

Disclaimer

This is a reproduction of a NOID as issued and is provided for reference purposes only. In the event of an inconsistency, the NOID as issued takes precedence over this reproduction.

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 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 Pension Plan for Crown Life Insurance Company Employees, Registration Number 0346601.

TO:

CH

Complainant

AND TO:

London Life Insurance Company
255 Dufferin Ave
London ON N6A 4K1
Attention: Cathy Macdonald

Administrator

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Pension Plan for Crown Life Insurance Company Employees, Registration Number 0346601 (the “Plan”), under section 87 of the *PBA* requiring that the Canada Life Assurance Company pay a deferred pension from the Plan to the Complainant.

REASONS:

1. The Canada Life Assurance Company (“Canada Life”) acquired the business operations of Crown Life Insurance Company (“Crown Life”) in November 1998. Immediately prior to the acquisition, Crown Life established the Plan for active employees who were transferring employment and for former Crown Life employees with entitlements under the Pension Plan for Crown Life Insurance Company Employees in Canada (the “Crown Life Staff Plan”). Canada Life became the successor sponsor and administrator of the Plan in

July 1999 as a result of the acquisition and subsequent amalgamation of the Crown Life business. The Plan was wound up effective December 31, 1998.

2. The Complainant was first employed by Crown Life during the period 1970 to 1975. He recommenced employment on September 2, 1975, and terminated employment on October 29, 1982. The Complainant claims that he was a member of the Crown Life Staff Plan during both periods of employment. Further, he claims that he did not receive any payout from the Crown Life Staff Plan at the time of his departure from Crown Life in 1982 and was not included in the wind up. He argues that he is, therefore, entitled to a deferred pension from the Plan.
3. Canada Life's position is that the Complainant was only a member of the Crown Life Staff Plan during the 1975 to 1982 period, based on Crown Life records now available to Canada Life, and that membership was voluntary prior to January 1, 1982. Further, Canada Life asserts that the Complainant's entitlements from the Crown Life Staff Plan were paid out as of his termination from employment. Canada Life points to a \$2,615 amount listed as pension income in the Complainant's tax records from 1982.
4. Based on a review of the available documentary evidence, the Superintendent has concluded that the Complainant's entitlements were paid out of the Crown Life Staff Plan at the time of his termination and that he, therefore, does not have entitlement to a deferred pension from the Plan. The basis for this determination is as follows.

There is no Record the Complainant joined the Crown Life Staff Plan prior to 1975

5. Canada Life has produced a microfiche record showing that the Complainant's pension entry date was September 2, 1975. There is no record showing that he joined the Crown Life Staff Plan prior to that date. Mandatory membership in the Crown Life Staff Plan was not introduced by amendment to the Crown Life Staff Plan until January 1, 1981. Accordingly, it was open to the Complainant to elect not to join the Crown Life Staff Plan prior to that date.

There is record of a Payment of Pension Entitlements

6. The Complainant terminated employment on October 29, 1982. Because his pension benefits were not locked-in under the terms of the Crown Life Staff Plan, he could elect to receive a cash refund. The Complainant's recently obtained income tax summary for 1982 shows a \$2,615 amount listed as "Pen Inc Not Elig". Accordingly, there was a pension related payment to the Complainant sometime during the 1982 tax year in an amount consistent with the Complainant's accrued entitlements in the Crown Life Staff Plan.

The Payment of the 1982 Amount was not a Refund of AVCs

7. The Complainant argues that the \$2,615 amount was a refund of additional voluntary contributions ("AVCs") rather than a lump sum transfer in satisfaction of his pension entitlements. However, the timing of the \$2,615 payment and the fact that there was an earlier payment which, based on available documentation, appears to be the refund of the AVCs supports the conclusion that the \$2,615 payment represented a lump sum transfer of his entitlements in the Crown Life Staff Plan at the time of his termination from Crown Life.
8. The Crown Life Staff Plan was amended in 1979 to become non-contributory and to preclude further AVCs (Amendment No. 1 dated August 7, 1979 effective July 1, 1979). Members were initially given an option to roll over all of their existing AVCs to a group RRSP. This rollover option was, in the word of the amendment, on a "once-and-for-all basis". By 1981, this rollover option became mandatory. The text of the amendment also states that the rollover was to a group RRSP identified as "GSP 46201".

9. Canada Life has produced a micro fiche record showing that the Complainant became a member of GSP 46201 on February 21, 1980. Further, the records show that the Complainant withdrew \$1,817.95 from the group RRSP on December 23, 1981. Finally, the Complainant's tax summary for 1981 shows the amount of \$1,817 listed as "Other income".
10. In summary, the available documentation combined with the requirements of the applicable Plan text demonstrates that the Complainant's AVCs were transferred to the group RRSP and then paid out to him in 1981. Consequently, the \$2,615 amount could not have been a refund of AVCs as claimed by the Complainant and could only be a lump sum payment of his pension entitlements.

Conclusion

11. The available documentary evidence indicates that the Complainant was paid a lump sum amount from the Crown Life Staff Plan at that time of his termination of employment representing his entitlements in the Crown Life Staff Plan. The Complainant, therefore, is not entitled to a deferred pension from the Plan and there is no basis for the Superintendent to issue an order requiring the administrator of the Plan to pay a deferred pension.
12. 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 **27th** day of **August**, 2012.

CC: **OSLER, HOSKIN & HARCOURT**
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Ian J. McSweeney
Tel: (416) 862-6578
Fax: (416) 862-6666

Counsel for the Canada Life Assurance Company

Original Signed By

K. David Gordon
Deputy Superintendent, Pensions

¹NOTE - 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.

© Queen's Printer for Ontario, 2012