



**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR  
(HELD IN JOHANNESBURG)**

**PFA/GA/15733/2007/EMD**

In the complaint between:

**PRIVATE SECURITY SECTOR PROVIDENT FUND**

**Complainant**

**and**

**TYRON SECURITY CC**

**Respondent**

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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION  
FUNDS ACT, 24 OF 1956 (“the Act”)**

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Introduction

[1] The complaint concerns the late payment of contributions to a pension fund and the furnishing of information regarding the contributions. The complainant also claims

as ancillary relief an order that the respondent be prohibited from applying for the liquidation of the business.

[2] The complaint was received by this office on 4 July 2007. On 16 July 2007, a copy of the complaint was sent to the respondent, which responded on 27 July 2007.

[3] After considering the submissions, it has been found to be unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. Both the determination and reasons therefor appear below.

#### Factual Background

[4] According to the records of the complainant, the last contribution received from the respondent was for the month ending 31 May 2007 and the last schedule received was for the month ending 31 April 2007.

#### Complaint

[5] The complainant, a provident fund established in terms of a sectoral determination, asked for an order that

[5.1] the respondent be prohibited from applying for liquidation of the business;

[5.2] the respondent be compelled within 7 working days to make the payment of contributions from 31 May 2007 to date, to the complainant's banking account;

[5.3] the respondent be compelled within 7 working days to submit schedules from 30 April 2007 to date of determination to the complainant;

[5.4] the administrator of the complainant, NBC Holdings (Pty) Limited, be compelled to calculate late payment interest and submit the calculations to the respondent for payment;

[5.5] the respondent to pay late payment interest within 7 working days of receipt of the calculations;

[5.6] the administrator to calculate repudiated amounts for death and disability claims ("Repudiated Amounts") plus late payment interest in terms of the complainant's policy and to revert to the respondent within 7 working days of receiving this determination; and

[5.7] the respondent to pay the Repudiated Amounts within 7 working days of receipt of the information from the administrator.

### Respondent's Response

[6] On 27 July 2007, the respondent submitted copies of deposit slips dated 14 May

2007 (payment for April), 20 June 2007 (payment for May) and 16 July 2007 (payment for June), showing that the payments were up to date.

[7] The respondent further submitted that, due to payments by Government Departments only being made between the seventh and the fifteenth of every month, they are only then able to make provident fund contributions.

[8] The respondent further stated that the necessary schedules had been submitted to the complainant.

#### Determination and reasons therefor

##### *Jurisdiction*

[9] Prior to the determination in *Mandla Mali v Nabelah Trading CC t/a Security Wise; Private Security Sector Provident Fund PFA/WE/7723/2006*, we historically made a decision these matters do not fall within our jurisdiction. This was reassessed and the decision is that we shall now deal with these matters, as the complainant in this matter is not a bargaining council fund, but a fund established in terms of a sectoral determination for the private security sector issued by the Minister of Labour under the Basic Conditions of Employment Act, 75 of 1997 and registered as a pension fund with the Registrar of Pension Funds.

[10] Since the decision in *Mandla Mali*, the Pension Funds Act was amended by the

Pension Funds Amendment Act, 11 of 2007, which came into operation on 13 September 2007. Section 2(1) as amended clarifies that the Act applies to all registered pension funds and that bargaining council funds not yet registered, have to do so by no later than 1 January 2008.

[11] It follows that this Tribunal does have the necessary jurisdiction to determine this matter.

*Prohibition against applying for liquidation*

[12] The complainant requests an order that the respondent be prohibited from applying for liquidation of the business.

[13] This application would apply to an application to court. It would not include the passing of a resolution for voluntary winding-up, be it for a members' or creditors' voluntary winding-up.

[14] The respondent is only one of a number of entities that may apply to court for winding-up. Other possible applicants would include one or more creditors, as well as one or more members (section 66(1) of the Close Corporations Act, 69 of 1984, read with section 36(1) of the Companies Act, 61 of 1973.)

