

Pension Funds Adjudicator

Press Office Feature : PFA finds Momentum Retirement Annuity guilty of delaying payment of death benefit

Company: Pension Funds Adjudicator

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Delayed by the request of unnecessary documents by the first respondent from the complainant

The Pension Funds Adjudicator has ordered a retirement fund to pay a frail widow her late son's death benefit after his Russian wife had absconded when he became gravely ill.

Mrs BL Perry, 77, of Beaufort West who lives in an old age home was unhappy that Momentum Retirement Annuity Fund (first respondent) and Momentum Group Ltd (second respondent) had unnecessarily delayed paying her the death benefit amounting to R37 470.20 although she was the sole nominated beneficiary of the deceased.

She told the Pension Funds Adjudicator Muvhango Lukhaimane that her son MH Schmidt passed away on 14 May 2012. He had been married to a Russian woman, Elena Gajnutdinova, who upon the deceased's admission to hospital in a diabetic coma, had returned to Russia on 13 April 2012. The deceased died intestate.

Mrs Perry said she lodged a claim for the payment of the death benefit with the second respondent and was informed that the benefit would be paid to the deceased's dependants as defined in the Pension Funds Act.

The second respondent advised that it would only pay the benefit to her if she was the executor of the deceased's estate.

She said she had tried becoming the executor of the deceased's estate by applying to courts within Beaufort West but was informed that she would have to travel to Pretoria and register at the Master's office in that area.

She submitted that as a frail lady, such trips were both expensive and painful. Also, she had little idea of the

complexities associated with being an executor.

She was also concerned that if she appointed an attorney to be an executor, she would have to pay costs upfront which may even exceed the available benefit and with no guarantee of success in the matter.

The complainant said because the deceased's wife had absconded to Russia, she was not aware of any legal dependants because he had no children.

The complainant further submitted that she believed she fell within the category of a dependant as the deceased would have become legally liable for her maintenance, had he not died.

In response, the second respondent submitted it had an obligation to trace the deceased's spouse because she qualified as a dependant in terms of the Act.

The complainant had been notified that more information regarding the spouse's whereabouts and financial circumstances had to be obtained.

The second respondent submitted that it tried to trace the deceased's spouse by even making use of an external tracing company, to no avail.

On failing to trace the deceased's spouse, it referred all the available information to the first respondent's board for its decision on how to distribute the death benefit.

The board resolved that the entire benefit be allocated to the complainant as a nominated beneficiary, provided that the deceased's estate was solvent.

The second respondent said the complainant was informed about the board's resolution and a certified copy of the letter of executorship plus written confirmation from the executor that the estate was solvent were requested from the complainant.

The complainant confirmed that there was no executor appointed.

The second respondent had also requested that the family of Mr Schmidt provide it with a list of possible creditors and the amounts that might be owed to these creditors by Mr

Schmidt.

The amount owed to the creditors would be paid into the estate bank account and the remaining benefit would be paid to the nominated beneficiary.

The second respondent submitted that it was not unduly withholding payment to the complainant. However, it needed to act within the guidelines of the Act and, therefore, needed proof of potential creditors and the amounts owed to these creditors.

In her determination, Ms Lukhaimane said it appeared that the first respondent was distributing the benefit in terms of section 37C (1) (b) of the Act, which was incorrect. This section governed the distribution of a death benefit to a nominee who was not a dependant of the deceased member.

Ms Lukhaimane said the complainant fell within the definition of a dependant in terms of the Act.

She said that by October 2012, the board had concluded its investigations with regards to dependants and possible dependants of the deceased. Therefore, payment of the death benefit to the complainant should have been made immediately after the board's resolution dated 10 October 2012.

"However, it has been delayed by the request of unnecessary documents by the first respondent from the complainant.

"Taking cognisance of all the circumstances, the payment of the death benefit to the complainant has been unreasonably and unfairly delayed," said Ms Lukhaimane.

The first respondent was ordered to pay the death benefit to the complainant, together with interest at the rate of 15.5% per annum.