

THE FINANCIAL SERVICES TRIBUNAL

Case no PFA 43/2024

In the matter between: -

THE DONCO TRUST T/A DONS DELIVERIES

FIRST APPLICANT

DONOVAN JOHN MC GILL

SECOND APPLICANT

KEVIN ROY FREEMAN

THIRD APPLICANT

and

TRANSPORT SECTOR RETIREMENT FUND

FIRST RESPONDENT

PENSION FUNDS ADJUDICATOR

SECOND RESPONDENT

DECISION ON COSTS

SEC 234(2) OF THE FINANCIAL SECTOR REGULATION ACT 9 OF 2017

- 1 The applicants applied for the reconsideration of a determination of the second respondent made in terms of sec 30M of the Pension Funds Act 24 of 1956.
- 2 The Fund had laid a complaint against the trust and Mr Freeman for failing to have paid the fund contributions for the period May to August 2023. The contributions were admittedly outstanding and the reason for non-payment related to the financial circumstances of the trust.

- 3 Despite the determination, the applicants failed to comply with the order of the PFA. It belatedly filed an application for reconsideration under sec 230(1) together with a condonation application and an application for suspension under sec 231.
- 4 The reconsideration application did not disclose any grounds for reconsideration and did not allege that the PFA had erred in any respect.

- 5 The suspension application was dismissed in these words:

The determination of the PFA has become moot since the applicant has complied with the determination. The suspension application is, accordingly, frivolous and is dismissed under sec 234(4) of the FSR Act with costs. The reconsideration application itself will probably suffer the same fate because inability to comply with the PFA is not a ground for reconsideration. The new "disputes" do not fall under the jurisdiction of the Tribunal.

- 6 The applicants subsequently withdrew the reconsideration application but since they did not tender costs the fund applied for a costs order in terms of sec 234(2):

The Tribunal may, in exceptional circumstances, make an order that a party to proceedings on an application for reconsideration of a decision pay some or all of the costs reasonably and properly incurred by the other party in connection with the proceedings.

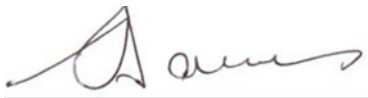
- 7 The question then is whether there are exceptional circumstances in this case. It is unnecessary to traverse the arguments of the parties because although bad cases are not necessarily exceptional cases, this case is different. The reconsideration application was not a bona fide application for reconsideration. Its undisputed

purpose was to delay payment. That is an abuse of process and not only a waste of the resources of the Tribunal but also a costly exercise for the fund.

8 Since the amount in contention exceeded R700 000, it is appropriate to order costs to be taxed under the Uniform Rule by the High Court Taxing Master.

ORDER: The applicants are ordered to pay, jointly and severally, the the costs reasonably and properly incurred by the Fund in connection with the reconsideration proceedings and taxed under the Uniform Rule by the High Court Taxing Master.

Signed on behalf of the Tribunal on 18 November 2024.

A handwritten signature in black ink, appearing to read 'LTC Harms', is written on a light blue horizontal line.

LTC Harms (Chairperson)