



Legal Services

FINANCIAL SERVICES



ON THE SCALES 10 OF 2012

Parties to Muslim marriages may claim divorce benefits

The Pension Funds Adjudicator (the "Adjudicator") has confirmed in the case of *Tyron v Nedgroup Defined Contribution Pension and Provident Funds* (the "Fund") that parties who were married in terms of the tenets of the Islamic faith are entitled to share their pension interest upon divorce.

Summary

- The member and the complainant (the "non-member spouse") were married in terms of the tenets of the Islamic religion and got divorced on 21 September 2007.
- In terms of the divorce order, the non-member spouse was entitled to 50 per cent of the member's pension interest. The non-member spouse claimed the pension interest and the Fund refused to pay.
- The non-member spouse lodged a complaint with the Pension Funds Adjudicator and the Adjudicator ordered the Fund and its administrator to make payment to her.

Facts

The member and non-member spouse were married in terms of the tenets of Islamic religion. They subsequently got divorced on 21 September 2007 in terms of the tenets of Islamic religion. The parties signed a settlement agreement which was made an order of court on 21 September 2011. In the settlement agreement the non-member spouse was awarded 50 per cent of the member's "value of the fund", calculated from the date of inception to 21 September 2007, being the date of divorce.

The Fund refused to pay the non-member spouse and she then complained to the Adjudicator.

The Fund's response

The Fund objected to the Adjudicator's jurisdiction saying that the complaint is not a 'complaint' as defined in the Pension Funds Act (the "Act") and the non-member spouse is not a 'complainant' as defined in the Act. The Fund argued that the divorce was not granted in terms of the Divorce Act, and therefore they could not give effect to the settlement agreement. The Fund argued that the order was unenforceable against it but it was binding between the parties.

The Fund further argued that the Divorce Act provides that a member's pension interest will only form part of the member's assets in the marriage if the parties were married in community of property, married with the accrual system, or married before 1984 in terms of an ante-nuptial contract without the accrual system. The Fund argued that the parties were not married under any of these regimes and that the member's pension interest did not form part of the assets in his estate.

Since the marriage was not dissolved in terms of the Divorce Act, the Fund stated that there is no “date of divorce” as required in the concept of “pension interest” and as such, it could not calculate the value of pension interest that would be payable to the non-member spouse.

The Adjudicator’s ruling

The Adjudicator held that the non-member spouse is considered a potential beneficiary as she has an interest in the matter, and thus qualified as a complainant. Since it was accepted that the member and non-member spouse were married under Islamic religion and that the marriage was dissolved according to the tenets of the Islamic religion, the Adjudicator held that the non-member spouse was considered a spouse for the purposes of sharing the member’s pension interest. This was also confirmed by the High Court when it made the settlement agreement an order of court. The Adjudicator therefore dismissed the Fund’s arguments that the complaint is not a ‘complaint’ and that the non-member spouse is not a ‘complainant’ as defined in the Act.

The dissolution of the marriage took place on 21 September 2007 and the Adjudicator held that since “Fasakh” is the date of divorce in terms of the Islamic faith and the settlement agreement was made an order of court, the member’s fund value as at 21 September 2007 can be easily calculated by the Fund. The Adjudicator ordered the Fund to pay a portion of the member’s pension interest to the non-member spouse as stipulated in the settlement agreement.

Comment: the Adjudicator did not say what the requirements are for a valid divorce insofar as a fund is concerned in terms of the tenets of the Islamic faith. Furthermore although the parties in this case had their settlement agreement made an order of court, the Adjudicator did not indicate whether this is relevant or not.

If you need more information, please contact your consultant.
