

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: A3/2021

SODEXO PROVIDENT FUND

APPLICANT

and

FINANCIAL SECTOR CONDUCT AUTHORITY

RESPONDENT

Application for reconsideration in terms of sec 230 of the Financial Sector Regulation Act, 2017, of
an administrative penalty imposed by the FSCA

DECISION

[1] The FSCA imposed an administrative penalty on the applicant Fund because of the Fund's failure to comply timeously with its duty in terms of sec 16 of the Pension Funds Act 1956 to file its actuarial valuation for the period 2007 to 2010. The FSCA, in determining the amount of the penalty, stated that the return had to have been submitted by 30 November 2015 but was only on 25 July 2019, 1333 days late.

[2] The Fund applies for the reconsideration of the decision. The parties have waived their right to a formal hearing.

[3] The imposition of penalties is regulated by sec 37(2):

The registrar may impose an administrative penalty in the case of any failure by a pension fund, administrator or third party to submit to the registrar or any other person within a period specified

in terms of this Act or in a directive or condition imposed by the registrar in terms of the Act, any scheme, statement, report, return or other document or information required in terms of this Act to be submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues.

The amount has been increased to R4 000 by regulation but the penalty imposed was calculated with reference of 205 days at the rate of R1 000 per day.

[4] Section 16 (1) and (8) state as follows:

(1) A registered fund shall, once at least in every three years, cause its financial condition to be investigated and reported upon by a valuator, and shall deposit a copy of such a report with the registrar, and shall send a copy of such report or a summary thereof, prepared by the valuator in a form prescribed and signed by the valuator, to every employer participating in the fund.

(8) Whenever a registered fund deposits with the registrar a copy of a report made by a valuator in terms of this section, it shall also deposit with the registrar a certificate by the board and by the principal officer that to the best of their knowledge and belief the information furnished to the valuator for the purposes of the report was correct and complete in every material respect and, where applicable, that a copy of the report or a summary thereof referred to in subsection (1) was sent to every employer participating in the fund.

[5] This must be read with Board Notice 149 of 2010:

2.1 The report must be legible and not contain any shading that would inhibit the readability of a scanned version.

2.2 A submission of the report to the Registrar must consist of the following—

(a) the statement by the board of the fund, duly signed in accordance with Regulation 20 to the Act, confirming—

(i) the date of the statutory actuarial valuation;

(ii) that the submission of the report constitutes a statutory submission in terms of section 16 (1) of the Act;

(iii) that the board acknowledges the recommendations made by the valuator, if any, and whether any steps have been taken to address these; and

(iv) that the certificate required in terms of section 16 (8) of the Act, duly completed, is attached;

(b) a duly signed copy of the report; and

(c) the certificate in terms of section 16 (8) of the Act, duly completed.

2.3 The submission to the Registrar must be made electronically (through the FSB Retirement Funds Online System, available at the website: www.fsb.co.za) in portable document format (PDF).

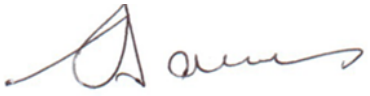
2.4 Unless all three of the above-mentioned documents are submitted together in one submission, the fund shall be deemed to not have submitted the report to the Registrar.

[6] The applicant, in its reconsideration application, alleged that the valuation was submitted on 18 September 2018. Although there is a letter of that date addressed to the FSCA attaching a copy of the valuation, there is no evidence of any submission as required by the Act and Board Notice, and para 2.4 of the Board Notice applies accordingly.

[7] The second ground for reconsideration is that the failure to submit the valuation was that of the Fund's administrator, and that the FSCA, instead of imposing a penalty on the Fund, should have imposed it on the responsible administrator. There is no merit in the submission. The duty to file the valuation is that of the Fund and not the administrator and the administrator can only be penalised by the FSCA for non-compliance of its own, and not those of someone else.

Order: The application is dismissed.

Signed on behalf of the Tribunal on 17 March 2021.

A handwritten signature in black ink, appearing to read 'LTC Harms', enclosed within a thin black rectangular border.

LTC Harms (deputy chair)