

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 2 December 2015

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Tellumat (Pty) Ltd v Appeal Board of the Financial Services Board [2015] ZASCA 202 and Registrar of Pension Funds v Financial Services Appeal Board [2015] ZASCA 203 .

The SCA today delivered judgment in these two appeals. Both arose out of a decision by the Registrar of Pension Funds to approve the transfer to pensioners of the Tellumat Pension Fund of annuity insurance policies selected by the pensioners for the purpose of providing them with the benefits they would otherwise have had to obtain from the Fund. The decision was taken on review to the Appeal Board and set aside. Both the employer, Tellumat (Pty) Ltd and the Registrar challenged the Appeal Board's decision by way of judicial review. Their applications were dismissed and they appealed to the SCA.

The SCA dismissed the Registrar's appeal on the grounds that she lacked *locus standi* to challenge the decision of the Appeal Board. It held that to permit a review would be contrary to the purpose of the legislature in establishing the Appeal Board with the power to hear appeals against the Registrar's decisions and either to confirm those decisions or to vary or set them aside and replace them with its own.

The SCA upheld Tellumat's appeal. It said that the Appeal Board had failed to pay sufficient regard to the fact that the application for the Registrar's approval was part of a larger distribution scheme properly agreed upon by the Fund's trustees. The effect of its order would have been to disturb that scheme and require the actions taken pursuant to it from 2007, with the support of the majority of pensioners, to be overturned and revisited. Instead of considering the scheme as a whole and the part the transfer would play in that scheme it treated the issues before it as discrete and separate from the scheme. This failed to recognise that the arrangements between the parties, which included substantial improvements in existing pensions would not have been the same were the issue to be approached on the basis it had done. Its decision was accordingly set aside.