

THE FINANCIAL SERVICES TRIBUNAL

("the Tribunal")

Case No. PFA74/2024

In the matter between:

SAREL PETRUS DU PLESSIS

Applicant

and

**UNIVERSITY OF SOUTH AFRICA
RETIREMENT FUND**

First Respondent

UNIVERSITY OF SOUTH AFRICA

Second Respondent

ALEXANDER FORBES (PTY) LTD

Third Respondent

THE PENSION FUNDS ADJUDICATOR

Forth Respondent

Summary: Reconsideration of a decision of the Pension Funds Adjudicator (30M) in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017.

DECISION

A: INTRODUCTION

1. The Applicant is Sarel Petrus Du Plessis ("the Applicant").
2. The First Respondent is the University of South Africa Retirement Fund ("the Fund").
3. The Second Respondent is the University of South Africa ("UNISA")
4. The Third Respondent is Alexander Forbes (Pty) Ltd, the administrator of the Fund ("the Administrator").
5. The Fourth Respondent the Pensions Fund Adjudicator ("the

Adjudicator")

6. This is an Application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 against the decision taken by the Adjudicator, pursuant to a complaint laid in terms of Section 30M of the Pensions Fund Act 24 of 1956 ("the PFA").
7. The parties have waived their right to a formal hearing, and this is the Tribunal's decision.
8. Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") provides the basis for the Applicant to lodge this Application for reconsideration and seek appropriate relief.

B: THE FACTS AND THE COMPLAINT

9. The essence of the Applicant's complaint is that he is aggrieved at the non-payment of a spouse's pension to him following the death of his life partner, Mr Daniel Wilhelmus Coetzee ('the deceased').
10. The Applicant maintains that he and the deceased were life partners and that, as a result, he was a Qualifying Spouse as defined in the Fund's Rules and should have enjoyed a spouse's pension.
11. The deceased was a member of the Fund until his retirement on 19 March 2019. Upon his retirement and at his election, the deceased enjoyed an in-fund annuity until his death on 23 April 2023. Upon his retirement and when making the aforementioned election, the deceased elected:

- 11.1 To commute R605,007.37 as a cash lump sum payment, with the balance of R5,747,940.54 to be used to purchase a life annuity from the Fund; and
- 11.2 A 0% spouse's pension and 0 years guaranteed period.
12. Notably, the deceased indicated to the Fund that he was not married, and a spouse consent form was unnecessary in the circumstances.
13. The election made by the deceased and the representations he made to the Fund materially influenced the quantum of the monthly pension he enjoyed. Furthermore, the election was irrevocable.
14. On the deceased's passing, the life annuity came to an end, and no further payments were due by the Fund.
15. Aggrieved by non-payment of a spouse's pension to him, the Applicant laid a complaint with the Adjudicator on 17 April 2024. In the complaint to the Adjudicator, the Applicant complained that the Fund had not complied with its own Rules.
16. The Adjudicator invited a response from the Fund. The Fund provided a comprehensive response, and the Adjudicator handed down a determination on 6 September 2024, the essence of which was that the Adjudicator was satisfied that the Fund had followed its Rules. The Adjudicator reiterated that the Fund's Rules are supreme and binding on all its officials, members, shareholders, beneficiaries, and anyone claiming from the Fund and that as a result of the election made by the

deceased, no spouse's pension was due to the Applicant.

17. Accordingly, the complaint was dismissed.
18. The Applicant applied for a reconsideration of the Adjudicator's Determination on 4 November 2024, and he filed Augmented Grounds for Reconsideration on 27 January 2025.
19. The Applicant based his application for reconsideration on four grounds:
 - 19.1 The Fund has not applied the Rules correctly – "Ground 1".
 - 19.2 There was an error in the contract of the Life Annuity - "Ground 2".
 - 19.3 The Life Annuity application forms are flawed - "Ground 3".
 - 19.4 The Retirement Benefit Counselling was flawed - "Ground 4".

C: DISCUSSION

20. In relation to Ground 1, the Applicant maintains that the deceased's election of a 0% spouse's pension is invalid without his consent as a Qualifying Spouse. The Fund maintains that it relied on the express assertion by the deceased that he was unmarried, and it did not have to go further to accept the veracity of the deceased's assertion.
21. In relation to Ground 2, the Applicant maintains that there was an error, at least, by the deceased that no provision was made for him as a Qualified Spouse. The Fund maintains no error was committed and sets out evidence of consistency in the documents presented to and completed by the deceased. Put differently, the Fund maintains that the election made by the deceased was consistent with his wishes, the consequences of which he fully appreciated.

22. In relation to ground 3, the Applicant maintains that the Annuity Application forms were flawed, which is denied by the Fund, which indicates that the Fund Retirement Option Form contains precisely the same information as the quote provided to the deceased. The Fund maintains further that it would have been inconceivable for the deceased to have made an election without knowing the quantum of his monthly pension, which was directly influenced by the option selected.
23. In relation to ground 4, the Applicant maintains that the retirement benefit counselling process was flawed and that the Fund did not follow its dispute resolution process. The Fund, in response, set out examples of the retirement benefit counselling resources made available to its members in compliance with its obligations. In so far as the allegation that it had not followed its dispute resolution process, the Fund referred this Tribunal to the correspondence on record and that the Applicant followed the dispute resolution process of referring his complaint to the Adjudicator.
24. It is difficult to gainsay the Adjudicator's findings in her Determination or the explanation by the Fund. It is apparent that the deceased made an election, and the Fund was entitled to accept him at his word. The deceased enjoyed the benefits under that election, and the Tribunal cannot assist the Applicant in reversing the consequences of the deceased's decisions.

E: CONCLUSION

25. In the circumstances, the Application for a reconsideration of the Adjudicator's decision must fail.

ORDER

(a) The Application for Reconsideration is dismissed.

Signed on behalf of the Tribunal on 1 April 2025.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

PJ VELDHUIZEN & LTC HARMS