

## **THE FINANCIAL SERVICES TRIBUNAL**

Case №: PFA3/2025

In the matter between:

**PRSS SOLUTIONS (PTY) LTD**

Applicant

and

**MALESELA GABRIEL MARARA**

First Respondent

**PRIVATE SECURITY SECTOR PROVIDENT FUND**

Second Respondent

**PENSION FUNDS ADJUDICATOR**

Third Respondent

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### **DECISION**

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Tribunal: Judge LTC Harms (Chairperson) and Adv W Ndinisa (Member)

Date of hearing: No hearing, matter decided on papers

Date of Decision: 28 May 2025

Representations: Both parties were not legally represented

*Summary: Application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 – Failure to respond or comment in terms of section 30F of the Pension Funds Act 24 of 1956 – Failure to notify the Fund of the employee's exit from service*

### Introduction

1. The applicant, PRSS Solutions (Pty) Ltd, is aggrieved by the determination of the Pension Funds Adjudicator (“the Adjudicator”) dated 7 January 2025.
2. The first respondent is a former employee of the applicant who was in its employ from 26 November 2018 until 29 April 2024, when the employment was terminated.
3. The second respondent is Private Security Sector Provident Fund (“the Fund”), a registered fund in terms of the Pension Funds Act 24 of 1956 (“the Act”).
4. The third respondent is the Adjudicator and the applicant challenges the determination issued from her office.
5. The parties agreed that this matter be decided on the documents filed on record and for that reason waived their rights to oral hearing.

### Background

6. The applicant is a participating employer with the Fund and the first respondent is a member of the Fund by virtue of his employment with the applicant.
7. A letter from the Fund to the first respondent dated 26 July 2024 confirms that he was not registered as a member of the Fund under the employer named Professional Risk & Security Solutions (Pty) Ltd.
8. On 4 September 2024 (as indicated by the date of the stamp) the first

respondent approached the offices of the Adjudicator to lodge a complaint against the applicant.

9. On 5 September 2024 the offices of the Adjudicator caused a letter to be sent to the Fund and to the applicant respectively. Both the Fund and the applicant were required to submit their written responses to the complaint by close of business on 4 October 2024. According to the Adjudicator, the complaint of the first respondent was attached to those letters.
10. On 20 September 2024 the Fund submitted its responses to the complaint. The submissions of the Fund to the Adjudicator are, amongst other things, that the first respondent's membership in the Fund is from 1 March 2024 by virtue of his employment with the applicant. The Fund stated that according to its records the first respondent had a fund credit in the amount as identified in the record, representing contributions of March 2024.
11. The Fund submitted that the first respondent was previously employed by a certain security services company until 31 August 2016 prior to his employment with the applicant on 26 November 2018. This historical backdrop had impact on the contributions period and remittance of such contributions. Reference was made to specific paragraphs of the Rules of the Fund applicable at that time.<sup>1</sup>
12. According to the Fund the applicant ought to have registered the first respondent with the Fund in December 2018 and commenced paying full

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<sup>1</sup> Rules 3.2.5 and 3.2.6 of the Rules of the Fund

contributions from April 2018. The applicant owes contributions for the following periods: April 2018 to February 2024 and April 2024, so the submissions state. The Adjudicator in her determination noticed the error of the Fund commencing calculation of contributions from April 2018 instead of April 2019. This is because the first respondent commenced his employment on 26 November 2018.

13. The Fund attached a reconstruction schedule detailing the amount owing to the Fund. The Fund accounted for the amendment of the Rules of the Fund which gave effect to the increase of contribution rate from 5% to 6.5% with effect from 1 March 2024.
14. Further, the Fund submitted that the applicant did not notify it of the first respondent exiting the service. According to the Fund an electronic mail was send to applicant (the employer) on 11 September 2024 requesting the withdrawal claim form. The Fund undertook to process the claim of the first respondent upon receipt of all necessary documents.
15. Furthermore, the Fund submitted that the applicant commenced its participation to the Fund in October 2023 and is non-compliant in terms of section 13A of the Act. The Fund stated that it has issued section 13A letters and the applicant has been reported to the Financial Sector Conduct Authority ("the FSCA"), which a regulatory body in the financial sector industry.
16. The applicant did not submit its responses on the required date. The applicant was afforded another opportunity to submit its response by 23

October 2024. In the very same letter to the applicant, the Adjudicator informed the applicant that should it fail to file its response, the matter will be finalised without its inputs. The applicant did not file its response.

