

**THE FINANCIAL SERVICES TRIBUNAL**

**CASE NO: PFA79/2023**

In the matter between:

**MNYAND TRADING (PTY) LTD**

Applicant

and

**L DU PLESSIS**

First Respondent

**PENSION FUNDS ADJUDICATOR**

Second Respondent

**PRIVATE SECTOR SECURITY PROVIDENT FUND**

Third Respondent

Tribunal: J Francis J (Chair), Adv MG Mashaba SC & Adv SM Maritz

Appearance for Applicant: Mr D Hewitt

Appearance for Respondent: No appearance

Date of Hearing: 14 August 2024

Date of Decision: 26 August 2024

Summary: Application for Reconsideration in terms of Section 230 of the Financial Sector Regulation Act, 9 of 2017 (“the FSR Act”) of determination by the Second Respondent, ordering the Applicant to pay contributions in terms of section 13A(1)(a) & (b) of the Pension Funds Act, 24 of 1956 (“the Act”) on behalf of the First Respondent from July 2019 to May 2020, as well as ancillary orders. The correct date of commencement of employment of First Respondent with Applicant has not been established.

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## DECISION

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### A. INTRODUCTION

1. The Applicant seeks reconsideration of a determination made by the Second Respondent on 14 October 2022 and received by the Applicant on 26 October 2023. The determination orders the Applicant to pay outstanding contributions on behalf of the First Respondent for the period from July 2019 to May 2020, and ancillary orders, which will be detailed below.
2. The Applicant is **MNYAND TRADING (PTY) LTD** (“the Applicant” or “the employer”).
3. The First Respondent, **L DU PLESSIS**, is a former employee of the Applicant. By virtue of her employment, she was registered as a member of the Third Respondent (“the First Respondent” or “the complainant”).
4. The Second Respondent is the **PENSION FUNDS ADJUDICATOR** (“the PFA”).
5. The Third Respondent is **PRIVATE SECTOR SECURITY PROVIDENT FUND** (“the Fund”).

### B. RELEVANT BACKGROUND

6. The First Respondent commenced employment as a watchman with the Applicant on 19 February 2020 and continued until 29 October 2021.<sup>1</sup> The Applicant operates in the private security sector. The First Respondent was registered as a member of the Fund, in which the Applicant is a participating employer.

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<sup>1</sup> PFA Complaint Form, Record: Part B: p 2  
Contract of Employment – Fixed Term, Record: Part A, pp 20-21

7. After the termination of the First Respondent's employment with the Applicant, she lodged a complaint with the PFA on 11 May 2022, expressing her dissatisfaction over the non-payment of her withdrawal benefit. The First Respondent's complaint was based on a single ground. However, the PFA expanded on this by introducing additional issues for consideration, including whether the employer had promptly registered as a participating employer in the Fund, whether the complainant had been registered as a member of the Fund in a timely manner, and whether all required provident fund contributions had been made on her behalf.

8. *Responses to Complaint*

*Fund*

8.1 The Fund submitted that the employer commenced participating in it on 1 March 2020 and that the employer is complaint with section 13A of the Act.

8.2 The Fund confirmed the complainant's membership with it from 1 October 2020 by virtue of her employment and that she exited the Fund on 30 November 2021 due to voluntary retrenchment.

8.3 The Fund confirmed that the complainant was paid a withdrawal benefit of R 7 091.70 on 16 May 2022 representing contributions received from the employer from October 2020 to November 2021. However, the contribution schedule indicate that contributions received from October 2020 to November 2021 fluctuated frequently.

8.4 The Fund indicated that an amount of R 3 459.60 in respect of outstanding contributions for June 2020 to September 2020 is owed by the employer together with late payment interest of R 1 226.55 calculated up to 31 August 2022.

*Employer*

- 8.5 The employer was given an opportunity to respond to the allegations against it. However, the employer did not respond to the PFA, and both the preliminary and final determinations were made without any input from the employer.
- 8.6 In response, the employer explained that it did not receive any correspondence or determination from the PFA because it was sent to the incorrect email address, [odweba@transtract.com](mailto:odweba@transtract.com), rather than the correct email address, [odweba@transtruct.com](mailto:odweba@transtruct.com). The Applicant similarly received the PFA's final determination dated 14 October 2022 only on 26 October 2023 (1 year later) due to the same issue. Furthermore, the email address reference in the Applicant's application for reconsideration is stated as [odweba@transtruct.com](mailto:odweba@transtruct.com). The record supports that Applicant's explanation, and in the absence of any evidence to the contrary, this Tribunal accepts the explanation. Therefore, there is no need for condonation for the late filing of the Applicant's reconsideration application, which was submitted on 1 December 2023, within the 60 days' period of receiving notification of the final determination on 26 October 2023, as required by section 230(2)(b) of the FSR Act.

