

THE FINANCIAL SERVICES TRIBUNAL

Case No. PFA54/2024

In the matter between:

SOUTH AFRICAN RETIREMENT ANNUITY FUND APPLICANT

and

THE PENSION FUNDS ADJUDICATOR FIRST RESPONDENT

DJ HAASBROEK SECOND 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 the South African Retirement Annuity Fund ("the Fund"), a pension fund registered in terms of section 4 of the Pension Funds Act 24 of 1956 ("the PFA").
2. The First Respondent is the Pension Funds Adjudicator ("the Adjudicator"), the statutory ombud as defined in section 1(1) of the Financial Sector Regulation Act 9 of 2017 ("FSR Act") and is established in terms of the PFA.
3. The Second Respondent is:

- 3.1. The complainant in the first and second complaint before the Adjudicator.
 - 3.2. The Trustee of the Trust ('the Trust).
 - 3.3. The executor of the Estate Late LD Haasbroek.
 - 3.4. The father of, LD Haasboek, who was a member of the Fund ("the deceased").
4. Section 230 of the FSR Act provides the basis for an Applicant to lodge an application for reconsideration and seek appropriate relief from the Financial Services Tribunal ("the Tribunal"). This is an application in terms of the aforementioned section against the decision taken by the Adjudicator in terms of Section 30M of the PFA.
 5. The parties have waived their right to a formal hearing, and this is the Tribunal's decision.

B. THE FACTS

6. This is an application for the reconsideration of the Adjudicator's decision relating to the Fund's allocation of the death benefit of its member, the deceased, in terms of Section 37C of the PFA.

7. The deceased died on the 10th of March 2021, and pursuant to his membership of the Fund a benefit of R167,604 was payable.
8. The deceased had nominated the Trust, which had been established for the benefit of his two minor children, Chante Haasbroek and Keanu Haasbroek, as the beneficiary of the death benefit.
9. The Fund established that the deceased, in addition to his minor children, had two further dependants, namely:
 - 9.1. Martha Leach ("Martha"), with whom he was cohabiting at the time of his death; and
 - 9.2. His spouse, Zona Haasbroek ("Zona"), from whom he was separated.
10. The Fund, in compliance with its obligations, investigated the financial circumstances of all four of the dependants and, ultimately, in the second allocation, allocated the death benefit between Martha (30%) and Zona (70%). I say ultimately because the Fund, in the first allocation, had allocated the death benefit equally between Martha and Zona, to the exclusion of the minor children. The Second Respondent, dissatisfied with the Fund's failure to allocate the death benefit solely to the Trust, laid a complaint with the Adjudicator ("the first complaint").

11. In answer to the first complaint, the Adjudicator set aside the death benefit allocation made by the Fund, referring same back to the Fund for reconsideration. In the determination of the first complaint, the Adjudicator had accepted that as a result of the significant wealth of the Trust (R17,469,000.00) created to look after the minor children, the only aspect to be investigated was the financial dependence of Martha and Zona on the Deceased and whether an equal allocation was appropriate. Thereafter, the Fund made a fresh allocation ('the second allocation'), in a 30/70 ratio, in favour of Martha and Zona, respectively.
12. This led to the second complaint, by the Second Respondent, on the same basis as the first complaint – i.e. That the Second Respondent disagreed with the death benefit allocation by the Fund to Martha and Zona in any ratio but rather that the death benefit should have been made to the Trust. The Second Respondent made several allegations relating to the financial information provided to the Fund but failed to provide the Fund or the Adjudicator with any formal evidence thereof.
13. In the determination of the second complaint, the Adjudicator ordered that:

[6] ORDER

6.1 In the result, the order of the Adjudicator is as follows:

6.1.1 The decision of the board regarding the allocation of 70% of the death benefit to Zona is hereby set aside;

6.1.2 The matter is referred back to the board to investigate the dependency of all the beneficiaries on the deceased, within eight weeks of this determination;

6.1.3 The fund is ordered to re-allocate the portion of the death benefit to all the identified dependants within two weeks of completing the investigation in paragraph 6.1.2 above; and

6.1.4 The fund is ordered to inform the Adjudicator and the dependants of its decision, within two weeks re-allocating the death benefit.

14. This application for reconsideration lies against the Adjudicator's determination set out above.

15. The Fund's position is that it investigated the financial dependency of each dependant and maintains that after all the necessary basket of factors were taken into account, as required by Section 37C of the PFA, the second allocation was correct, fair and equitable. In defence of its second allocation, the Fund *inter alia*:

- 15.1. Acknowledged the nomination of the Trust to receive the death benefit allocated to the Chante and Keanu but indicated that the nomination was not binding on it.
- 15.2. *"...submitted that in the face of demonstrable financial need on the part of both the spouse and the partner, the nil percent allocated to the children from this small benefit (R167,604.00) would have no negative impact on their future considering the amount available to them in the Trust (R17,469,000.00).*
- 15.3. Confirmed the statutory qualification of the four dependants.
- 15.4. Conducted investigations into the financial needs of the spouse and the partner and established that *"The partner's circumstances were slightly more favourable, but there was still a need for support"*. In contrast, the spouse's financial circumstances indicated a *"desperate need for support"*.
16. The Fund confirmed that it had made payment pursuant to the second allocation to Martha and Zona on the 5th of May, 2024.

C. DISCUSSION

17. Generally, the Tribunal does not consider a Fund or an Administrator to be an aggrieved person for the purposes of the FSR Act. The reason is that a Fund or an Administrator lacks *locus standi* on the basis that while *"the decision of*

*the Adjudicator may affect the Fund in the sense that it must reconsider the matter and exercise its discretion again, but it has no legal interest in the allocation. Reference is made to the cases of Hollenbach, Aon, and Fundsatwork (para6). It is unnecessary to restate the legal principles."*¹

18. This matter is distinguishable in that should this Tribunal uphold the Adjudicator's decision, the Fund may well be out of pocket, as the Fund, pursuant to the Second Allocation, made payment of the death benefit to Zona and Martha, and it holds no further amounts in respect of this death benefit to allocate or disburse. In the circumstances, it must be that the Fund has the necessary *locus standi* to bring this Application.
19. The Fund raised several grounds for promoting its case for reconsideration, including:
 - 19.1. The Adjudicator decided on a complaint that was not before her.
 - 19.2. Mistake of law.
 - 19.3. The Fund met the requirements set out by the Adjudicator.
 - 19.4. Errors and internal contradictions in the determination.

¹ *Momentum/Botha* PFA 47/2021

20. For the reasons set out below, dealing with each of these grounds in detail is unnecessary.
21. As foreshadowed above, we find that the Fund carefully considered the allocation of the death benefit in the second allocation, taking into account all available evidence and the basket of factors required. In considering the allocation, a Fund enjoys a broad discretion which can only be challenged on the basis that it considered irrational, irrelevant or improper factors or came to a decision that no reasonable decision maker could have come to. We do not believe the Fund misdirected itself in the second allocation on any of the aforementioned grounds. Consequently, there was no legitimate reason for the Adjudicator to refer the matter back to the Fund.

D. CONCLUSION

22. For the reasons above, the Applicants must succeed in the Application for a reconsideration of the Adjudicator's determination.

ORDER

- (a) The Application for reconsideration is upheld, and the matter is referred to the Adjudicator for reconsideration.

Signed on behalf of the Tribunal on the 15th of November 2024.



PJ Veldhuizen and LTC Harms