

THE FINANCIAL SERVICES TRIBUNAL

Case No: **PFA46/2019**

In the matter between:

P BACCUS

Applicant

and

ACA EMPLOYEE BENEFITS (PTY) LTD

First Respondent

THE PENSION FUNDS ADJUDICATOR

Second Respondent

Tribunal: H Kooverjie (chair), G Madlanga, A Jaffer

Summary: Whether the Pension Funds Adjudicator has jurisdiction in the matter by virtue of sections 2 and 4 of the Pension Funds Act 24 of 1956.

DECISION

THE COMPLAINT

1. Mr P Baccus, the complainant, lodged this application against the determination of the Pension Fund Adjudicator ("**PFA**"), whose decision was aligned with that of the first respondent (ACA Employee Benefit (Pty) Ltd). Essentially the complaint turns on the allocation of benefits payable from the ABSA Group Life Scheme.

2. Mr Baccus was the spouse of the late Mr R Baccus (the deceased). The deceased at the time was an employee of the ABSA Group, and employed as a financial planner. He held membership *inter alia* in the ABSA Pension Fund (“**The Fund**”), and the ABSA Group Life Scheme (“**The Scheme**”)
3. Before lodging the complaint with the PFA, the complainant had lodged same with the Long Term Insurance Ombudsman. It appears that the Long Term Insurance Ombudsman dismissed the complaint. It was thereafter that he lodged the complaint with the Pension Funds Adjudicator.
4. In particular Mr Baccus challenged the allocation in respect of the Group Life Scheme. The ABSA Group Life Scheme lumpsum amount was R200,000.00. On 29 June 2017, the Claims Committee approved the distribution as follows:
 - 80% to the applicant;
 - 5% to the deceased’s mother in law;
 - 15% to the deceased’s father, Mr H Baccus.
5. After the distribution of the Group Life Scheme benefits was completed, Mr Baccus lodged his complaint. As a result thereof, no distributions were made to the dependants. The Committee pended this process until the outcome of the complaint.
6. At this juncture it is necessary to record that the Tribunal was never presented with the decision of the Long Term Insurance Ombud. If such a decision existed it is trite the complainant’s next recourse was by way of review to the High Court. The complainant on the other hand submitted that the Long Term Ombud

advised him that its office does not have jurisdiction.

JURISDICTION

7. Therefore, before considering the merits in issue, it is necessary to have regard to the jurisdictional aspect.
8. It was contended that the PFA did not have jurisdiction to issue a determination on insurance schemes and therefore the complaint should be dismissed. It was submitted that this Scheme is an unapproved insurance scheme which is separate from the retirement fund and thus the Scheme is separate from the Fund.
9. The response from the PFA was that it had jurisdiction in terms of a death benefit payable by the first respondent in terms of the rules. In the determination, the PFA submitted that the payment of death benefits is regulated by section 37C of the Act which is read with the definition of “***dependent***” in section 1. The purpose of the section is to protect those financially dependent on the deceased during his lifetime.
10. The first consideration therefore is whether the “***group life insurance scheme***” falls under the ambit of the Pension Funds Act?
11. From the record, we note that admission to the Scheme is a condition of employment for each employee of ABSA and the Scheme is governed in terms of the rules of the Scheme. The Scheme was established with the object of providing its beneficiaries with benefits described in the Scheme rules. ABSA

as the employer was at all times, legally required to manage the Scheme. This requirement is derived from the fact that the insurance policies entered into between the employer and the insurer. This means that the employer is a policy holder and not the member.

12. ABSA claimed that the rules of the Scheme governing the distribution of benefits offered under the Scheme and how the Scheme is administered with regard to death benefits, is aligned with the principles of section 37C of the Act even through the scheme not governed by the principles of the Pension Funds Act.¹

13. The first respondent in considering the death benefit took cognisance of the fact that:

13.1 the deceased did not complete any nomination form for the Scheme;

13.2 distribution of the benefits under the Scheme are therefore overseen by the trustees;

13.3 the distribution was done according to the rules of the Scheme.

14. It is accepted that section 37C makes provision for the distribution of death benefits payable on the death of a member of a pension fund. The distribution of benefits payable on the death of a member of a pension fund is regulated by section 37C of the Pension Funds Act. This section was introduced primarily to ensure that death benefits are paid in accordance with the object of the Act and

¹ Page 16 of part B of the record

government policy. The section provides that death benefits do not form part of the deceased's estate. Its purpose is to make sure that the dependents of the deceased member are not left destitute by the member's death. Accordingly, therefore section 37C overrides the freedom of testation, and the board of management is not bound by the wishes of the deceased as expressed in the latter's nomination form.

