

JULY 2020

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Section 37C of the Pension Funds Act ('the Act') – What are the rights of the deceased Member's heirs?

1. Rights of the heirs

A recent decision by the Financial Services Tribunal suggests that the rights of the heirs of a deceased member of a retirement fund are strictly limited. The case in question is the Sanlam Umbrella Provident Fund (the Fund) versus the Pension Funds Adjudicator (the PFA), Adela Wolmarans and Sanlam Employee Benefits

2. Facts of the Case

The daughters of the deceased, Mr FJ Nagel were estranged from him and were not financially dependent on him. He was cared for by his sister-in-law's children, one of whom was Ms Wolmarans. Mr Nagel did not designate a nominee to receive his benefit from the retirement fund, but he left his estate to the children of his sister-in-law.

At no stage was it alleged that the children of the sister-in-law were dependants or designated nominees of the deceased. However, had the Fund paid the death benefit to the estate, the children of the sister in law would have benefited as the heirs, once the assets in the estate had been used to pay taxes, master's fees, the cost of administration and other costs.

3. The decision by the Fund

The opening paragraph of Section 37C (a) states specifically that "any benefit payable by a fund on the death of a membershall not form part of the assets of the estate of the member". However, Section 37C (1) (c) of the Act does set out the conditions under which the estate may be regarded as a potential beneficiary. The Fund relied on the provisions of this section. The conditions in terms of which a death benefit may be paid to the estate of the deceased member are as follows:

- (1) The Fund must not be aware of or be unable to trace any dependant of the member within twelve months of the member's death; and
- (2) The member must not have designated a nominee to receive all or a portion of the benefit.

The Fund decided that in this case these two conditions had not been met and the benefit could not be paid to the estate. The Fund argued further that although the two daughters were not financially dependent on the deceased, they nevertheless fell within the definition of dependant in terms of (b) (iii) of the definition of "dependant" in the Act which reads as follows:

(b) (iii) is the child of a member, including a posthumous child, an adopted child and a child born out of wedlock.

The daughters were therefore legal dependants of the deceased. The Fund was aware of their existence and therefore decided to distribute the benefit to the daughters and not to pay the benefit to the estate of the deceased member.

4. PFA Determination

In her determination, the PFA overlooked section (b) (iii) of the definition of dependant in the Act and held that the daughters were not dependants as they were not financially dependent on the deceased. She defined the issue as whether the Fund had allocated the death benefit fairly and equitably between the deceased's beneficiaries.

5. Decision of the Tribunal

The Tribunal held that as the heirs were not beneficiaries and the estate was a beneficiary only if the two conditions referred to above had been met, which in this case they had not been, the PFA had misconstrued the situation and had erred in saying that the two daughters were not dependants of the deceased.

The fact that the deceased made a particular person his or her heir may be an indication of the wishes of the deceased, but unless the person was formally named in a nomination of beneficiary form, the benefit cannot be paid to the estate if the Fund is aware of the existence of a legal dependant.

Comment

It appears that in making the determination, the PFA relied on the principle of equity rather than adhering to the strict provisions of the legislation. It is likely that going forwards the principle of equity will be increasingly relied on by the PFA and other regulatory authorities. A death benefit investigation in terms of Section 37C of the Act is possibly the most onerous duty of the Trustees. It is important that if a decision made by the Trustees results in a complaint to the PFA, the Trustees are able to demonstrate that they applied their minds by following a coherent and consistent process which took into consideration the circumstances of all potential beneficiaries and was supported by appropriate documentation obtained from the beneficiaries.