

THE FINANCIAL SERVICES TRIBUNAL

Case No. PFA60/2023

In the matter between:

NTABENI LOGISTICS MANAGEMENT CC

Applicant

and

THE PENSION FUNDS ADJUDICATOR

First Respondent

MUVHANGO ANTOINETTE LUKHAIMANE N.O.

Second Respondent

THE TRANSPORT SECTOR RETIREMENT FUND

Third Respondent

ASIENA MARIA NKOSI

Fourth Respondent

Summary: Reconsideration of a Determination of the Pension Funds Adjudicator (30M) in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017.

DECISION

INTRODUCTION

1. The Applicant is Ntabeni Logistics Management CC, a close corporation registered in accordance with the company laws of the Republic of South Africa and carrying on business at 117 Floors Road Withok Estates, Brakpan.
2. The First Respondent is the office of the Pension Funds Adjudicator.
3. The Second Respondent is the Pension Funds Adjudicator and the author of the Determination.
4. The Third Respondent is the Transport Sector Retirement Fund (“the Fund”).

5. The Fourth Respondent is the Complainant in the referral to the Pension Funds Adjudicator. She is the wife of the deceased, Mr ND Nkosi, and the executor of his estate ("the deceased").
6. This is an application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 against the decision taken by the First and Second Respondents in terms of Section 30M of the Pensions Fund Act 24 of 1956 ("the PFA").
7. The parties have waived their right to a formal hearing, and this is the Tribunal's decision.
8. Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") provides the basis for the Applicant to lodge this application for reconsideration and seek appropriate relief.

THE COMPLAINT

9. The Fourth Respondent filed a complaint on the 23rd of November 2022 with the First Respondent in relation to the Applicant's failure to remit all retirement fund contributions to the Third Respondent on the deceased's behalf. The matter further concerned the payment of a death benefit, which should have been paid on the death of the deceased and which has not yet been paid.
10. The Applicant employed the deceased on 1 October 2020, and he remained in their employ until his death on 14 September 2021. By virtue of his employment, the deceased was a member of the Fund, and the

Applicant participates in the Fund.

11. The Fund submitted that its records reflected that the deceased only joined it on 1 January 2021, has no record of any death notification forms from the Applicant, and that its records reflect that the Applicant owes contributions for the period October 2020 to December 2020 and August 2021. The Fund indicated that the Applicant owes R9,620.08 for these outstanding contributions and an amount of R 4,209.29 for interest calculated up to June 2023. Naturally, further interest will have accrued.
12. In addition, the Fund submitted that although a death benefit of R465,404.40 would have been payable, the Applicant has permitted this benefit to lapse.
13. Furthermore, the Fund submitted that, in any event, Section 37C of the PFA would apply to any paid-up member's death benefit and any distribution thereof.
14. The Applicant failed to make any submissions.
15. Based on the submissions received from the Fund, the First Respondent concluded *inter alia* that the Applicant is in arrears with contributions, plus late payment interest thereon, and that it was liable to make good the death benefit of R465,404.40.

THE APPLICANT'S CASE FOR RECONSIDERATION

16. The Applicant, as stated hereinabove, was aggrieved by the Determination of the Adjudicator and, for that reason, lodged this

application for reconsideration.

17. The Applicant submits that it did not receive any communications from the First Respondent in relation to the complaint and suggests that the correspondence transmitted by the First Respondent to it was *“purportedly transmitted to a none-existent (sic) email address of the Applicant.”*
18. The Applicant further states, *“The incorrect and none-existent (sic) email address used by the First Respondent was info@ntabenilogistics.co.za. One can only wonder where the First Respondent obtained this incorrect email address.”*
19. The Applicant set out further grounds to support its application for reconsideration, but for the reasons set out below, it is unnecessary to deal with same.

SUBMISSION OF FURTHER REASONS BY THE FIRST RESPONDENT IN TERMS OF RULE 13

20. After the Applicant filed this application, the First Respondent filed Further Reasons in terms of rule 13 (“the Further Reasons”).
21. The Further Reasons deal specifically with the email address issue raised by the Applicant and put an end to this matter.
22. The First Respondent confirms that despite the Applicant’s incredulity at where the email address initially utilised came from, this is the email address listed on Applicant’s own website. Furthermore, concerned that it had not received the Applicant’s submissions, the First Respondent went further and obtained an alternative email address for the Applicant from the Fund. The First Respondent then served the Applicant with a

copy of the complaint and the Funds response using both email addresses. Notably, the second email address is the very email address that the Applicant uses in this application as its service address.

23. In the circumstances, the First Respondent denies that any procedural irregularities exist.

CONCLUSION

24. The Applicant's suggestion that the Determination was granted in its absence and that the news came as a surprise is rejected.
25. The Applicant was afforded an opportunity to be heard and to provide the First Respondent with its representations and failed to do so.
26. The Applicant has not been truthful in its submissions in relation to the *audi alteram partem* principle and cannot be afforded what is effectively a second bite at the cherry.

ORDER

- (a) The application is dismissed.

Signed on behalf of the Tribunal on 13 December 2023.

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**LTC Harms (deputy chair) o.b.o. self and
PJ Veldhuizen (member of the Tribunal)**