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Please quote our reference: **PFA/GP/00113886/2024/YVT**

Fund reference: **38514920**

PER REGISTERED POST

Dear Madam,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT,
24 OF 1956 (“the Act”): NM MOFOKENG (“complainant”) v SANLAM
UMBRELLA PROVIDENT FUND (“fund”) AND TRIPONZA 58 CC T/A IMMANUEL
MEAT MARKET (“employer”)**

[1] INTRODUCTION

- 1.1 This complaint concerns the payment of a withdrawal benefit.
- 1.2 The Adjudicator received the complaint on 18 June 2024. On 25 June 2024, a notification of the complaint was sent to the respondents affording them until 25 July 2024 to resolve the complaint. On the same date, a letter was sent to the complainant, notifying her that the complaint was forwarded to the respondents for possible resolution. On 26 July 2024, a letter acknowledging receipt of the complaint was sent to the complainant. On the same date, the respondents were requested to submit their responses by 16 August 2024. A response was received from the fund on 20 August 2024. On 26 July 2024 and 31 July 2024,

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the investigator in this matter attempted to contact the employer, with no success. On 04 September 2024, a follow-up letter was sent to the employer requesting its response by 16 September 2024. No response was received from the employer. No further submissions were received from the parties.

- 1.3 Having considered the written submissions before the Adjudicator, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainant commenced employment from 01 February 2011 to 30 October 2022. He was registered as a member of the fund by virtue of his employment.
- 2.2 The complainant's fund credit was R24 197.13 as at 19 August 2024.

[3] COMPLAINT

- 3.1 The complainant submitted that he was employed with the employer and the latter deducted provident fund contributions from his salary. He averred that the employer failed to remit all contributions due on his behalf to the fund. Further, his employment was terminated in October 2022 due to the employer's liquidation. However, he has not received payment of a withdrawal benefit.
- 3.2 The complainant provided a copy of his withdrawal claim form stamped by the employer.
- 3.3 The complainant requests the Adjudicator to investigate the matter and order the payment of his withdrawal benefit.

[4] RESPONSES

Fund

- 4.1 The fund submitted that the employer commenced its participation on 01 October 2016. The complainant was registered as its member on the same date.
- 4.2 The fund received contributions on behalf of the complainant from October 2016 to August 2021. The complainant's fund credit was R24 197.13 as at 19 August 2024. The fund attached a copy of the complainant's contribution schedule and benefit statement in support of its submissions.
- 4.3 The fund stated that on 17 May 2024, it received the complainant's electronic withdrawal claim form from the employer.
- 4.4 The fund submitted that the employer's participation in the fund is being liquidated from 01 October 2021. It submitted that the Financial Sector Conduct Authority will approve the dissolution of the employer's participation in the fund and the appointment of the liquidator. It submitted that no payments may be made until the FSCA issued the required directive under section 28(11) of the Act. Therefore, the complainant is only entitled to a withdrawal benefit once the relevant directive has been issued by the FSCA.

Employer

- 4.5 The employer was granted an opportunity to respond to the allegations made against it, as required in terms of Section 30F of the Act. However, the employer did not file a response. In the circumstances, the Adjudicator will dispose of the matter on the basis of the available

submissions.

Financial Sector Conduct Authority (“FSCA”)

4.6 On 07 October 2024, the FSCA confirmed that it has not yet received an application for the appointment of a liquidator from the fund.

[5] DETERMINATION AND REASONS THEREFOR

Point in limine - Jurisdiction

5.1 A search conducted on the Companies and Intellectual Property Commission’s (“CIPC”) website on 07 October 2023, indicated that the employer was placed under voluntary liquidation. The Adjudicator is precluded from dealing with complaints for outstanding contributions against an entity that was placed under voluntary liquidation. The complainant may contact the Master of the High Court, whose details appear at the foot of this determination, for the details of the liquidation process and to claim his outstanding contributions.

