COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Bruce DiBella,
Petitioner,

v.

Quincy Retirement Board,
Respondent.

Docket No.: CR-25-0202

Appearances:
For Petitioner: Mr. Mark Parrish
For Respondent: Michael Sacco, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner retired, choosing option (a) under G.L. c. 32, § 12(2). Soon thereafter, he was diagnosed with Alzheimer's disease. The medical evidence establishes that the petitioner filed his retirement paperwork while lacking the capacity to understand the nature and consequences of his actions. His choice of option is therefore voidable at the election of an appropriate representative, in this case the petitioner's nephew, who is acting "in behalf of and for the best interests of [the] member." *Id.* § 17.

DECISION

Petitioner Bruce DiBella is a retired member of the retirement system administered by respondent the Quincy Retirement Board (board). Mark Parrish is Mr. DiBella's nephew. Asserting an authority to act on Mr. DiBella's behalf, Mr. Parrish asked the board to modify Mr. DiBella's retirement "option" under G.L. c. 32, § 12, from option (a) to option (b). This is an appeal from the board's denial of that request.

An evidentiary hearing took place on November 6, 2025. The witnesses were Mr. Parrish, two board employees (Deborah O'Brien and Brigid Gaughan), and a member of Mr. DiBella's union (Daniel Jacobs). I admitted into evidence exhibits marked A-Q.

Findings of Fact

I find the following facts.

1. For more than forty years, Mr. DiBella worked as an animal control officer in the Quincy police department. He is now in his seventies. He has no spouse or children. He and his only brother do not speak to each other. Mr. DiBella is on better terms with his two nephews, namely Mr. Parrish and his brother, Scott. (Parrish[1]; Jacobs; exhibit A.)

2. Over the years, Mr. DiBella made periodic trips to the board's offices to inquire about his accumulating entitlements. For nearly his entire career, he named no beneficiary under G.L. c. 32, § 11(2)(c), i.e., for purposes of any refund of his accumulated retirement contributions in the event of his death. In July 2023, Mr. DiBella began to fill out a form appointing a § 11(2)(c) beneficiary but then wrote no name into the form. (O'Brien; Gaughan; exhibit O.)

3. Near the end of 2023, Mr. DiBella responded to an incident involving a severely injured raccoon. In his efforts to treat or euthanize the raccoon, Mr. DiBella ran into a series of obstacles and dilemmas. The police department viewed his performance at the incident as substandard and initiated a disciplinary investigation. (Parrish; Jacobs.)

[1] The testimony is cited by witness name.

4. After the raccoon incident, Mr. DiBella began to suffer from anxiety and panic attacks. He pursued care with his primary care provider, physician's assistant Shelagh Macropoulos. Beginning in January 2024, PA Macropoulos wrote notes excusing Mr. DiBella from work. She also wrote a referral for Mr. DiBella to see a neurologist. (Parrish; Jacobs; exhibits L, M.)

5. In February 2024, Mr. DiBella visited the board's offices and appointed Mr. Parrish as his § 11(2)(c) beneficiary. The form that he used stated repeatedly that the appointment was limited to any refund payable if "the member's death occurs prior to [the member's] retirement." In April 2024, Mr. DiBella and Mr. Parrish met together with an attorney, who drew up a series of additional documents. A will devised Mr. DiBella's assets to his nephews. Other forms gave Mr. Parrish the authority to make financial and medical decisions for Mr. DiBella in certain contingencies. (Parrish; exhibits D, E, I-K, P.)

6. Concurrently with the disciplinary case against Mr. DiBella, the police department urged him to retire, stating in part that he was no longer fit to drive. Negotiations among Mr. DiBella, his union, the police department, and the city resulted in an informal agreement that Mr. DiBella would remain on leave until July 2024 and retire during that month. (Jacobs.)

7. Mr. Jacobs was involved in the negotiations on the union's behalf. On Friday, June 21, 2024, he drove Mr. DiBella to the board's offices to file a retirement application. Board employee Ms. O'Brien explained to Mr. DiBella the difference between retirement options (a) and (b) under G.L. c. 32, § 12. She specifically noted the risk that a member electing

option (a) may pass away without exhausting his or her accumulated contributions, in which case the balance of the funds remains with the board. (Jacobs; O'Brien; Gaughan.)

8. Mr. DiBella returned to the board's office on Monday, June 24, 2024, with additional information or documentation. On that day, board employee Ms. Gaughan was on duty. Mr. DiBella finalized his application, choosing option (a). (Jacobs; Gaughan; exhibit F.)

9. Mr. Jacobs, Ms. O'Brien, and Ms. Gaughan all observed Mr. DiBella during his June 2024 visits to the board. They did not see any signs that he failed to comprehend the forms he was signing or the explanations he was hearing. Mr. Jacobs did notice that Mr. DiBella was forgetting pieces of information around that time, including recently scheduled medical appointments. (Jacobs; O'Brien; Gaughan.)

