

## Case law - Fund related matters

This update discusses several recent determinations relating to benefits that have an impact on retirement funds, and where applicable, sets out the position adopted by the Momentum Metropolitan Sponsor Funds. The Momentum Metropolitan Sponsor Funds are the FundsAtWork Umbrella Pension and Provident Funds as well as the Momentum Corporate Pension and Provident Preservation Funds.

### A. Summary

#### 1. **JT Damoense v ABSA Pension Fund and ABSA Consultants and Actuaries – Pension Funds Adjudicator (PFA/NC/00042103/2018/MD) – Duty to properly investigate financial dependency**

- A nominee does not need to provide evidence of financial dependency to be considered for the allocation of a death benefit. The fact that the complainant was nominated compelled the fund to consider her situation together with all the relevant factors.
- Momentum Metropolitan Sponsor Funds: When investigating the allocation of a death benefit, both dependants and nominees are considered. Factors that will be taken into account when considering the allocation include but are not limited to the level of dependency, other benefits/pay-outs received and the value of the benefit that is available for distribution.

#### 2. **Fokazi v Sanlam Staff Umbrella Pension and Provident Fund and Another – Pension Funds Adjudicator (PFA/WC/00028104/2016/SM) – Variation of a divorce order**

- A fund cannot give effect to a variation order that awards the division of pension interest if it is not clear that the order amends or varies the initial divorce order.
- Momentum Metropolitan Sponsor Funds: When the Funds receive a variation order to a divorce order, if the variation order deletes the previous order/s (parts that relate to the transfer of pension interest), then the Funds will only consider the variation order. Where the variation order does not delete the original order, both orders will be considered together to determine whether they are binding on the Funds. If the orders are ambiguous and/or defective, the Funds will not give effect to them.

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## B. Case law

### 1. **JT Damoense v ABSA Pension Fund and ABSA Consultants and Actuaries – Pension Funds Adjudicator (PFA/NC/00042103/2018/MD) – Duty to properly investigate financial dependency**

Ms Damoense, the complainant, was the former life partner of Mr LB Mantjui. They had a son. Mr Mantjui and his son passed away in a car accident and a death benefit of R1 065 480 became available for distribution to his beneficiaries. Mr Mantjui nominated his mother, Ms Mantjui and the complainant to each receive 50% of the benefit. The board of trustees of the ABSA Pension Fund decided to allocate 100% of the benefit to Ms Mantjui. The complainant lodged a complaint with the Pension Funds Adjudicator (the PFA) on the basis that the board did not properly investigate Ms Mantjui's financial dependency. She argued that even though Ms Mantjui was financially dependent on Mr Mantjui, she was 75 years old and was receiving a state grant which was enough to meet her financial needs. Furthermore, the board failed to consider the complainant as a nominee.

The PFA found that while the board correctly found Ms Mantjui to be dependent on Mr Mantjui, they did not take into account other factors such as the State grant she received as well as the group life assurance benefit of R1 598 220 that was paid to her. The board failed to show that Ms Mantjui would be negatively affected financially if a portion of the benefit was allocated to the complainant.

The PFA also found that the complainant should have been considered on the basis that she was a nominee. She did not have to prove that she was financially dependent on Mr Mantjui for her to be considered. The fact that she was nominated compelled the fund to consider her situation together with all the relevant factors.

The PFA set aside the decision to allocate the full benefit to Ms Mantjui and referred the matter back to the board of trustees for reconsideration.

#### **Approach adopted by the Momentum Metropolitan Sponsor Funds**

When investigating the allocation of a death benefit, both dependants and nominees are considered. Factors that will be taken into account when considering the allocation include but are not limited to the level of dependency, other benefits/pay-outs received and the value of the benefit that is available for distribution.

### 2. **Fokazi v Sanlam Staff Umbrella Pension and Provident Fund and Another – Pension Funds Adjudicator (PFA/WC/00028104/2016/SM) – Variation of a divorce order**

Mr Fokazi, the complainant, was the former spouse of Mrs AN Fokazi. She was a member of the Sanlam Staff Umbrella Pension and Provident Fund. When their divorce order was granted in January 2015, it stated that each party would not have a claim against the other's pension/provident/retirement fund. In August 2016, the parties obtained a variation order, which is an order that amends the original divorce order. The variation order provided that the Sanlam Staff Umbrella Pension and Provident Fund had to pay 50% of Mrs Fokazi's pension interest to the complainant.

The fund refused to give effect to the variation order because it did not state that it amended the original order by setting aside the statement that each party will not have a claim against each other's funds. The complainant approached the PFA for an order compelling the fund to comply with the variation order.

The PFA stated that when a variation order is granted, it must clearly state which clause or part of the original order is being varied to avoid uncertainty. In the present matter it was not clear if the variation order amended or varied the statement in the initial divorce order. The variation order only stated that the fund must pay 50% of the pension interest to the complainant, but did not specifically indicate that the initial statement was varied or amended.

The PFA further stated that the relevant clauses relating to pension interest in the variation order were not written correctly as it conflicted with the initial divorce order. The PFA found that the variation order was not binding on the fund and dismissed the complaint.

#### **Approach by Momentum Metropolitan Sponsor Funds**

When the Funds receive a variation order to a divorce order, if the variation order deletes the previous order/s (parts that relate to the transfer of pension interest), then the Funds will only consider the variation order. Where the variation order does not delete the original order, both orders will be considered together to determine whether they are binding on the Funds. If the orders are ambiguous and/or defective, the Funds will not give effect to them.