



## **Onus is on the employee to check loan deductions are made**

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*11 June 2014 Muvhango Lukhaimane, Pension Funds Adjudicator*

It is the duty of an employee to ensure that amounts are deducted from his salary to repay a housing loan granted in terms of the Pension Funds Act, says Pension Funds Adjudicator Muvhango Lukhaimane.

Cape Town Municipality employee SN Fortuin claimed it was not his fault that deductions were not made from his salary, resulting in arrears. He asked for the loan to be written off.

He said he applied for a housing loan of R25 000 from the Cape Municipal Pension Fund (first respondent), administered by Alexander Forbes Financial Services (Pty) Ltd (second respondent) on 25 April 1999 and this was granted on 4 May 1999.

The housing loan repayments were supposed to be deducted by his employer with effect from 31 July 1999. The deduction of R96 per week commenced as per the agreement.

However, between April 2000 and November 2002, the employer stopped deducting from the complainant's salary. Thus interest had accrued on the arrear amounts.

The complainant submitted that according to his calculations the housing loan had been paid off but he was still paying it. According to his calculations, the loan including interest had been paid up by an amount of approximately R80 000.

He said the fact that deductions for loan repayments were stopped for a period was not due to any fault on his part. He submitted that the loan repayment instalments initially were R333.30 and they had increased to R800.00.

The complainant requested the Office of the Pension Funds Adjudicator to direct the respondents to write off the loan.

In its response, the first respondent said the employer was responsible for making the salary deductions in repayments of loans granted to employees. From April 2000 until November 2002 the employer stopped making payments of the deductions. Interest on the arrears resulting from the non-payment was added to the capital to be repaid by the complainant.

Also in September 1999, the complainant requested that his repayment amount be reduced from R96 to R76.59. This was agreed to and the loan term was extended from 10 years to 25 years.

The first respondent said a letter was written to the complainant advising him that his current home loan deduction was not sufficient to cover the required instalment to ensure that at least the monthly interest that was accruing on the outstanding balance was repaid.

Consequently his home loan balance was not reducing but increasing. He was advised that his repayment would be increased to the agreed repayment amount as per his housing loan application with effect from 1 June 2006.

The first respondent submitted that the employer's failure to make deductions from the complainant's salary and pay to it, caused the arrear interest to be added to the capital. This did not have the effect of altering the complainant's obligation in terms of the loan agreement.

It submitted that although the employer fulfilled the role of assisting its employees in repaying their housing loans by deducting the loan repayments from their salaries and paying to it, it was primarily the member's responsibility to ensure this was done.

In her determination, Ms Lukhaimane said by accepting the housing loan, the complainant accepted that the primary responsibility to repay the loan was his. It was the complainant's responsibility to check his salary slips and ensure that amounts were being deducted. Thus the respondent could not be faulted for the employer's failure to effect the said deductions.

She said the first and second respondents could not be ordered to write off the arrear interest levied on the outstanding amount, nor could they be ordered to write off the outstanding housing loan. In order for the complainant's claim to succeed, it must be proved that the respondents committed an intentional or negligent act or omission. The employer was responsible to deduct this amount from the complainant's salary. Thus, the respondents had not committed any act or omission as a result of which the complainant suffered loss.

In dismissing the complaint, Ms Lukhaimane said the complainant received monthly salary advices from the employer, which would have reflected whether or not any housing loan repayments were made. The complainant failed to prove he had suffered any loss.

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