[15] A blanket prohibition against applying to court for relief would be inappropriate. Access to the courts, albeit to have disputes settled, is one of the fundamentals set out in Chapter 2, the Bill of Rights, of the Constitution of the Republic of South Africa,

Act 106 of 1996. An order denying a person the right to approach a court for relief would be unconstitutional.

[16] Such an order would under the circumstances also be inappropriate. The order, if granted, could readily be circumvented and rendered ineffective, as it would not restrain any other party, including one or more members of the respondent itself, from applying to court for relief in their individual capacity. I am not willing to consider granting an order that could so easily be circumvented.

*Late transmission of contributions and submission of schedules*

[17] Section 13A of the Act requires every employer to transmit member and employee contributions to a fund within seven days from the end of the month for which it was due.

[18] In terms of regulation 33(2), the person responsible for checking the receipt of electronic transfers into the fund's bank account, or similar person, has to report to the principal officer or the monitoring person

[18.1] not later than 30 days after the end of the month about the receipt and reconciliation of data; and

[18.2] not later than 22 days after the end of the month about the receipt of contributions.

[19] The monitoring person provided for in section 13A(6) has a duty to report to the board of the complainant in writing within seven days after receipt of the reports referred to above about the failure to transmit payments and submit data.

[20] In the present matter, payment for May 2007 was transmitted on 16 June 2007, nine days late. The person referred to in regulation 33(2) (a) or (b) had to submit a report about late payment to the monitoring person by 22 June 2007, by which time payment had been made.

[21] The responsible person should have been aware of the payment before the complaint was lodged.

[22] Should the lodging of complaints for non-payment of contributions and non-submission of schedules before the responsible person and the monitoring person have properly executed their duties in terms of regulation 33 be a recurring problem, such complainants may well in future be required to lodge their complaints by way of affidavit, as is normally required in a court of law.

*Calculation of late payment interest*

[23] The fourth prayer is that the administrator be ordered to calculate late payment interest. The method of calculation is explained in Circular PF 110. The maximum interest rate is prescribed by Government Notice 338 in *Government Gazette* 22210 of 6 April 2001. As the administrator is accountable to the complainant, it is up to the

complainant to give an instruction to the administrator to do the necessary calculations. The only complaint before this Tribunal relates to the payment that should have been made by no later than 7 June 2007, which was made on 20 June 2007.

*Payment of late payment interest*

[24] The fifth prayer is that the respondent be ordered to pay late payment interest. The complainant should first instruct the administrator to quantify the amount. Once the amount has been quantified, the complainant should demand payment from the respondent and submit a copy of the detailed calculations to this tribunal before relief can be considered. At the same time, the respondent should be afforded the opportunity to respond to any letter of demand.

*Repudiation and payment of death and disability claims*

[25] The sixth and seventh prayers: The complainant should instruct the administrator to establish whether or not there has been any repudiation of death and disability claims, quantify this amount and the respondent should pay the quantified amounts within 7 days of receipt of the information from the administrator. No determination can be made before it has been shown that there has indeed been any repudiation of death and disability claims.

Relief

[26] In the result, I make the following order:

[26.1] Complaints 1, 2 and 3 are dismissed;

[26.2] The complainant shall instruct its administrator to calculate late payment interest from 1 June 2007 to 20 June 2007 in accordance with Circular PF 110 and Government Notice 338 in *Government Gazette* 22210 of 6 April 2001, read with Government Notice 166 in *Government Gazette* 29661 of 26 February 2007 and clause 5 of Schedule 3 of the National Credit Act, 34 of 2005;

[26.3] The respondent is ordered to pay late payment interest calculated in accordance with paragraph [26.2] within 7 working days of receipt of the calculations from the complainant;

[26.4] Complaints 6 and 7 are dismissed.

**SIGNED AT JOHANNESBURG ON THIS            DAY OF            2007**

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**Mamodupi Mohlala**  
**Pension Funds Adjudicator**