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REGISTERED POST

Mr & Mrs J M Sekiti
P O Box 2199
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Dear Mr & Mrs Sekiti,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 of 1956 (“the Act”): J M & M J SEKITI (“complainants”) v AMPLATS MINES RETIREMENT FUND (PROVIDENT AND PENSION SECTION) (“first respondent”), OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LIMITED (“second respondent”) ALEXANDER FORBES FINANCIAL SERVICES (“third respondent”) AND ANGLO PLATINUM MINE (PTY) LTD (“fourth respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the non-payment of a death benefit by the first respondent following the death of the complainants’ son, Mr M M Sekiti (“the deceased”).

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 24 of 1956

-The service offered by the Pension Funds Adjudicator is free to members of the public-

- 1.2 The complaint was received by this office on 18 December 2007. On 29 January 2008, a letter was dispatched to the third respondent giving it until 29 February 2008 to file its response to the complaint. On 17 September 2008, a letter was dispatched to the first respondent giving it until 3 October 2008 to file its response to the complaint. A follow-up response letter was sent to the third respondent on 23 January 2009 giving it until 27 January 2009 to file its response. On 25 March 2010, a letter was dispatched to the second respondent giving it until 26 March 2010 to file its response to the complaint. A response was received from the third respondent on 29 July 2010. A copy of same was forwarded to the complainants on 2 September 2010 giving them until 22 September 2010 to file further submissions in the event that they wished to do so. No further submissions were filed. A response was received from the second respondent on 13 October 2010. The fourth respondent was joined as a party to this matter in terms of section 30G (d) and a copy of the complaint was forwarded to the fourth respondent on 15 October 2010 giving it until 26 October 2010 to file its response to the complaint. No response was received from the fourth respondent to date.
- 1.3 After considering the facts and the circumstances of this matter, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainants are the deceased member's parents. The deceased was a member of the first respondent until he passed away on 25 June 2004.
- 2.2 Subsequent to his death, the deceased's beneficiaries became entitled to receive a death benefit from the first respondent.

[3] COMPLAINT

- 3.1 The complainants are aggrieved by the failure of the first respondent to pay their late son's death benefit. They allege that following the deceased's death, they have made several attempts to get the death benefit payment with no positive outcome.
- 3.2 They request this Tribunal to compel the first respondent to pay the deceased's death benefit to them.

[4] RESPONSE

Third respondent's response

- 4.1 A response submitted by the third respondent on behalf of the first respondent confirmed that the deceased was a member of the first respondent until he passed away on 25 June 2004. A response further submitted that the second respondent provides administration services to the first respondent and the third respondent provides consulting services to the first respondent.
- 4.2 The third respondent submitted that it received the original complaint in February 2008 and carried out detailed investigations to establish which fund the deceased belonged to and if a benefit was due.
- 4.3 The third respondent further submitted that a copy of the salary advice showed the late member's employer as being Bafokeng Rasimone Platinum Mine and that Bafokeng Rasimone Platinum Mine was not a participating employer in the fund.
- 4.4 The third respondent submitted that the deceased had been transferred

from Bafokeng Rasimone Platinum Mine to Lebowa Platinum Mine, which was a participating employer in the fund at the time.

- 4.5 The third respondent further submitted that the first respondent was only notified of this death on 16 May 2006 and the then administrators initiated the investigations. The investigations confirmed the complainants as the likely beneficiaries and also noted that the deceased was survived by his brother.
- 4.6 The third respondent submitted that the calculations in 2006 showed a benefit of R7, 564.91 in the pension section and a benefit of R9, 754.28 (excluding the group life benefit) in the provident section of the Fund.
- 4.7 The third respondent further submitted that on 12 June 2006, the claim notification form was sent to Capital Alliance Group Risk (the insurer), the then underwriter of the benefit for consideration.
- 4.8 The third respondent mentioned that the administration of the first respondent passed to the second respondent and that the second respondent received the member's fund credit values in the first respondent on handover of the records and at no time prior to July 2009 was a claim form submitted to the first respondent.
- 4.9 The third respondent submitted that the investigation by trustees showed that the deceased did not complete a nomination form and was never married nor had any children.
- 4.10 In investigating the reasons for the delay in paying the deceased's benefit, the third respondent indicated that the first respondent contacted Capital Alliance Group Risk, which indicated that they were notified of the death of the member in 2006 but never received complete documentation.

4.11 The third respondent further indicated that it was noted that the copy of the ID, payslip, death certificate and proof that the deceased was a member of the first respondent had been forwarded to Capital Alliance Group Risk in 2006 but the death notification form was still outstanding from the employer. The form was only received by the first respondent on 3 July 2009.

4.12 The third respondent submitted that on 24 June 2009 the trustees of the first respondent decided to make payment of the benefits to the persons in percentages and in the manner indicated below:

Name	Relation	Age	Percentage	Payment
Mampye Johannes Sekiti	Father	65	50%	Cash
Mashishimale J Sekiti	Mother	55	50%	Cash

4.13 The third respondent indicated that the updated benefits were noted as follows:

Pension Section	R 9, 379.08
Provident Section	R 12, 093.48
4 X Annual Salary	R 108, 686.00 (GLA not received)

4.14 The third respondent further indicated that the insurer was contacted to reconsider the claim and the first respondent received a letter confirming that the insured benefit claim had been repudiated on contractual grounds.

4.15 The third respondent submitted that the first respondent was able to pay out the fund credits in the Pension and Provident Sections only, and no group life benefit was payable.

