH</sup> DAY OF OCTOBER 2001.

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**JOHN MURPHY**  
**PENSION FUNDS ADJUDICATOR**