

Pension Funds Adjudicator

Press Office Feature : **No end to pension fund complaints in security industry**

Company: Pension Funds Adjudicator
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60 Percent of all pension fund complaints to her office come from private security guards

There appears to be no stopping the flood of complaints arriving on the desk of Pension Funds Adjudicator Muvhango Lukhaimane from employees of security companies who discover they are not properly covered.

The extent of the problem is so serious that 60 percent of all pension fund complaints to her office come from private security guards.

Despite several orders against the Private Security Industry Regulatory Authority (PSIRA) and employers to remedy problems, the situation does not seem to improve.

The latest such complaint came from VM Ntuli who worked for Top Ten Catering and Security CC (second respondent) from 22 April 2010 until 30 July 2013. He was a member of the Private Security Sector Provident Fund (first respondent).

He complained that the second respondent deducted money for Unemployment Insurance Fund (UIF) and for provident fund contributions from his salary. Following the termination of his service, no withdrawal benefit was paid to him.

The first respondent informed the Office of the Pension Funds Adjudicator (OPFA) that the second respondent became its participating employer on 8 March 2006 and was non-compliant in terms of section 13A of the Act.

It submitted that the complainant appeared on the second respondent's contribution schedules for the period April 2010 to January 2013.

Although the second respondent provided contribution schedules, it only provided corresponding contribution payments for the period January 2012 to February 2012, April 2012 and December 2012 to January 2013 and failed to provide corresponding contribution payments for the period April 2010 to December 2011, March 2012 and May 2012 to November 2012.

Due to the second respondent's non-compliance, the complainant did not have any contributions allocated to him and the fund credit could not be transmitted from the ABSA Consultants and Actuaries (Pty) Ltd (ACA) system.

It stated that the complainant had a record in the first respondent in respect of the period January 2012 to February 2012, April 2012 and December 2012 to January 2013.

The first respondent submitted that if the complainant was indeed employed as alleged, then the second respondent defaulted in respect of the payment of contributions on his behalf for the period April 2010 to December 2011, March 2012, May 2012 to November 2012, and February 2013 to July 2013.

It indicated that the second respondent's conduct was in contravention of fund rules which stated that the member's contribution shall be deducted by his employer and must, together with the employer's contribution, be paid to the fund monthly in arrears.

The first respondent concluded it could not pay any benefit that would have been secured by contributions that were not paid to it.

No response was received by the OPFA from the second respondent.

In her determination, Ms Lukhaimane said according to the information obtained from the Companies and Intellectual Property Commission (CIPC) on 8 September 2014, the second respondent commenced its business in the private security sector on 25 November 2002 and was still in business.

The second respondent became a participating employer in the first respondent on 8 March 2006. The first respondent commenced on 1 September 2002. Thus, the second respondent ought to have registered itself as a participating employer on 25 November 2002 when it commenced business. The second respondent failed to register itself timeously as a participating employer in the first respondent.

Ms Lukhaimane said the second respondent had a duty placed on it by the provisions of section 13A(1)(a) of the Pension Funds Act and the rules of the first respondent to pay contributions and submit schedules to the first respondent indicating on whose behalf payment was being made, and the first respondent in turn had a duty to pay out benefits to the members when they became due.

Ms Lukhaimane said the first respondent stated that fund contributions were received up to March 2013 and allocated up to December 2009.

"This Tribunal notes with concern the practice of the first respondent's administrator, ACA, of not allocating contributions received from employers."

"The first respondent appointed ACA as its administrator and delegated all its administration duties to the latter. ACA was in turn expected to perform these duties as contemplated in section 13B(5) of the Act."

Ms Lukhaimane said owing to the number of responses the OPFA received from the first respondent indicating non-compliance by ACA, it was clear that ACA was failing to perform its duties in terms of section 13B(5).

"As the board of the respondent has not indicated any action taken to remedy the failure by ACA to comply with section 13B(5), it is vital that the board of the first respondent submit a comprehensive report to this Tribunal and to the Registrar indicating the compliance status of ACA regarding the allocation of contributions.

"Therefore, the appropriate relief is that which has the effect of placing the complainant in the position he would have occupied had the first respondent allocated contributions received from the second respondent, the second respondent registered itself timeously with the first respondent and paid the contributions due."

The second respondent was ordered to pay the first respondent the complainant's outstanding contributions plus late payment interest.

The first respondent was ordered to pay the complainant the fund credit held on his behalf, together with interest thereto calculated at the rate of 15.5% per annum from August 2013 to date of payment.

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