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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “PBA”)

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the *PBA* relating to the Retirement Benefit Plan for Local 27 C.A.W. Members of Dana Canada Corporation, Registration Number 1017110

TO:

MW

Complainant

AND TO:

Dana Canada Corporation
656 Kerr Street
Oakville ON L6K 3E4

Attention:

Kathryn Ibson

Plan Administrator and Employer

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER that pension funds transferred on wind up to an annuity be transferred to a locked-in retirement account in respect of the Retirement Benefit Plan for Local 27 C.A.W. Members of Dana Canada Corporation, Registration Number 1017110, (the “Plan”) under section 87 of the *PBA*.

REASONS:

1. Dana Canada Corporation was the administrator of the Plan (the “Administrator”) at all relevant times.
2. MW is a former member of the Plan who terminated employment with Dana Canada Corporation on January 23, 2004. At that time, MW had a vested pension benefit in the

Plan.

3. The facility where MW had been employed was closed in 2008 and the Plan was subsequently wound up effective April 30, 2009.
4. MW has advised that she did not receive any information about her pension benefit entitlement from the Administrator either after the termination of employment or in connection with the wind up of the Plan. MW has further advised that if she had received any information, she would have directed that the funds be transferred to a locked-in account as opposed to the annuity that the Administrator caused to be purchased on her behalf on the wind up of the Plan. MW has requested the Superintendent to issue an Order requiring the Administrator to transfer the funds to a locked-in account.
5. The Administrator has advised that MW's address as at her termination of employment was the last known address for MW in its records at all relevant times.
6. The Administrator has advised that it sent a termination option statement to MW at her last known address following the termination of employment in 2004. The Administrator has advised that it was not returned in the mail by Canada Post.
7. The Administrator did not receive any direction from MW in connection with the termination option statement. MW's pension entitlement therefore remained in the Plan as a deferred pension.
8. The Administrator has advised that notice of the Plan wind up dated April 27, 2009 was mailed to MW at her last known address and was not returned in the mail by Canada Post.
9. The Administrator has advised that it mailed a Statement and Election of Benefits on Plan Wind Up dated May 28, 2010 (the "Wind Up Option Statement") to MW addressed to her last known address. This was returned in the mail by Canada Post.
10. MW has advised that she continued to reside at the same address following her termination of employment in 2004 until she moved in January 2005, and that she made arrangements with Canada Post to have her mail forwarded for three years.
11. MW has also advised that she first notified the Administrator of her change in address by way of a telephone call on June 12, 2007. MW did not give the Administrator written notice of her change in address. The Administrator has advised that it has no record of this telephone call.
12. The Administrator retained National Search Unit of Service Canada, by letter dated June 28, 2010, to conduct a national search to locate certain former members, including MW. The Administrator has advised that it did not receive any result regarding MW.
13. The Administrator has advised that an annuity was therefore purchased on MW's behalf on August 16, 2011, as an unlocated member.
14. MW has advised that she received a letter on March 5, 2012 from National Search Unit of Service Canada addressed to her current address (which is an additional address change after her move in 2005), advising that her former employer was trying to locate her.
15. MW then contacted the Administrator who advised her of the annuity purchase. In October 2012 MW contacted the Superintendent with her request that the annuity funds be

transferred to a locked-in account.

16. Section 72(1) of the *PBA* in 2010 required that the administrator of a pension plan that is to be wound up give to each person entitled to a pension, deferred pension or other benefit or refund under the pension plan a statement that sets out the person's entitlement under the plan, the options available to the person and other prescribed information. Section 72(2) required the recipient of the statement to make an election from the options available within the prescribed time period or the person would be deemed to have elected to receive payment of a pension, once eligible. Section 28(3) of Regulation 909 required the election to be returned within 90 days after receipt of the statement.
17. Section 112(1) of the *PBA* in 2010 provided, in part, that a document is sufficiently given if sent by regular mail addressed to the person to whom it is to be given at the person's last known address. Section 112(2) of the *PBA* provided that a document sent by regular mail is deemed to be given on the seventh day after the day of mailing "unless the person to whom it is sent establishes that, acting in good faith, the person did not receive the notice, order or other document, or did not receive it until a later date, through absence, accident, illness or other cause beyond the person's control".
18. The Administrator sent MW the Wind Up Option Statement at her last known address. The Administrator subsequently attempted to locate MW through Service Canada when the Wind Up Option Statement was returned in 2010. The Superintendent is of the view that the Administrator made reasonable efforts to locate MW in connection with the wind up of the Plan and that the annuity purchase on her behalf in 2011 was also reasonable.
19. The Superintendent does not have jurisdiction to order that funds transferred to an annuity from a pension plan on wind up be subsequently transferred to a locked-in account.
20. Sections 87(1) and 87(2)(c) of the *PBA* provide that the Superintendent may by written order require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan if the Superintendent is of the opinion, upon reasonable and probable grounds, that the administrator of the pension plan, the employer or the other person is contravening a requirement of the *PBA* or the regulations.
21. Based on the information provided, the Superintendent is not of the opinion that the Administrator contravened a provision of the *PBA* or the regulations.
22. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the *PBA*. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.**¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416-590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **26th** day of **November, 2014.**

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions (Interim)

¹*NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.*

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