9. *PFA's Final Determination/Order*

The final order of the PFA is as follows:

- 9.1 The Fund is ordered to register the employer as its participating employer from **19 February 2019**, within four weeks from the date of this determination.  
[Emphasis added]
- 9.2 The Fund is ordered to register the complainant as its member with effect from **1 March 2019 to 29 October 2021**, within four weeks of this determination.  
[Emphasis added]

- 9.3 The Fund is ordered to reconcile the contribution payments made by the employer for October 2020 to November 2021, within four weeks of this determination and advise the employer of the outstanding amount as soon as the reconciliation is finalised.
- 9.4 The employer is ordered to pay to the Fund the amount of R 3 459.60 as arrear contributions in respect of the complainant for June 2020 to September 2020, within four weeks of this determination.
- 9.5 The late payment interest on the amount referred to in paragraph 9.4 above must be calculated by the Fund at the rate prescribed in terms of section 13A(7), calculated from the dates set out in section 13A(7) until date of final payment, and provided to the employer for payment.
- 9.6 The employer is ordered to submit all outstanding contribution schedules in respect of the complainant for **July 2019 to May 2020**, to the Fund in order to facilitate the computation schedules based on the information already in its possession, within two weeks of the employer's failure to submit the schedules.
- 9.7 Should the employer fail to comply with paragraph 9.6, the Fund is ordered to reconstruct the complainant's contribution schedules based on the information already in its possession, within two weeks of the employer's failure to submit the schedules.
- 9.8 The Fund is ordered to compute the arrear contributions due by the employer, together with late payment interest owed by it in terms of section 13A(7) of the Act, within one week of receiving the contribution schedules in terms of either paragraph 9.6 or 9.7 (whichever is applicable).
- 9.9 The Fund is ordered to transmit to the employer its computations in paragraph 9.8, within three days of completing them.

- 9.10 The employer is ordered to pay to the fund the arrear contributions together with late payment interest as computed in accordance with paragraph 9.8, within two weeks of receiving the computations and the reconciliation feedback from the Fund.
- 9.11 The Fund is ordered to pay the complainant a further withdrawal benefit amount, less any deductions permitted by the Act, within two weeks from receipt of payment from the employer in terms of paragraph 9.4 and 9.10 above.
- 9.12 The Fund is ordered to provide the complainant with a breakdown of her withdrawal benefit paid in terms of paragraph 9.11 above, within one week of effecting such payment.
10. On 1 December 2023, the Applicant filed its application for reconsideration against the PFA determination and order.

**C. APPLICANT'S GROUNDS FOR RECONSIDERATION**

11. The Applicant contends that the PFA's determination, requiring payment of contributions for the First Respondent by the Applicant starting from 31 July 2019, is incorrect, as the First Respondent was only employed by the Applicant from 19 February 2020.
12. The Applicant acknowledged that an error occurred when the First Respondent's employment date was incorrectly recorded in the payroll system. In the Applicant's augmented grounds for reconsideration, it clarified that this error affected the First Respondent's employment records. To support its position, the Applicant attached correspondence with the UIF department, confirming that the First Respondent's employment spanned from 19 February 2020 to 29 October 2021. The Applicant further explained that although the First Respondent had work hours recorded in November 2021, her last day of employment was 29 October 2021, meaning that the

hours worked from 21 October 2021 to 29 October 2021, were recorded in the November wage period.