*Determination of Adjudicator*

17. The Adjudicator proceeded to considered the complaint of the first respondent without inputs from the applicant.
18. The Adjudicator indicated in her determination that the issues that fall to be determine are whether or not the applicant failed to timeously register the first respondent with the Fund and remit all provident fund contributions on his behalf.
19. Reference was made to rule 3.2.1 of the Rules of the Fund which states, amongst other things, that each eligible employee shall, as a condition of employment, become a member of the Fund with effect from the commencement of the Fund or the commencement of the Employer's business in the private security sector, whichever is the later.
20. The Adjudicator considered the submissions of the Fund and concluded that the applicant ought to have registered the first respondent on 1 December 2018. Therefore, the applicant failed to timeously register the first respondent, so the Adjudicator concluded.
21. Further, reference was made to rules 3.2.5, 3.2.6 and 4.1 of the Rules of the Fund, which are applicable to the commencement and the rates of contributions in this matter. The Adjudicator also referred to the provisions of

clauses 30(6) and 30(7) of the Main Collective Agreement which, in the main, appear to mirror the relevant provisions of the Rules of the Fund.

22. Furthermore, the Adjudicator noted that section 13A of the Act, read together with FSCA Conduct Standard 1 of 2022 (“Conduct Standard”), which came into effect on 19 February 2023 and repealed Regulation 33 of the Act. These provisions underscore, amongst other things, the nature of the obligations each employer has in respect remittance of contributions.
23. Further, the Adjudicator noted the incorrect computations of the outstanding contributions and stated that the Fund must be ordered to compute the employer’s portion (applicant) only from for April 2019 to February 2024.
24. The Adjudicator concluded that the appropriate relief is the one that has effect of placing the first respondent in the position he would have been had the employer timeously registered him and paid all contributions due on first respondent’s behalf.
25. The determination made several orders to give effect to the payment of pension money due to the first respondent. For instance, the applicant is required to submit all outstanding contributions schedules in respect of the first respondent for the period of April 2018 to February 2024 (the employer’s portion only) in order to facilitate the computation of the arrear contributions.
26. At the heart of the Adjudicator’s order are the steps to be taken by the applicant and/or the Fund and the first respondent, to give effect to the relief sought by the latter regarding his pension money. The applicant is aggrieved

by the order and steps to be taken.

Grounds of reconsideration

27. The applicant submitted that it received a complaint in October 2024. According to the applicant, the Adjudicator stated that the first respondent (the complainant) was employed by Prof Risk Coastal Security Services and the applicant could not source the first respondent under that company. No further communications from the Adjudicator since then, so the applicant submits.
28. The applicant submitted that the determination was not submitted to it prior to the sheriff's arrival at the premises on 29 January 2025 with a notice of attachment. Further, the applicant submitted that the first respondent failed to follow all internal procedures to resolve the matter prior to approaching the Adjudicator. Furthermore, the applicant submitted that it is currently busy with a section 14 transfer between Momentum and the Fund, which process was initiated in March 2024. According to the applicant, this process is out of their hands and the first respondent's funds are with a specified financial institution in the record.
29. The Adjudicator submitted further reasons in terms of rule 13 of the Rules of the Financial Services Tribunal. The Adjudicator noted that the applicant referred to the wrong name as the employer and disregarded the first respondent (complainant). The Adjudicator confirmed that the applicant's name was incorrectly captured and that was an error on her part. This led to the applicant being incorrectly cited throughout the investigative and

adjudicative processes. However, the Adjudicator stated that the first respondent correctly cited the applicant in his complaint, his details regarding his employment are visible on the payslip attached to the complaint. The Adjudicator noted that the applicant confirmed that it received the complaint of the first respondent in October 2024. According to the Adjudicator, there is no reason why the applicant failed to respond to the complaint.