15. On a general understanding, Group life insurance is a type of life insurance in which a single contract covers an entire group of people. Typically, the policyowner is an employer or an entity such as a labour organization, and the policy covers the employees or members of the group. Group life insurance is often provided as part of a complete employee benefit package. In most cases, the cost of group coverage is far less than what the employees or members would pay for a similar amount of individual protection.
16. As the policyowner, the employer or other entity keeps the actual insurance policy, known as the master contract. All of those who are covered typically receive a certificate of insurance that serves as proof of insurance but is not actually the insurance policy. As with other types of life insurance, group life insurance allows you to choose your beneficiary.
17. Term insurance is the most common form of group life insurance. Group term life is typically provided in the form of yearly renewable term insurance. When group term insurance is provided through your employer, the employer usually pays for most (and in some cases all) of the premiums.
18. Group term coverage remains in force until your employment is terminated or

until the specific term of coverage ends.

19. However in order for the PFA to have jurisdiction, the Fund must be a “**pension fund**” as defined in the Pension Funds Act, more particularly sections 2 and 4 thereof.

20. The following definitions embodied in section 1 of the PFA have relevance in understanding the jurisdictional aspect namely:

- “**fund**” means a pension fund organisation, and ‘**pension fund**’ or ‘**registered fund**’ has the same meaning;
- “**pension fund**” means a pension fund organization;
- “**pension fund organisation**” means
 - (a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members; or
 - (b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons; or
 - (c) any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits that became payable in terms of the employment of a member on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds, and includes any such association or business which in addition to carrying on business in

connection with any of the objects specified in paragraph (a), (b) or (c) also carries on business in connection with any of the objects for which a friendly society may be established, as specified in section 2 of the Friendly Societies Act, 1956, or which is or may become liable for the payment of any benefits provided for in its rules, whether or not it continues to admit, or collect contributions from or on behalf, of members.

21. Sections 2 of the PFA requires that every pension fund must apply for registration and be provisionally or finally registered under the PFA.
22. Consequently without having been registered, the Group Life Insurance Scheme will not fall under the provisions of the PFA and consequently the PFA will not have the requisite jurisdiction, even in the event where the scheme meets the definition of a pension fund or pension fund organisation.
23. More particularly, reference is made to section 4(1) of the PFA which stipulates that:

“Every pension fund shall apply to the Registrar for registration under this Act.”

24. The Ombud is confined to dispose of complaints lodged in terms of the Pension Funds Act. It can adjudicate in respect of complaints lodged in respect of funds registered in terms of section 4 of the Pension Funds Act read with section 2 thereof. Section 2A specifically states that:

“All beneficiary funds established on or after the commencement date of the Financial Services Laws General Amendment Act, 2008, must register

in terms of this Act.”

25. The Adjudicator’s office is a creature of statute and can only perform functions and preside over matters, which it is empowered to do so by the PFA.² In terms of section 2 of the PFA, the provisions of this Act apply only to retirement funds which have been registered in accordance with this Act or which ought to have registered with this Act by 1 January 2008.³
26. It was not demonstrated that the Scheme in issue was registered. Consequently having regard to the considerations aforesaid, the office of the PFA does not have jurisdiction in this matter.
27. The order therefore granted is that this application be dismissed.

SIGNED at **PRETORIA** on this **29th** day of **JANUARY 2020** on behalf of the Panel.



ADV H KOOVERJIE SC

With the Panel consisting also of:

G Madlanga

A Jaffer

² See **Meyer v Iscor Pension Fund** 2003 1 All SA 40 (SCA) para 7, where it is held that “*it must be borne in mind that, since the office of the Adjudicator is a creature of statute, the Adjudicator has no inherent jurisdiction. His powers and functions are confined to those conferred upon him by the provisions of Chapter V A.*” See also **Shell and BP South Africa Petroleum Refineries (Pty) Ltd v Murphy N.O. and Others** 2001 (3) SA 683 (D)

³ De Jure Law Journal 115 – 137 Marumoagae “*The need to provide members of Retirement Funds which are not regulated by the Pension Funds Act access to a specialised dispute resulted for.*” at page 126 - 127