5.2 The fund submitted that the employer’s participation has been terminated with effect from 01 October 2021. The FSCA has not yet approved the appointment of a liquidator. However, once appointed, the liquidator will commence with the liquidation process in terms of section 28 of the Act. Section 28(1) and (2) of the Act read as follows:

“(1) Subject to the provisions of this section, a registered fund may be terminated or dissolved, whether wholly or in part, in the circumstances, (if any) specified for that purpose in its rules, and in the manner provided by those rules. In such an event, the assets of the fund, or, in the case of the partial termination of the fund, those assets of the fund attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination (as the case may be) shall, subject to the

provisions of this section, be distributed in the manner provided by those rules.

- (2) A liquidator shall be appointed in the manner directed by the rules, or, if the rules do not contain directions as to such appointment, by the board, but such appointment shall be subject to the approval of the registrar, and the period of liquidation shall be deemed to commence as from the date of such approval.”

5.3 The liquidator appointment has not yet been approved by the FSCA. The fund confirmed that the complainant had a fund credit of R24 197.13 as at 19 August 2024. Therefore, the Adjudicator may order the payment of the complainant’s withdrawal benefit.

Merits

5.4 The issue that falls to be determined is whether or not the complainant is entitled to a withdrawal benefit in terms of the rules of the fund and the Act.

Partial liquidation

5.5 Rule 18 of the fund provides for termination and reads as follows:

“18.1(4) If the Fund is to be liquidated the Board must, subject to the approval of the Authority, appoint a liquidator and the period of liquidation is deemed to commence as from the date of such approval.

Further, Rule 18.2 provides as follows:

“18.2(1) The provisions of this Rule apply to an Employer that terminates its participation in the fund without transferring the Members as a group to another approved retirement fund in terms of section 14 of the Act.

18.2.(2) An Employer wishing to terminate or temporarily suspend its participation in the Fund in this manner must give two months prior written notice to the Board. The Board may agree to a shorter period of notice on the condition it may determine...”

- 5.6 The rules of the fund provide that liquidation is deemed to commence from the date of approval of the liquidator. The FSCA has not yet approved the liquidator’s appointment. Legally, the Adjudicator is precluded from dealing with complaints relating to payment of contributions to a fund that is in liquidation. Section 28 of the Act makes provision for the FSCA to monitor the liquidator to achieve a fair distribution of fund assets. In terms of section 28(4)(b) of the Act, the duty of the liquidator is, *inter alia*, to discharge the liabilities of the fund to its members according to full recognition of their rights and reasonable benefit expectations. Thus, where such a process is set in motion, the liquidator and the FSCA are best placed to protect a member’s interests. The employer’s participation has been terminated from 01 October 2021. The liquidator appointment has not yet been approved by the FSCA. The Adjudicator cannot order the employer to pay any outstanding contributions. However, the fund should be ordered to pay the complainant a withdrawal benefit.

Benefit entitlement

- 5.7 Rule 9 of the fund provides for termination of service and reads as follows:

“9.1 Termination of service

- 9.1(1) If a MEMBER’s service with the EMPLOYER is terminated before the NORMAL RETIREMENT DATE (whether voluntarily by the MEMBER or as a result of retrenchment, redundancy and dismissal or any other reason), and he/she

may then not retire in terms of the RULES, the MEMBER will become entitled to a benefit in terms of this Part 9 only once he/she elects, in writing in the prescribed format and subject to RULE 9.2(2) and the relevant provisions of the SPECIAL RULES, one of options indicated below:

Cash benefit

- (a) The whole of his/her MEMBER SHARE is paid to him/her in a lump sum."

The complainant had a fund credit of R24 197.13 representing contributions received from October 2016 to August 2021. The complainant's employment was terminated in October 2022. Upon the termination of his employment, the complainant became entitled to a withdrawal benefit. The complainant's employment was terminated over two years ago and yet the appointment of the liquidator has not been approved by the FSCA. Therefore, the fund should pay the complainant a withdrawal benefit.

[6] ORDER

6.1 In the result, the order by the Adjudicator is as follows:

6.1.1 The fund is ordered to pay the complainant the fund credit of R24 197.13 that it is currently holding on his behalf, less any deductions permitted by the Act, within two weeks of this determination; and

6.1.2 The fund is ordered to provide the complainant with a breakdown of the payment, together with the payment made in terms of paragraphs 6.1.1 above.

DATED AT PRETORIA ON THIS 11TH DAY OF OCTOBER 2024

MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR

Section 30M Filing: High Court

Parties unrepresented