

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA74/2020

OASIS GROUP HOLDINGS (PTY) LTD

APPLICANT

and

MANSOOR MIA

FIRST RESPONDENT

THE PENSION FUNDS ADJUDICATOR

SECOND RESPONDENT

OASIS CRESCENT RETIREMENT FUND SOLUTIONS (PTY) LTD

THIRD RESPONDENT

OASIS CRESCENT RETIREMENT FUND

FOURTH RESPONDENT

Re: Application for reconsideration of a decision by PFA regarding the suspension of payment of withdrawal benefit under sec 37D(1)(b)(ii) of the Pension Funds Act, 1956.

Costs order made.

DECISION

1. This is an application for the reconsideration of a decision by the PFA ordering a pension fund to pay a member the withdrawal benefit purportedly withheld by the fund at the behest of the employer.
2. The ground on which the determination was based was that the Fund did not comply with the *audi alteram partem* rule. It did not inform the complainant of the application to freeze

his pension benefit pending the finalisation of legal proceedings against him, and it did not ask him for his input. It is common cause that it did not.

3. This Tribunal dealt with the issue repeatedly, e.g., in *Fundsatwork Umbrella Pension Fund v EE Ngobeni* case PFA 64/2020.¹ There is no need to restate that a pension fund may not refuse to pay a member the withdrawal benefit on the application of an employer without complying with the *audi alteram partem* rule.
4. Section 234(2) states:

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.

5. The applicant knew full well what the SCA and High Court judgments state (as appears from the application itself) and ought to know what the decisions of this Tribunal say. The intention behind an application such as the present can only be to delay payment by the Fund and the time has arrived to order employers who persist in launching such applications knowing full well what the binding case law states to pay the costs of the member.


ORDER:

The application is summarily dismissed in terms of sec 234(4) of the Financial Sector Regulation Act 9 of 2021.

The applicant is to pay the costs of the first respondent in opposing this application on the High Court scale.

¹ <https://www.fsca.co.za/Enforcement-Matters/Publications%20and%20Documents/Decision%20-%20Fundsatwork%20Umbrella%20Pension%20Fund%20and%20E%20E%20Ngobeni%20and%20PFA.pdf>.

Signed on behalf of the Tribunal on 20 May 2021.

A handwritten signature in black ink, appearing to read "LTC Harms", enclosed in a thin black rectangular border. The signature is written in a cursive style with a large initial 'L' and a long horizontal stroke at the end.

LTC Harms (deputy chair)