

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA6/2021

In the matter between:

ZINIA BELEGGINGS (PTY) LTD t/a

TAPPANS ELECTRICAL

APPLICANT

and

B A SEANE

FIRST RESPONDENT

THE PENSION FUNDS ADJUDICATOR

SECOND RESPONDENT

FUNDSATWORK UMBRELLA PENSION FUND

THIRD RESPONDENT

MOMENTUM METROPOLITAN LIFE LIMITED

FOURTH RESPONDENT

Application for reconsideration of a determination by the PFA. Binding nature of rules.

DECISION

[1] The first respondent, Mr BA Seane ('the complainant'), filed a complaint with the Pension Funds Adjudicator about the quantum of his withdrawal benefit due to him upon termination of his employment with the applicant, Zinia Beleggings (Pty) Ltd t/a Tappans Electrical.

[2] Zinia is since 1 May 2009 a participating employer of the FundsAtWork Umbrella Provident Fund, which is administered by the fourth respondent, Momentum.

[3] The complainant re-entered the employment of Zinia on 3 September 2016. Zinia registered him as a member of the Fund on 1 September 2018 and paid his fund contribution as from that date until the date of his resignation, which was end July 2019.

[4] The issue the PFA had to consider was whether Zinia was entitled to delay the registration of the complainant as member, and consequently, not pay the required contributions to the Fund in respect of that period.

[5] The PFA's determination in terms of sec 30M of the Pension Funds Act, 24 of 1956, in effect ordered the Fund to register the complainant as member as from 3 September 2016, for Zinia to pay the outstanding contributions for the period 3 September 2016 to 31 August 2018 to the Fund, and for the Fund to recalculate the complainant's withdrawal benefits and pay the amount due to him.

[6] Zinia applies for the reconsideration of this decision in terms of sec 230 of the Financial Sector Regulation Act 9 of 2017. The parties have waived their right to a formal hearing.

[7] The statutory position is clear:

- An employer must register an eligible employee under the rules of a fund.
- The rules of a registered fund are binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming.
- The employer of any member of a fund must pay the following to the fund in full, namely— any contribution which, in terms of the rules of the fund, is to be deducted from the member's remuneration; and any contribution for which the employer is liable in terms of those rules.

[8] The General Rules of the Fund provide in clause 2.1.2 that an

“ELIGIBLE EMPLOYEE who enters EMPLOYMENT on or after the PARTICIPATION DATE must become a MEMBER. His membership will start on the date when he fulfils the membership qualifications set out In the SPECIAL RULES.”

The other relevant rules are quoted in the determination.

[9] Zinia’s case is that it was unaware of the provisions of the General Rules and always believed that membership was voluntary, and had it known it was obligatory it would not have joined the Fund. It seems to suggest that either it joined the Fund because of an error on its side or because of a misrepresentation by Momentum.

[10] The explanation is hardly credible because the Special Rules applicable to Zinia provide for eligibility and read as follows: "All full-time employees in Employment under normal retirement age." And the resolution passed by Zinia on 1 April 2009 states that the company had resolved that all its employees would become members of the Fund with effect from 1 May 2009.

[11] In any event, the Special Rules state expressly that they must be read in conjunction with and form an integral part of the General Rules, and the same is stated in the certificate of participation where Zinia confirmed that it accepts the rights and duties imposed on it under the General Rules. Cf *Glen Comeragh (Pty) Ltd v Colibri (Pty) Ltd* [1979] 4 All SA 321, 1979 (3) SA 210 (T).

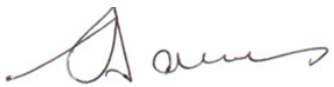
[12] The fact that Momentum did not provide it with a copy of the General Rules is neither here nor there since Zinia accepted its obligations under the Rules. The document Zinia relies on for its misconception is a family protector policy issued by Momentum which does not even pretend to set out the General Rules of the Fund. It is an agreement between Zinia and Momentum and nothing more. The submissions based on the policy are irrelevant for present purposes.

[13] Zinia suggests that the General Rules may have been amended unlawfully but that suggestion has no factual basis. It is based on the fallacious premise that the policy formed the General Rules of the Fund. In addition, Zinia's case before the PFA was that membership was voluntary – which it is not. No-one was called upon to answer this new case made out in the application for reconsideration.

[14] The short answer to the application is this: the PFA and this Tribunal are in duty bound to apply the rules of the Fund. Neither can set aside or ignore the rules. Unless and until the rules are set aside by a competent authority, they are binding. See *Tek Corporation Provident Fund v Lorentz*, [1999] 4 All SA 297 (A), 1999 (4) SA 884 (SCA).

The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 20 May 2021.

A handwritten signature in black ink, appearing to read 'LTC Harms', is written over a thin horizontal line. The signature is cursive and stylized.

LTC Harms (deputy chair)