<u>THE FINANCIAL SERVICES TRIBUNAL</u>

Case №: **PFA100/2019**

In the matter between:

SHUMANI MOSES MORWAMPHELA	Applicant
and	
MOMENTUM RETIREMENT AND ANNUITY FUND	First Respondent
THE MMI GROUP LIMITED	Second Respondent
PENSION FUND ADJUDICATOR	Third Respondent

Tribunal: H Kooverjie (chair), J Pema and E Phiyega

Summary: Public should be educated of how their retirement annuities values are derived at retirement.

DECISION

---

1. The applicant challenged the determination of the Pension Fund Adjudicator ("***PFA***") dated 14 November 2019. The nature of the dispute concerned the complainant's maturity benefit amount that he was entitled to in respect of his retirement annuity.

2. The policy commenced 1 September 1991 for a term of twenty eight years where the initial monthly premium was R50.00 at 15% increase in the premium annually. At the time the applicant's policy was with Protea Assurance Company Ltd ("***Protea***") – as a member of Prosure Retirement Annuity Fund.

3. In 2013, the applicant became a member of Momentum Retirement Annuity Fund (the first applicant) – Then there was a merger between Momentum and Metropolitan, around September 2018, where the applicant's Odyssey contract was transferred from the "***All Odyssey All Equity***" Portfolio to "***The Deferred Maturities***" Portfolio. The fund value at the time was R176,522.00 .

4. The main issue for determination is whether or not the maturity value of the complainant's policies is correct and if he is entitled to a greater benefit?

5. The applicant submitted that at application stage he was advised that upon the maturity of his policy, he could either choose an annual pension in the amount of R112,274.00 or a cash lumpsum benefit of R233,995.00 plus an annual pension in the amount of R74,831.00.

6. However upon his retirement, he was informed that his maturity value was only an amount of R169,000.00 and that such amount was attracted a growth up to a return of 15% per annum. The applicant contended that his intention was always to purchase a retirement annuity and not earn interest on an investment. He further stated that he had contributed to the first respondent for twenty eight years and was informed that his benefits would not be effected by any changes. He insisted on being paid the illustrative value of a policy as per the policy document. It was upon that basis that the matter came before the Pension

Funds Adjudicator ("***PFA***").

7. The applicant relied on and insisted that he had certainly received communication from the first respondent advising him that he would receive a cash lumpsum benefit in the amount of R233,995.00 and a monthly pension of R6,000.00. He was further advised that his pension fund had increased at a rate of 5% per annum.

8. The applicant contended that the PFA ignored the correspondences which reflected that the annuity value was more than R245,500.00.

9. The second respondent responded on behalf of the first respondent and submitted the following namely that the applicant's fund credit was less than R247,500.00 and in such instances he had an option to take the full maturity value in cash subject to a tax directive. *Alternatively,* he could have chosen to take up one third of the maturity value of his policy in cash subject to a tax directive. The remaining two thirds could then be used to purchase a compulsory annuity of his choice.

10. Various documents were submitted to the office of the PFA. In particular, the retirement annuity certificate which he held in the Prosure Retirement Annuity Fund was also considered. The retirement investment growth rates were illustrated to be between 12% – 15% at the time. In total, the applicant made a total contribution of R57,105.72. From these contributions the insurer deducted fees that were payable. The actual maturity value becomes payable when a complainant decides to retire from the first respondent depends on the growth that was experienced over the term of the policy on the JSE for the underlying

investment fund. Hence the value payable at retirement is not guaranteed or equal to the retirement capital values illustrated.

11. In particular, the applicant was furnished with annual portfolio summary statements during the term of the policy. On 24 August 2018, the applicant was provided with information on the underlying investment fund namely Odyssey All Equity Portfolio. Although this portfolio reflected a growth, it did not manage to grow as per the illustrated growth trend (up to 15%). The applicant was required to furnish a retirement instruction prior to the majority date on 1 September 2018. No such instruction was forthcoming and his fund credit of R176,522.00 was moved from the Odyssey All Equity Portfolio to the Deferred Maturities Portfolio.

12. The second respondent maintained that the illustrative values referred to by the complainant did not form part of the policy document. Although there was a transfer from Metropolitan Odyssey to Metropolitan Life and the fact that contract numbers changed, there was in effect no change to his contractual benefits or premiums on his policy contract. The applicant was informed thereof in correspondence dated 12 March 2013. Therefore the respondents maintained that the applicant's maturity value in the amount of R167,522.00 as at 1 September 2018 is accurate and fair in relation to the capital growth in response to the capital growth under the Odyssey All Equity Portfolio for the period of September 1990 to September 2018.

13. We note from the determination, the current value of the applicant's policy at the time when the determination was made, was an amount of R181,000.20.

