

## Trustees must pay for funds' admin 'mess'

August 4 2013 at 12:05pm

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<http://www.iol.co.za/business/personal-finance>

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The former trustees of four troubled umbrella retirement funds have been ordered to repay about R20 million to the funds, which house the savings of 11 000 retirement fund members from 200 companies. The money was used to reconstruct members' records left in a mess by the funds' former administrators and fund sponsors, Dynam-ique Consultants & Actuaries.

The order is the latest from Pension Funds Adjudicator Muvhango Lukhaimane on an issue which saw the former trustees deciding to rebuild the funds' records at a cost of 2.5 percent (R20 million) of members' savings.

Initially, in August last year, the adjudicator ordered the funds to repay a group of members who had complained about deductions from their fund credits for the rebuilding process. The funds successfully appealed to the High Court against the determination, arguing that the funds themselves did not have the money and it would have to be deducted from the savings of other members.

The issue is further complicated by the fact that, in 2008, the South African arm of global financial services company Aon took over the administration of the funds after it bought the Dynam-ique administration system but not the company.

The four funds, with combined assets of about R800 million, are:

- \* Dynam-ique SA Umbrella Pension Fund, with 937 members and 17 participating employers;
- \* Dynam-ique SA Umbrella Provident Fund, with 5 343 members and 101 employers;
- \* Integrated Future Umbrella Pension Fund, with 711 members and 12 employers; and
- \* Integrated Future Umbrella Provident Fund, with 4 272 members and 70 employers.

The former trustees were trustees while the funds were being administered by Dynam-ique and after Aon took over the funds. The instruction to rebuild the records was given after the Aon takeover.

Lukhaimane has now twice found that the ultimate responsibility for the administrative mess lay with the trustees of the funds, who failed in their duties to:

- \* Exercise a rigorous oversight function over the administrators;
- \* Act with due care, diligence and good faith in respect of the operation and administration of the funds; and

\* Ensure that the funds had adequate indemnity cover to provide for gross negligence resulting in financial loss or liability.

Lukhaimane has now ordered the former trustees to jointly and severally repay the money. She says the former trustees – Gail le Grellier, Renier Botha, David Lepar, and Carel Smith – did not manage the funds properly and, as a result, caused financial loss to the funds and ultimately to the members.

Lukhaimane says she is forced to let another former trustee, Tony Kamionsky and his Dynam-ique administration company, off the hook because he reached a R1-million settlement with the funds.

Regarding Kamionsky, she says it should be noted that the amount of R1 million that he paid in settlement of all civil claims against him for alleged maladministration of the funds “is negligible”. She says a reasonable settlement should have taken into account the financial prejudice to members and the funds.

The former trustees have seven weeks to make the payment.

The former trustees, who made the decision to rebuild the records of the funds’ data, resigned on February 10, 2011, when a new board was appointed.

The new board of trustees endorsed the decision made by the previous board of trustees. Aon has since instructed the auditors to continue with the rebuilding process at its own cost.

There are still various High Court actions under way, including a claim by the funds against Aon, based on maladministration of the funds.

Lukhaimane points out that Aon purchased the administrative books of Dynam-ique without conducting a proper due diligence.

“As a result of its failure to act with care and due diligence, it inherited the administrative problems from Dynam-ique,” she says.

In her determination, Lukhaimane says that the rules of the funds allow for deductions from the members’ fund credits for the rebuilding process, because these costs can be categorised as audit fees, or fees or levies paid to service providers or fund creditors.

But Lukhaimane says this does not give the trustees “unlimited power to use the members’ fund credits to fund any cost resulting from their negligent conduct. It also does not cover costs resulting from the maladministration of the funds, which resulted in the members suffering an unwarranted loss on their fund credits.

“The facts indicate that the decision of the previous board of trustees of the funds to use 2.5 percent of the members’ fund credits to fund the cost of the rebuilding process was a result of maladministration of the funds. The members were financially prejudiced, in that their fund credits were less than they would have been had the former trustees managed the funds properly,” Lukhaimane says.