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REGISTERED POST

Mr CD November
36 Nutmeg Street
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Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): CD NOVEMBER (“complainant”) v MUNICIPAL COUNCILLORS PENSION FUND (“first respondent”); CONSOLIDATED RETIREMENT FUND FOR LOCAL GOVERNMENT (“second respondent”); VERSO FINANCIAL SERVICES (PTY) LTD (“third respondent”) AND THEEWATERSKLOOF MUNICIPALITY (“fourth respondent”)

[1] INTRODUCTION

- 1.1 This complaint concerns the refusal by the first respondent to transfer the complainant’s fund value to the second respondent.

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)

- 1.2 The complaint was received by this Tribunal on 3 March 2017. On 9 March 2017, a letter acknowledging receipt thereof was sent to the complainant. On the same date, the complaint was forwarded to the respondents requesting their responses by 6 April 2017. On 11 April 2017, follow-up letters were sent to the respondents requesting their response by 25 April 2017. A response was received from the first respondent on 27 May 2017. A response was received from the third respondent on 20 June 2017. On 17 July 2017, a response was received from the fourth respondent.
- 1.3 Having considered the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainant has been employed with the fourth respondent from 1 May 2006 to date. He is a member of the first respondent by virtue of his employment with the fourth respondent. He provided this Tribunal with copies of his payslips for July 2016 and December 2016, reflecting pension fund deductions in the amounts of R2 047.11 and R2 715.57, respectively.

[3] COMPLAINT

- 3.1 The complainant is aggrieved with the refusal of the first respondent to transfer his fund value to the second respondent. He states that he has been a member of the first respondent from 1 May 2006 until 31 July 2016. He commenced contributing to the second respondent from November 2016. He requested through the Human Resources department of the fourth respondent that his fund value in the first respondent be transferred to the second respondent. However, the first respondent refused to effect the transfer stating that his fund value will

remain invested until he ceases to be a councillor. He requests this Tribunal to investigate the matter.

[4] RESPONSES

First respondent

- 4.1 The first respondent submitted that the complainant has been its member since May 2006. It states that the complainant is currently a serving councillor. It states that since August 2016, after the elections, the complainant instructed the fourth respondent to cease contributing on his behalf to the first respondent. It states that its Rules do not permit a member to cease contributing to it or to transfer his fund value whilst he remains in service. It states that the fourth respondent must pay the complainant's arrear contributions to it.

Second and third respondents

- 4.2 The third respondent filed a response in its capacity as the second respondent's administrator. It states that the fourth respondent is a participating employer in the second respondent. The fourth respondent submitted a new member application form on behalf of the complainant indicating that he is joining the second respondent from 1 November 2016. It states that contributions were paid on behalf of the complainant from December 2016. On 14 June 2017, a letter was received from the fourth respondent requesting that the complainant's fund value in the second respondent should be transferred to the first respondent as previously held by this Tribunal. It states that in terms of the Rules of the second respondent, a councillor may become a member based on the provisions contained in his term of office arrangement. It states that it relies on the fourth respondent to provide it with the correct information to enable the second respondent to be administered correctly. As the Rules of the second respondent allow a

councillor to be a member, the complainant's new member application was considered to have been validly submitted by the fourth respondent. The second respondent will abide by this Tribunal's determination with regards to the complainant's fund membership.

Fourth respondent

- 4.3 The fourth respondent states that its letter of 14 June 2017 that the complainant's fund value in the second respondent should be transferred to the first respondent in terms of this Tribunal's ruling, was not in response to a specific determination issued by the latter. Thus, it awaits the outcome of this complaint.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The issue that falls to be determined is whether or not the complainant is entitled to transfer his fund value from the first respondent to the second respondent whilst he remains in service.
- 5.2 The Rules of a fund are supreme and binding on its officials, members, shareholders and beneficiaries and anyone so claiming from the fund (See Section 13 of the Act and *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28]).
- 5.3 Rule 24.1 of the first respondent's Rules reads as follows:

"Every MUNICIPALITY participates as an employer in the FUND"

Rule 24.3 of the first respondent's Rules reads as follows:

"A member may not cease to be a member whilst he or she is a councillor."

In turn, Rule 24.4 provides as follows:

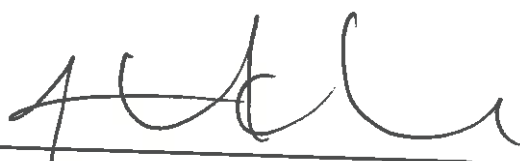
“A councillor who ceases to be a councillor within 60 (sixty) days of the public announcement of the date of the national municipal elections, but at those same municipal elections is re-elected as a councillor, is deemed for the purpose of these rules to have remained a councillor without any interruption and may not as a result of so ceasing to be a councillor, be eligible to withdraw from the Fund.”

- 5.4 In the instant matter, the complainant stated that he has been employed with the fourth respondent as a councillor from 1 May 2006 and remains in service. The complainant submitted that in November 2016, he commenced contributing to the second respondent. As mentioned above, the fourth respondent is a participating employer in the first respondent in terms of Rule 24.1 of the first respondent's Rules. Further, the complainant remains a councillor appointed by the fourth respondent and therefore, in terms of Rule 24.3, he is not entitled to terminate his membership of the first respondent.
- 5.5 The complainant submitted that he joined the second respondent. Rule 24.4 of the first respondent's Rules bars members from terminating membership whilst they are still in service. In this respect, the complainant's act is in contravention of the first respondent's Rules. Membership in the first respondent is a condition of service and therefore, if the third respondent finds that its employees that are members of the first respondent desire to leave the latter, it must enter into negotiations to amend the conditions of service accordingly. In a similar matter of *Ramokgoatedi JM: PFA/19710/2015/UM* as yet unreported, this Tribunal held that members of the first respondent are only allowed to join any pension fund when they cease to be councillors in terms of the former's Rules. Therefore, the complainant is not entitled to the transfer of his fund value from the first respondent to the second respondent.

[6] ORDER

1. In the result, the complaint cannot succeed and is hereby dismissed.

DATED AT PRETORIA ON THIS 04TH DAY OF AUGUST 2017



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PENSION FUNDS ADJUDICATOR

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Section 30M filing: High Court
Parties unrepresented