14. The PFA had taken into account the rules of the Fund, particularly rule 2.5 and

rule 6, which provides that the member's membership ends when he retires from the Fund. It is no doubt that the complainant is aggrieved with the maturity value of his policy. At the time, the maturity value was an amount of R169,000.38. The office of the PFA took it into consideration all of the aforesaid, particularly that the amount which the applicant believed he was entitled to; where consideration was given to the fact that the illustrated retirement capital range from a growth between 12% – 15% at the time.

15. It is a known fact in the industry that the actual maturity value becomes payable when a party decides to retire. The value of a policy would depend on the growth that was experienced over time and that the value payable at retirement is not guaranteed or equal to the illustrated retirement capital values. These values are mere illustrations of the benefit that the complainant could expect to receive once he retires from the proposed retirement annuity contract, and it is not a binding value. These illustrated projected values are based on assumptions and there were many factors which had played a role in the calculation of the maturity value, such as interest rates, dividend, taxation and market conditions, hence the value illustrated cannot be guaranteed.

16. In this regard, the office of the PFA made reference to the **Central Retirement Annuity Fund matter**[1] where the court held that:

> "***Projections do not amount to contractual obligations and to the extent that they are fair and reasonable and are not binding on the issuing insurer as they are based on assumptions which may or may not materialise."***

---

1 **Central Retirement Annuity Fund v Adjudicator of Pension Funds and Others** [2005] 8 BPLR 655 (C)

17. It was pointed out that the ultimate value is influenced by the payment of contributions, the escalation of such contributions, completion of the policy terms as well as the markets. The office of the PFA found that the Fund's decision was justified and acknowledged that the Fund value as at January 2019 was R181,020.00.

18. In the correspondence dated 15 August 1990 from Protea Assurance Company Ltd, we note that the applicant was advised:

> "***Your <u>projected</u> values are stated for you herein below. Because of regulations governing benefit projections of this kind, your projected figures are based on hypothetical growth rates of 12% and 15% per year.*** (***The amount you actually receive from this new and legally "freed" RA facility will of course depend on the actual investment performance and not on these hypothetical figures***.)
>
> (Our emphasis)

19. On 12 March 2013, when the transfer from Metropolitan Odyssey to Metropolitan Life was made and thereafter to Momentum, the applicant was informed in a letter dated 12 March 2013:

> "***In 2010 Momentum and Metropolitan merged to form MMI Holdings Limited, South Africa's third largest insurer. As part of the consolidation process, MMI Holdings is transferring your Odyssey contract from Metropolitan to Momentum."***

20. Insofar as the administrative process was concerned, the applicant was further advised that although there were some changes to his contract, these changes

would not affect any of his contractual benefits or premiums on the contract. Even when there was an amalgamation, the applicant was advised that the amalgamation had not changed the benefits payable under the contract. Essentially the effect was that the applicant would become a member of the Momentum Retirement Annuity Fund.

21. We note that during the duration of the said policy (the period September 1990 to September 2018), the applicant made a total contribution of R57,105.72. His maturity value of the policy was an amount of R176,522.00 as at September 2018. Momentum maintained that this was a fair and accurate reflection of his value.

22. The applicant claims to have been ill advised of how the maturity value is actually derived at. This appears to be once more a typical instance when a member of the public was not informed of the nature and structure of a retirement annuity as well as the nature and purpose of the various documents presented to him/her when introducing such annuities. We have been advised on behalf of the Fund that there was constant correspondence directed to the applicant informing him of the illustrated as well as the actual value of his investment. We reiterate however that members of the public understand the difference between illustrative and actual values at maturity.

23. Financial service providers are urged to take the time and effort to explain same to the insured so as to avoid a situation the applicant finds himself in. There is a generic understanding in the industry that when the broker calculates the illustrative value, an assumption is made about the investment return (nominal growth rate) on an investment. It was accepted that at least 20 years ago, the

industry protected nominal growth rates of 15%. However factors such as inflation and the fees charged on the policy over the years certainly has an effect on the growth rate.

24. The applicant should have been placed in a position where he understood that the illustrative values are mere projections and that the value at maturity was dependent on a range of factors as alluded to above.

CONCLUSION

25. We however cannot find that the office of the PFA erred in its decision. It is evident that the applicant was entitled to the maturity value as at his retirement, which value was R176,522.00 at September 2018. We acknowledge from the PFA's determination that the value at the time of the said determination was R181,020.00, that is at 14 November 2019, and such amount would be the amount the applicant would be entitled to.

26. The following order is made:

(1) the application is dismissed.

SIGNED at **PRETORIA** on this **4th** day of **JUNE 2020** on behalf of the Panel.

Hkooverjie

ADV H KOOVERJIE SC
With the Panel consisting also of:
J Pema

E Phiyega