PERSONAL FINANCE

Municipal pension fund not off the hook

June 29 2014 at 12:00pm
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http://www.iol.co.za/business/personal-finance

The Municipal Employees Pension Fund, which was slammed by the Pension Funds Adjudicator for applying a rule change that reduced members' withdrawal benefits without first obtaining the approval of the Registrar of Pension Funds, has had the rule change approved with retrospective effect. However, it is still obliged to pay out the original higher benefit to members who left the fund between the retrospective date of the rule change, April 1, 2013, and April 1 this year, when the rule was registered.

Recently, Personal Finance reported that, in February, the adjudicator, Muvhango Lukhaimane, ruled that TS Raboshakga, who had worked for the Aganang Municipality, be paid the withdrawal benefit ton to which he was entitled by the Municipal Employees Pension Fund because its then-registered rules did not allow it to pay a reduced benefit.

Both Personal Finance and the adjudicator's office have received queries from other former members of the pension fund affected by the rule change. Some of these former members have been told that they have no claim against the fund because the Registrar of Pension Funds, Rosemary Hunter of the Financial Services Board, approved the rule change with retrospective effect to April 1, 2013.

When Personal Finance asked Lukhaimane whether she had received complaints from affected ex-members, she said she had, and her office had asked the registrar "to provide us with reasons why they registered the rule that the fund has commenced applying unlawfully with retrospective effect".

"When faced with complaints, our office would want to establish the rationale behind such action, especially in an instance like present where … the impact of the change is this drastic on the withdrawal benefits of members."

However, the office of the registrar has pointed out that, while in law a rule amendment may be approved with retrospective effect:

- It cannot be applied before it has been registered; and

- It cannot be applied to benefits that have accrued before the amendment was approved by the registrar.

The registrar says these principles were applied in an earlier determination by the adjudicator in 2010.

At a board meeting of the Municipal Employees Pension Fund in June last year, the board resolved to amend its rules with effect from April 1, 2013 to reduce the amount payable to a member on withdrawal, from three times to 1.5 times a member's contributions and interest.

This decision was taken on the advice of the fund's actuary, who said the fund could not afford to continue paying the higher benefits and, because the rates at which employers contributed to the fund were fixed, the only way to ensure that the fund remained financially sound was to reduce the benefits. The reduced benefits would still be higher than the minimum benefits prescribed by the Pension Funds Act.

In July 2013, the board applied to the registrar for the approval of the rule change, but that approval was granted only on April 1, 2014 – after the adjudicator had dealt with Raboshakga's complaint.

The registrar's office says the decision on the rule amendment was delayed because the fund had failed to submit a certificate by its valuator confirming that the amendment was financially sound.

The rule change was approved in terms of section 12 of the Pension Funds Act, which says that:

- The registrar must approve a rule amendment if it is not inconsistent with the Act and is financially sound; and

- A rule amendment will take effect on the date chosen by the board and specified in the rule amendment or, if no such date has been specified, on the date on which the amendment is approved by the registrar.

In this case, the effective date chosen by the board was April 1, 2013. Nonetheless, those whose membership of the fund ended between April 1, 2013 and April 1, 2014 (before the amendment was registered) are entitled to benefits in terms of the pre-amendment rules.