IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/KZN/97/98/IM

In the complaint between:

Nelson N Gwala Complainant

and

Sanlam Respondent

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

Introduction

1. The complainant is a retired member of the Telkom Retirement Fund who chose to have his pension purchased from insurer Sanlam. He later experienced financial difficulties and when he approached Sanlam to withdraw the cash they hold to provide his pension income, he was refused. The complainant alleges that the pension he is receiving from Sanlam is too small for him to live on and their refusal to allow him to withdraw cash to alleviate the situation is maladministration of his pension fund assets.

2. In formulating and lodging his complaint with the respondent, the complainant enlisted the services of Mr N M Dan Chetty of Consumer Affairs Services (SA) in Pietermaritzburg and later also approached Mrs N R Mzolo, a Consumer Adviser with the Consumer Affairs Division of the Department of Economic Affairs and Tourism in Pietermaritzburg, for assistance.

3. The complaint has been investigated by my senior investigator, Ian McDonald, who has presented a detailed report to me based on the written submissions of all these parties, together with those of the respondent, and other information obtained during telephonic conversations with the parties.

Background to the complaint

4. The complainant took early retirement from Telkom in July 1997 at the age of 54 having been employed with that organisation for 23 years.

5. In terms of Rule 4.4 of the Telkom Retirement Fund, of which he was a member at the time, the complainant exercised his options to take one third of his pension entitlement in cash and to have the balance of two thirds purchased from the respondent. Rule 4.4 says:

> 4.4(1) At the request of a retiring member made at the time of retirement, the member may choose to receive as a lump sum benefit up to one-third of his member=s share (or up to the whole thereof if allowed by income tax legislation), vesting on the first day of the month immediately following the member's retirement from service. The balance of the member's share, if any, will be made available to secure a pension for the member, as decided by the trustees acting on the advice of the actuary.
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> (1) Instead of granting payment of a pension by the fund as contemplated in rule 4, the trustees may pay the amount of the member=s share that would have been applied by the fund towards such pension to an insurer to purchase a pension for the beneficiary concerned:
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> The conditions determined in respect of the said pension are to be approved by the trustees. The fund shall thereafter have no further liability in respect of the member provided that:
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> (1) the pension purchased for the beneficiary from the insurer is an immediate pension payable for the life time of the beneficiary,
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> (2) if the member chooses to receive a lump sum benefit in terms of (1) above, it shall be paid by the fund to the member and no further lump sum benefit

shall be paid by the insurer to the member,

(3) the amount transferred by the fund to the insurer for the benefit of the member shall represent the full value of the member=s share in the fund as at the date of transfer; provided that if a lump sum benefit is paid in terms of (1) above, the amount transferred by the fund to the insurer shall be the balance of the member=s share after payment of the lump sum benefit.

(4) the pension purchased from the insurer is purchased in the name of the beneficiary.

6. The amount of R33,354.00 was paid to the complainant in cash and the balance amounting to R66,708.93 was applied as a purchase price to secure a pension. In order to protect the interests of the complainant's wife and family in the event of his death, the purchase price was applied to secure two annuity policies from the respondent. R56,530.25 was applied to secure a monthly pension of R694.24 which is paid direct into the complainant's bank account, and R10,178.68 was applied to secure a yearly pension of R1378,48 which is applied as a premium for a further life policy which will pay a sum assured of R66,708.00 to the complainant=s dependants in the event of his death. In terms of rule 44(2)(b) above and in compliance with section 37A of the Pension Funds Act of 1956, the pension purchased from the respondent is non-commutable and non-assignable. In other words no further cash lump sum can be paid to the complainant and the pension cannot be reduced, pledged, transferred or otherwise ceded.

7. During the period between May 1998 and October 1998 the complainant and his agent Mr Chetty approached the respondent on several occasions requesting that the annuity policies be terminated and that their cash value be paid to the complainant. On each occasion the request was refused and the applicable terms of the rules of the Telkom Retirement Fund and the Pension Funds Act which precluded such action were explained.

The complaint

8. The complainant argues that his pension is insufficient for his needs and that he could re-invest the capital in a better way himself in order to provide a better return, and a better living for his family. He claims that by refusing his request, the respondent is not acing in his best interests and that he is being prejudiced as a result.

   He has an outstanding housing loan of R34,000.00 with Peoples Bank and requests that half of the R66,000.00 invested with the respondent be applied to pay off this loan, while the remainder is left to provide a monthly pension.

The issues for determination

9. In assessing the circumstances surrounding this complaint, it is clear that the approach adopted by the respondent in refusing to grant the complainant=s request is correct. They are bound by the rules of the pension fund on whose behalf they are paying the pension, and by the Pension Funds Act of 1956 which insists that, once the member has received the maximum commutable amount of one third of his benefit is cash, in terms of the Income Tax Act of 1962, the remaining two thirds must be paid to him in the form of a non-commutable life annuity.

10. However, one can also understand the frustration of a pensioner who on the one hand has an outstanding housing loan of R34,000.00 with a monthly repayment of R680 (in terms of interest rates applying at the time the complaint was lodged), and on the other hand sees his life savings in the form of his pension asset amounting to R66,000.00 lying in the hands of a financial institution paying him a monthly income of R694.00. Simple arithmetic tells us there should be a better solution to the complainant's problem.

11. It must also be said, however, that the complainant could have avoided at least

some of the financial hardship he is suffering by using the R33,000 he took in cash at retirement to pay off his housing loan. There is evidence to the effect that his colleagues at Telkom, and the financial adviser who set up his pension at the time, strongly recommended that he apply the cash in this way, but he chose not to take their advice.

12. It is perhaps ironic that, had the housing loan been granted by the retirement fund in terms of section 19(5)(a) of the Act, or had the fund provided a guarantee to the bank in respect of the loan, the fund could have insisted that the cash lump sum be applied to repay the loan, at the date of retirement. This, of course would not have prevented the complainant from using his property as collateral for a further loan at a future date.

13. In fact the fund and the respondents acting on its behalf had no authority to apply the benefit or any part of it towards repayment of the housing loan at the date of retirement, nor do they have such authority now.

14. Equally, although I can sympathise with the predicament in which the complainant finds himself, and understand the logic he applies to the situation, I do not have the power or the authority to grant relief that would be contrary to the provisions of the Act. These provisions have been put in place to ensure that at least a part of a member=s retirement benefit provides an income for as long as the member lives.

15. For the aforegoing reasons the complainant's complaint is dismissed.

Dated at Cape Town this 5th day of October 1999.

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John Murphy

Pension Funds Adjudicator