

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER 1296 [NW1437E]
DATE OF PUBLICATION: 21APRIL 2011

Dr D T George (DA) to ask the Minister of Finance:

- (1) Whether the Financial Services Board provided start-up capital to a certain pension fund curator (name furnished) or his law firm; if so, (a) how much and (b) why;
- (2) whether the terms of the agreement can be provided; if not, why not; if so, what are the terms?

NW1437E

Reply:

- (1) No, the Financial Services Board (FSB) assures me that it does not provide, and has not provided, any start-up fund to any pension fund curators. As explained in more detail below, the FSB has provided funds in this instance, where the pension funds were not in a position to fund the curatorship investigations – this was done transparently, and sanctioned or noted by the court. I want to appeal to the Honourable Member to respect the integrity of our financial regulators, and not so readily rush to speak in the interest of those attempting to raid pension funds and who end up at the receiving end of the FSB and the appointed curators.

We should take care not to continually request information that is already in the public domain and competent parliamentary researchers should be able to access by contacting the FSB directly. I attach such a public document, a copy of the court order dated 7 September 2005 (attached marked

“Annexure A”) which will answer the question. Indeed, I would like to invite any Honourable Member, or any of their researchers, to raise such queries directly with the Registrar of Financial Services Board, who will be happy to provide any public or factual information. The facts in this case are as follows:

The Executive Officer of the Financial Services Board (FSB) applied for the Datakor Pension Fund, Datakor Retirement Fund and Cortech Pension Fund to be placed into provisional curatorship on 21 April 2005. Three practising attorneys were appointed as the curators to these funds. On 2 August 2005 a final curatorship order was granted. It soon transpired that save for an amount of R355 000, there were no funds available in any of these Funds to fund the curatorship and the work to be undertaken by the curators to recover the assets of the Funds. The FSB therefore resolved to make available from its special reserve fund an amount of R1 million to the curators to cover the disbursements which they would have to incur in anticipation of and during the recovery process of claims. This reserve is not funded by levies imposed on financial institutions, but by penalties imposed on non-compliant financial institutions, essentially in respect of the late filing of statutory returns. It subsequently transpired that the amount of R1million would not be sufficient to cover the curatorship expenses and consequently the Executive Officer applied to Court on 7 September 2005 for an order sanctioning the funding of the curatorship on a contingency fee basis. In this application to Court full disclosure was made of the amount of R1million which the FSB had resolved to make available. In its order, the Court noted that the FSB had agreed to contribute the said amount on the understanding that this contribution would be refunded to the FSB from recoveries made by the curators in the funds. Of the amount of R1 million which the FSB had agreed to contribute, it only expended R505 380.43, which amount was refunded by the curators to the FSB during March 2007.

- (2) The terms appear from the Court order dated 7 September 2005 attached as Annexure “A”.



**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

PRETORIA 7 SEPTEMBER 2005

CASE NO: 12898/2005

BEFORE THE HONOURABLE JUSTICE VAN DER MERWE

In the ex parte application of

EXECUTIVE OFFICER OF THE
FINANCIAL SERVICES BOARD

IN RE THE BUSINESS OF:

DATAKOR PENSION FUND
REGISTRATION NUMBER 12/8/8849

DATAKAR RETIREMENT FUND
REGISTRATION NUMBER 12/8/19919

CORTECH PENSION FUND
REGISTRATION NUMBER 12/8/7696



HAVING HEARD counsel(s) for the party(ies) and having read the documents filed of record

IT IS ORDERED

1. That in terms of Section 5(5)(c) of the Financial Institution (Protection of Funds) Act, No 28 of 2001, read with paragraph 9 of the order of court dated 21 April 2005 and paragraph 2 of the order dated 2 August 2005, the curators be remunerated as follows:
 - 1.1 Subject to paragraph 1.2 below, for the work done since 25 August 2005 Antony Louis Mostert and David Jacobus Wandrag (jointly hereafter referred to as the first and second curators) in the exercise of their duties as curators, including any legal work undertaken by their respective law firms, the first and second curators and their respective firms shall jointly be entitled to 25%

(twenty five percent) of all amounts recovered for the benefit of either or all the Pension Funds referred to above, including any recovery made by way of a settlement, but excluding the amount of R355 000 mentioned in paragraph 1.4 below.

- 1.2 The remuneration of the first and second curators and their respective law firms provided for in paragraph 1.1 may be apportioned between themselves
 - 1.3 Sheila Segopotje Mphahlele (third curator) will be remunerated in accordance with an hourly rate agreed with the applicant, for work actually performed by her in the course of the curatorship, to be paid from the contribution of one million rand referred to in paragraph 2 below
 - 1.4 For the work done by the first, second and third curators, and their respective firms, on and prior to 25 August 2005, all three curators will be remunerated in accordance with the respective hourly rates previously agreed by them with the applicant, which remuneration, inclusive of disbursements, will be paid from the amount of R355 000 already recovered by the curators, and from the contribution of one million rand referred to in paragraph 2 below.
2. That it be noted that the Financial Services Board has agreed to contribute an amount of R1 000 000 (one million rand) towards the costs of the curatorship on the understanding that the contribution will be refunded to the Financial Services Board from the recoveries (if any) referred to in paragraph 1.1.

BY THE COURT


REGISTRAR