30. Further, the Adjudicator noted that the initial letter served in September 2024 on the applicant and the follow-up letter, together with the complaint and the Fund's response also served on the applicant in October 2024, same electronic mail was used. The Adjudicator stated that the determination was served on the applicant on 27 January 2025, using the same electronic mail which the applicant confirmed receiving complaint.
31. Further, the Adjudicator submitted that the applicant was afforded an opportunity in terms of section 30F of the Act to comment and assist the Adjudicator in her investigation.
32. On 19 March 2025 the applicant augmented its grounds of reconsideration and persisted that this application revolves around incorrect company names and none of the mentioned companies are involved in this case. Further, the applicant stated that the first respondent was with a specified financial institution from April 2018 until February 2024 and was moved over to the Fund from March 2024.
33. This Tribunal is call upon to assess if there are basis in law to set aside the order of the Adjudicator in terms of section 234(1)(a) of the FSR Act.



Legal framework and analysis

34. When an Adjudicator intends to conduct an investigation into a complaint, she shall afford the fund or the person against whom the allegations contained in the complaint are made, the opportunity to comment on the allegations.<sup>2</sup>
35. The Adjudicator stated in her determination that the complaint of the first respondent was initially sent to the applicant on 4 September 2024 and requested a response by 4 October 2024. The applicant failed to respond by the date indicated. Further, the Adjudicator afforded the applicant with another opportunity to respond by 23 October 2024. According to the Adjudicator, the applicant did not respond or comment.
36. It is the applicant's version that it received the complaint of the first respondent in October 2024. This is not assisting the case of the applicant for the reasons that the details of the first respondent (its former employee) and its correct name are stated in the complaint.
37. The applicant contended that after it received the complaint in October 2024, it had no further communication from the Adjudicator. It does not dispute that the submission of the Adjudicator that same electronic address used in September 2024, is the same electronic address used in October 2024. No explanation is proffered by the applicant on its failure to respond to the section 30F opportunity.

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<sup>2</sup> Section 30F of the Pension Funds Act 24 of 1956

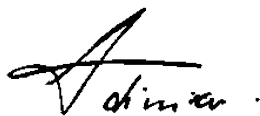
38. The applicant contended that the matter revolves around two companies named but not involved in the matter. This contention is not sustainable for the reason that the applicant should have known the first respondent as its former employee and its name appears on the complainant's complaint and on the payslip copy.
39. The applicant in this matter did not only receive the first respondent's complaint and his payslip, the Adjudicator also sent the responses of the Fund during October 2024 for its consideration. This elicited no response from the applicant. Therefore, there is no sound basis for the applicant to use the company misdescription of its name as the basis to avoid complying with the orders of the Adjudicator. On the evidence in this record, the applicant should have been aware of the Adjudicator's investigation and adjudication processes, and elected not to comment or respond when required to do so.
40. According to the Adjudicator, the Fund indicated that it had not received a notification of the complainant's (first respondent's) exit from service together with necessary documentation. Further, the Adjudicator stated that it is the duty of the applicant to submit the first respondent's claim form to allow the Fund to determine which benefit is payable and to make payment accordingly. These provide the justification for the Adjudicator's order. It cannot be faulted.
41. The applicant contended that the funds of the first respondent are with another financial institution. This does not absolve the applicant from taking necessary steps to enable the first respondent to access his pension money.

42. Lastly, the applicant referred to a pending section 14 transfer between the Fund and another financial institution. No information in this application demonstrating any step taken by the applicant for the first respondent to received his pension money.
43. Therefore, there are no basis for this Tribunal to interfere with the order of the Adjudicator.

**ORDER:**

The application for reconsideration is dismissed.

Signed on behalf of the panel at Pretoria on 28 May 2025.

A handwritten signature in black ink, appearing to read 'Adv W Ndinisa', is written above a solid horizontal line.

Adv W Ndinisa