



Pension Funds Adjudicator

Press Office Feature : **Financial woes does not stop provident fund contribution obligations**

Company: Pension Funds Adjudicator
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Business rescue did not absolve the statutory duty to pay the outstanding contributions

Companies experiencing financial difficulties had a legal obligation to continue to pay provident fund contributions in respect of their employees, says the deputy Pension Funds Adjudicator Ms Muvhango Lukhaimane.

She proclaimed this in a case concerning an employee who complained that the company she had worked for had stopped paying contributions to the provident when it ran into financial difficulties.

Ms Landman of Richards Bay commenced employment with Master Care (Pty) Ltd (third respondent) on 1 August 2005. The company made deductions from her salary in respect of the Wilenri Appliance Services Provident Fund (first respondent).

In May 2011 Ms Landman complained to the Office of the Pension Funds Adjudicator (OPFA) that the company did not pay all contributions to the fund. This would affect the benefit payable to her upon her exit from the fund.

Absa Consultants & Actuaries (Pty) Ltd (second respondent) told the OPFA that from the beginning of 2010, the third respondent began experiencing financial difficulties and did not pay provident fund contributions to the fund on time.

The third respondent paid provident fund contributions up to 31 August 2010 and made a number of undertakings to pay the outstanding contributions but these undertakings did not materialise.

The third respondent subsequently requested that payment of contributions be suspended from 1 June 2011 due financial difficulties.

A rule amendment was drafted to suspend contributions from 1 June 2011 onwards, but the third respondent would remain liable for contributions for the period from 1 September 2010 to 31 May 2011.

The second respondent said that the third respondent had been



placed under business rescue.

Ms Landman left her employment in May 2012 and was paid a withdrawal benefit comprising contributions paid up to August 2010 plus investment returns. Further payment was to be made to her once the third respondent paid the outstanding contributions.

The attorneys for the third respondent confirmed that the company had been placed under business rescue from May 2012. A business rescue practitioner and his team had taken over the running of the company and discovered that its records were not accurately kept.

In her determination, Ms Lukhaimane said the third respondent had defaulted with payment of contributions from 1 September 2010 to 31 May 2012. The withdrawal benefit paid to Ms Landman only consisted of provident fund contributions paid up to August 2010.

Thus, the third respondent contravened the rule that the employer shall contribute to the fund each month in respect of each member who is an employee.

The fact that the third respondent was placed under business rescue did not absolve it from its statutory duty to pay the outstanding contributions.

Ms Lukhaimane ordered the third respondent to pay the first respondent the outstanding contributions plus late payment interest.

She ordered the first respondent to pay Ms Landman her withdrawal benefit, less amounts already paid to her.