CR105

Lapsing - Whole life policy made paid-up for reduced benefits – policy kept in force until funds in the accumulation account were depleted – policy lapsed – complainant expected paid-up value to increase with bonuses

Background

The insured effected a whole life policy during 1987 and during 1992 the premium and cover were increased respectively. On 19 January 1999 the insured requested the insurer to make the policy paid-up with immediate effect with the instruction that "*no further premiums are to be collected*". The paid-up value quoted was R5 799,00.

The insured was advised that the policy had lapsed due to insufficient funds to keep the policy in force, with effect from 1 June 2004.

After corresponding with the insurer, the insured's broker lodged a complaint with this office expressing his dissatisfaction that the policy had lapsed because, when making the policy paid-up, the insured had "*expected the paid up value to increase with bonuses over time*".

Assessment

On 19 January 1999, the insured requested that his policy be made paid-up and that no further premiums were to be collected.

This was in accordance with the "*explanatory notes*" which, while not part of the policy, were issued to "*facilitate understanding*". "Paid-up" was defined in these explanatory notes as "*Certain reduced benefits will be payable, as calculated by* (the insurer)*, based on the balance in the Accumulation Account, after the deduction of all outstanding expenses. These reduced benefits are calculated on the assumption that no further premiums will be paid under the policy*".

The broker alleged that the instruction that no further premiums were to be collected was included on the advice of the broker consultant at the time the policy was made paid-up. It was clear from the documentation on file and the advice of the insurer's broker consultant, that the insured understood his election to be that he would not be liable to pay further premiums and that he would only (in the wording of the explanatory note) be entitled to "*reduced benefits…as calculated by* (the insurer)*, based on the balance in the Accumulation Account after the deduction of all outstanding expenses*".

This was not, however, what happened. The insurer purported to act in terms of the policy provisions providing for "*Automatic Paid-up Value and Reinstatement*":

"*If the instalment premiums are not paid within the period of grace allowed, the policy will, … be automatically converted to a paid-up assurance (for* *reduced benefits and in accordance with conditions which* (the insurer) *will determine at the time. The Basic Benefits and Supplementary Benefits and Supplementary Benefits will continue for as long as there is sufficient balance in the Accumulation Account to meet the costs of these benefits*".

The insurer contended that the insured should have given a special instruction to have the life cover removed in order to give effect to his election.

In the result and contrary to the insured's intention, the policy, due to the depletion of the balance in the accumulation account, eventually lapsed.

In the circumstances there was clearly no consensus between the insured and the insurer as to the implications and contractual consequences of his decision at the time to make the policy paid-up. Because his decision was in line with the explanatory note and the broker consultant's advice, his decision was not an informed one and consequently it did not seem to us that his error was an unreasonable one.

That being the case, his then election to make the policy paid-up would appear to have been invalid for lack of consensus and the position of both parties should have retrospectively been reinstated as it was in January 1999 when the uninformed decision to make the policy paid-up was taken.

<u>Recommendation</u>

The office recommended that the insured should be afforded a fresh opportunity to decide what he wants to do as if this were January 1999.

The insurer thereupon offered the insured the choice of the payment of the surrender value of the policy as at January 1999 (amounting to R4 464,92 with interest) or of accepting the payment of R7 928,95 as at 1 June 2004 with interest. The latter amount was the maturity value of the policy as at 1 June 2004 (date of lapse) had the policy been changed to a pure endowment policy during January 1999.

<u>Result</u>

The insured elected to receive the payment of the maturity value of R7 928,95 with interest at a rate of 8% per annum as if the policy had been changed to a pure endowment policy during January 1999.

The insurer paid the amount accordingly.

AR
October 2005