4.16 The third respondent further submitted that the trustees requested Capital

Alliance Group Risk to consider payment of the claim on an ex-gratia basis and that has not been approved or declined.

Second respondent's response

4.17 The second respondent confirmed that the benefit payable in respect of the deceased was finalized on 13 October 2010 as being the full and final settlement of all benefits. The amount payable was derived as follows:

Provident Fund

Provident Fund:	R13 189.71
Less Provident Fund Tax:	R 0.00
Less Advanced paid:	R 0.00
Nett Benefit:	R13 189.71

4.18 Distribution to beneficiaries was done as follows:

NAME	AMOUNT	PAYMENT DETAILS
M J Sekiti	R 6 594.85	Standard Bank
Mashishimale Sekiti	R 6 594.86	Nedbank
	R13 189.71	Net Benefit

4.19 The amount payable was derived as follows:

Pension Fund

Pension Fund:	R10 229.26	
Less Pension Fund Tax:	R 1 839.75	IRP5 certificate copy attached
Net Benefit:	R 8 389.51	

4.20 Distribution to beneficiaries was done as follows:

NAME	AMOUNT	PAYMENT DETAILS
M J Sekiti	R4 194.75	Standard Bank
Mashishimale Sekiti	R4 194.76	Nedbank
	R8 389.51	Net Benefit

Fourth respondent's response

4.21 No response was received from the fourth respondent.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The issue that falls for determination is whether or not the first respondent failed to comply with its duties in terms of the Act with regard to the payment of a death benefit to the complainants.

5.2 The complainants have submitted a death certificate, a copy of payslip and a copy of an identity document to substantiate their entitlement to submit the complaint and access the benefit.

5.3 The payment of any benefit that is due to a member of a fund is regulated by the fund's rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E) and section 13 of the Act).

5.4 Rule 6.2.4 of the first respondent's rules provides that:

"The benefit payable in terms of Rule 6.1.1(a) shall be insured with a Registered Insurer and no such benefit shall be paid unless the claim for the benefit has been admitted by the Registered Insurer."

- 5.5 As is indicated in the response, the third respondent submitted that on 24 June 2009 the trustees of the first respondent decided to make payment of the benefits to the persons in percentages and in the manner indicated below:

Name	Relation	Age	Percentage	Payment
Mampye Johannes Sekiti	Father	65	50%	Cash
Mashishimale J Sekiti	Mother	55	50%	Cash

- 5.6 The third respondent indicated that the updated benefits were noted as follows:

Pension Section	R 9, 379.08
Provident Section	R 12, 093.48
4 X Annual Salary	R108, 686.00 (GLA not received)

- 5.7 The deceased passed away on 25 June 2004 and a copy of his identity document, payslip, death certificate and proof that the deceased was a member of the first respondent had been forwarded to Capital Alliance Group Risk by the third respondent on 12 June 2006, which makes it 2 years and 13 days late, but the death notification form was only received by the first respondent on 3 July 2009. Due to late notification, the insured benefit claim had been repudiated on contractual grounds.
- 5.8 In the correspondence between the first respondent and Capital Alliance Group Risk, the first respondent requested Capital Alliance Group Risk to reconsider payment of the insured benefit claim on an ex-gratia basis and this request has not yet been approved or declined.
- 5.9 The first respondent indicated that having received the claim form, the fund benefits can be paid out which will exclude the insured benefit. From a telephonic conversation that the investigator in this matter had on 1

September 2010 with one of the complainants, she indicated that payment had not yet been made. The second respondent confirmed that the provident and pension section benefit payable in respect of the deceased were finalised on 13 October 2010 as being the full and final settlement of all benefits.

- 5.10 The complainants submit that they have been claiming the deceased's death benefit since 2004. The first respondent submitted that they were unable to notify the insurer earlier as late notification was received from the fourth respondent. The first respondent submitted further that the fourth respondent in turn may also not have been aware of the death of the member, as the deceased simply "did not return to work". The fourth respondent has been granted the opportunity to comment on the allegations, as is required by section 30F of the Act. No response was received from the fourth respondent. As this was not disputed or confirmed by the fourth respondent, the complainant is entitled to relief.
- 5.11 The late notification of the member's death to the insurer was on the submissions before this tribunal, the result of fault on the part of the employer. The beneficiaries may not even have been aware of the benefits provided. In *Rwexwana v Idaho Spur Provident Fund and Others* [2005] 7 BPLR 640 (PFA) at 624 it was held that it is essential for the employer to complete a notification form indicating the cause of the termination of employment in order for the fund to determine which benefit is payable. In *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 235 it was held that the employer in a pension fund at the very least owes a duty of good faith to its employees. As a result of this omission, the death benefit has not been paid. In the circumstances, the complainants should be put in as good a position as if the wrong had not been committed.

[6] ORDER

6.1 In the result, the order of this Tribunal is as follows:

6.1.1 The first respondent is ordered to calculate the amount of the death benefit, that would have been payable to the complainants had the first respondent been properly notified about the deceased's death timeously, together with interest thereto at the rate of 15.5% *per annum* from 25 June 2005 to date of determination.

6.1.2 The fourth respondent is directed to pay the complainants the amount due in terms of paragraph 6.1.1 within seven days of receipt of the calculations by the first respondent in paragraph 6.1.1 *supra*.

DATED AT JOHANNESBURG ON THIS 25TH DAY OF MARCH 2011

DR E. M. DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Section 30M Filing: High Court
Parties Unrepresented