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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 Plan for Salaried Employees of Holcim (Canada) Inc., Registration Number 0338301.

TO:

Weihua (Marie) Shi
3145 Joel Kerbel Place
Concord, ON L4K 5X6

Applicant

AND TO:

Holcim (Canada) Inc.
2300 Steeles Ave. W., 1st Floor
Concord, ON L4K 5X6

Attention: RoseMary Boyd, Benefits Manager

Administrator

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Retirement Plan for Salaried Employees of Holcim (Canada) Inc., Registration Number 0338301, (the “Plan”) under section 87 of the *PBA*.

REASONS:

1. The Applicant commenced employment with Holcim (Canada) Inc. (“Holcim”) on November 24, 2008 and became a member of the Plan on that date.
2. The Plan is an Ontario registered combination plan that has both a defined benefit (DB) and a defined contribution (DC) option. It was established in 1957. The Applicant

participated in the DC option.

3. Holcim terminated the Applicant's employment by way of letter dated January 15, 2010.
4. The termination letter informed the Applicant that she would be paid her base salary and vacation entitlement (less statutory deductions) up to and including January 29, 2010, consistent with termination notice requirements under the *Ontario Employment Standards Act, 2000*.
5. Section 37 of the *PBA* in effect at the time of the Applicant's termination provided that a member of a pension plan who was a member on or after January 1st, 1988, who had been a member for a continuous period of at least 24 months and whose employment terminated before reaching the normal retirement date, was entitled to a deferred pension.
6. Section 63(4) of the *PBA* in effect at the time of the Applicant's termination provided that a member whose employment was terminated and who was not entitled to a pension or to a deferred pension under section 37 was entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment after the 31st day of December, 1986.
7. Section 42 of the *PBA* in effect at the time of the Applicant's termination provided that a member who terminated employment on or after January 1st, 1988 and was entitled to a deferred pension, was entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension to the pension fund related to another pension plan, if the administrator of the other pension plan agreed to accept the payment; into a prescribed retirement savings arrangement; or for the purchase of a life annuity that would not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.
8. In accordance with section 21 of Regulation 909 in effect at the time of the Applicant's termination, the prescribed retirement savings arrangement options were: transfer to a life income fund; transfer to a locked-in retirement income fund; transfer to a locked-in retirement account; transfer to a registered retirement income fund; and transfer to a registered retirement savings plan.
9. At the time of the Applicant's termination, section 14.02(1) of the Plan, consistent with the *PBA* section 42 transfer rights in effect at the time, provided that a member who terminated might elect, in full satisfaction of his/her entitlements under the defined contribution option of the plan, to have the value of his/her account: transferred directly on a locked-in basis to another registered pension plan, provided that the administrator of that pension plan agreed to accept the transfer; transferred directly to a locked-in retirement account or a locked-in registered retirement savings plan as prescribed for this purpose under the *PBA*; applied to purchase a deferred annuity authorized under the terms of the Plan under which he/she is the annuitant from a licensed annuities provider; or transferred directly to any other vehicle as may be described for this purpose by the *PBA* and the federal *Income Tax Act*.
10. Notwithstanding section 14.02(1) of the Plan, section 14.02(2) provided that an Ontario member who terminated membership before completing 24 months of membership was entitled to receive "a refund of the value of his Defined Contribution Account" (this included both member and employer contributions) and was also authorized to "elect to

have that refund transferred directly to a registered retirement savings plan”.

11. The Applicant’s Plan membership ceased on January 30, 2010 at the end of her statutory notice period.
12. The Applicant was issued a Statement of Options (“Statement”) with respect to her pension entitlement on behalf of the administrator by The Standard Life Insurance Company of Canada (“Standard Life”). The Statement indicated that her \$8,359.16 entitlement was available on a “non locked-in basis” and offered her corresponding transfer options, including cash refund less applicable tax and transfer to a retirement savings plan. The Statement indicated a termination date of January 29, 2010 consistent with the end of the Applicant’s statutory notice period.
13. The Applicant states that on January 21, 2010 she signed a T2151 at the Canadian Imperial Bank of Commerce (“CIBC”) providing instructions to Standard Life to transfer her entitlement to a locked-in account at CIBC.
14. The Applicant states that in April of 2010 she was informed by CIBC that her entitlement was received and deposited into a non locked-in account at CIBC contrary to her wishes.
15. It is the Applicant’s position that: the termination date set out in the Statement is incorrect and hence that Holcim over-contributed to the Applicant’s DC account; and that her former DC account assets should have been transferred on a locked-in basis.
16. The Applicant seeks an Order requiring: the return of the contributions made to her DC account after January 15, 2010 (to her and to Holcim respectively); and the issuance of a new Statement of Options providing for section 42 locked-in transfer options.
17. On the basis of the facts above, there has been no violation of the *PBA*.
18. The transfer options provided to the Applicant and her pension accrual period were consistent with the *PBA* and the Plan in effect at the time of the transfer. The Applicant was not entitled to transfer her entitlement to a locked-in vehicle, and Holcim was not required to offer the Applicant such an option, as the Applicant had not been a member of the Plan for a continuous period of at least 24 months.
19. 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 **5th** day of **February, 2013**.

Original Signed By

K. David Gordon
Deputy Superintendent, Pensions

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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