13. The Applicant attributed its failure to respond to the PFA's correspondence to the fact that communications were sent to an incorrect email address, as noted previously. Consequently, the Applicant asserts that it only became aware of the PFA's preliminary and final determinations on 26 October 2023. In its augmented grounds for reconsideration, the Applicant argued that it did not receive any correspondence mailed to a PO Box number, as no postal service is available at its physical address.
14. The Applicant stated that its registration with the Fund was finalized only in October 2020. In its augmented grounds for reconsideration, it clarified that it had applied for registration via email in March 2020 but received a response from the Fund only on 24 August 2020, a delay of six months. The Applicant further submitted that on 6 November 2020, it was instructed by the Fund to change the commencement date on the forms from 1 March 2020 to 1 October 2020, and it provided the relevant emails to support this. The Applicant emphasized that although it had submitted the necessary paperwork in March 2020, its official registration with the Fund only occurred in October 2020. Therefore, the Applicant argued that it should not be required to pay contributions from 31 July 2019, as the First Respondent's employment only began in February 2020 and the registration with the Fund was only completed in October 2020.

**D. TRIBUNAL'S DECISION**

15. The Applicant's reconsideration application primarily hinges on the fact that the start date of the First Respondent's employment with the Applicant was erroneously recorded and accepted by the PFA in its final determination as 19 February 2019, instead of the correct date of 19 February 2020. This incorrect information led the PFA to issue its final order, which directed the Applicant to make contributions on behalf of the First Respondent from 31 July 2019, along with the ancillary relief.

16. The Tribunal notes that the PFA's reasoning and subsequent determination rely primarily on the start date of the First Respondent's employment with the Applicant. In support of the PFA's submissions, reference is made to a payslip received from the First Respondent, dated 24 March 2021, which indicates a "*Date Engaged*" of 19 February 2019. The Applicant, however, contested this by explaining that the start date was incorrectly recorded in its payroll system.
17. After carefully reviewing the record, the Tribunal finds no additional evidence, apart from the aforementioned payslip, to support the PFA's assertion that the First Respondent commenced employment on 19 February 2019. All other evidence supports the Applicant's claim that the First Respondent's employment began 19 February 2020.
18. The following documentation supports the Applicant's submission that the First Respondent's employment start date was 19 February 2020:
  - 18.1 The PFA's Complaint Form<sup>2</sup>, completed in the First Respondent's handwriting, states the "*Date of Joining the Company*" as "*19 February 2020*". This document is part of the PFA's record, yet no explanation is provided in the PFA's determination as to why it was not considered.
  - 18.2 The Pre-Employment Form<sup>3</sup> indicates the proposed employment start date as 19 February 2020.
  - 18.3 The Contract of Employment (Fixed Term)<sup>4</sup>, duly signed by the First Respondent, specifies the duration of employment as a fixed period from 19 February 2020 until 30 May 2020.

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<sup>2</sup> Record: Part B, pp 1 - 5

<sup>3</sup> Record: Part A, p 19

<sup>4</sup> Record: Part A, pp 20 - 21



- 18.4 A copy of the First Respondent's payslip<sup>5</sup>, dated 20 October 2021, shows the "Date Engaged" as 19 February 2020.
- 18.5 A letter from an employee (payroll department) of the Applicant, dated 19 November 2021, confirms the First Respondent's employment start date as 19 February 2020.<sup>6</sup>
19. All of the above documentation, except for the First Respondent's complaint form, is part of the Applicant's reconsideration application. The Applicant has adequately explained why it did not respond to the PFA's correspondence regarding the First Respondent's complaint, for reasons already mentioned, which will not be repeated for the sake of brevity. While the Tribunal recognizes that this evidence may not have been available to the PFA at the time of its determination, it should still be considered regardless.
20. The Tribunal notes that discrepancies concerning the employer's registration as a participating employer with the Fund include the conflicting dates of 1 March 2020 versus October 2020. The PFA reliance on the Companies and Intellectual Property Commission ("CIPC") website to determine the commencement of the Applicant's business is unclear, particularly when the employer began operations in the private security sector. The Applicant submitted emails and documentation supporting that its registration with the Fund was finalized only in October 2020. Given this, these issues should be reconsidered by the PFA.
21. For reasons stated above, the Applicant's reconsideration application should succeed.

**E. ORDER**

1. The Applicant's reconsideration application succeeds.

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<sup>5</sup> Record: Part A, p 22

<sup>6</sup> Record: Part A, p 25

2. The Pension Funds Adjudicator's final determination is set aside and remitted for reconsideration.

**SIGNED on this 26<sup>th</sup> day of AUGUST 2024.**

A handwritten signature in black ink, appearing to read 'ADV SALMÉ MARITZ', written in a cursive style.

**ADV SALMÉ MARITZ**

With the Panel also consisting of:

J Francis J (Chair)

Adv MG Mashaba SC