10. PA Macropoulos's referral of Mr. DiBella finally yielded a neurology appointment on July 2, 2024, with Dr. Hagen Yang. Dr. Yang reviewed Mr. DiBella's history, analyzed his MRI results, and conducted a Montreal Cognitive Assessment. She concluded that Mr. DiBella was suffering from a progressive cognitive decline and diagnosed Alzheimer's disease. (Parrish; exhibit C.)

11. During the months that followed his retirement, Mr. DiBella's cognitive condition worsened. Approximately in September 2024, the police were called twice to his residence. Mr. Parrish moved into the home to look after Mr. DiBella. Approximately in October 2024, Mr. DiBella was admitted full-time into a memory-care facility, where he remains. The costs of the facility are covered in part by Mr. DiBella's retirement allowance but largely by his savings. Mr. Parrish visits often. (Parrish; Jacobs; exhibit H.)

12. Later in October 2024, Mr. Parrish asked the board to modify Mr. DiBella's retirement option from (a) to (b). In a letter supportive of the request, PA Macropoulos wrote:

> Bruce DiBella has been a patient under my care since 2019. During the beginning of 2024 there was a change in the patient's health. Extensive work-up was performed. . . . Bruce started to exhibit cognitive decline and he was referred to neurology . . . . where he was [diagnosed] with mild late onset Alzheimer's disease. At no such time should the patient have made any legal, financial or retirement decisions without his nephew . . . present.

(Exhibits A, B.)

13. Dr. Yang followed up with her own letter, where she wrote:

> Bruce E. DiBella was seen in the neurology clinic for his progressive cognitive decline . . . . The patient's cognitive evaluation was abnormal . . . and along with MRI results as well as clinical history, his progressive cognitive decline that dates back to at least since 2023 is most consistent with Alzheimer's dementia. . . .
>
> Due to Alzheimer's dementia, the patient is not able to make informed financial or medical decisions. . . . [A]lthough the patient was evaluated by me on 7/2/24, his cognitive impairment rendering him unable to make his own informed financial and medical decisions dates back to 2023 and possibly earlier.

(Exhibit C.)

14. In January 2025, the board declined to change Mr. DiBella's option selection. Mr. Parrish lodged this timely appeal, explaining that his goal is to "protect [Mr. DiBella's] annuity." While the appeal was pending, in August 2025, psychiatrist Dr. Suzanne Valcheva discussed Mr. DiBella's condition in an updated letter, stating:

> His cognitive status has progressively declined . . . . I have encouraged Bruce's family to petition for guardianship based on my determination that Bruce is unable to make medical decisions at this point in time and in the future. . . . Based on Bruce's condition, he is unable to recall specifics

> of the relevant [events] nor understand/rationalize the implications on his current/future socioeconomic status.

(Exhibits G, H.)

Analysis

The members of the public retirement systems make contributions toward retirement out of every paycheck. In return, on specified statutory conditions, they become entitled upon retiring to indefinite monthly allowances. *See* G.L. c. 32, §§ 5, 10, 22.

A retiring member may choose among benefits arrangements known as options (a), (b), and (c). Option (a) grants the member the highest possible monthly allowance, with a downside: if the member passes away without collecting the equivalent of his or her careerlong contributions, the balance remains with the retirement system. Option (b) offers a lower monthly allowance but enables the member to appoint a recipient for a lump-sum refund of any undisbursed contributions. Option (c) involves a lower-still allowance to the member but also provides a monthly survivor's allowance to a named beneficiary upon the member's death. *See* G.L. c. 32, § 12(2).

The option-election statute says: "[N]o election of an option shall be valid unless such election is filed with the board . . . on or before the date [the] allowance becomes effective." G.L. c. 32, § 12(1). As a result, even in sympathy-provoking circumstances, a retiree is committed for life to the option that he or she chose pre-retirement. *See Barker v. State Bd. of Ret.*, No. CR-15-72 (Div. Admin. Law App. June 26, 2015, *aff'd*, Contributory Ret. App. Bd. Dec. 21, 2016).

The Contributory Retirement Appeal Board (CRAB) has identified one set of circumstances to which the unyielding general rule does not apply. The leading case is *Roche v.*

State Board of Retirement, No. CR-98-648 (Contributory Ret. App. Bd. May 2, 2000). The member there retired in 1992, selecting option (a). In 1995, he died of lung cancer. In 1998, a neuropsychiatrist studied the case and concluded that the member had sustained cancer-related brain damage as early as 1992. Relying on that opinion, CRAB concluded that the employee "was incompetent at the time that he selected [option (a)]." CRAB directed the retirement board to modify the member's option and to pay an option (c) survivor's allowance to his widow. *See also Taylor v. State Bd. of Ret.*, No. CR-00-599 (Contributory Ret. App. Bd. Apr. 3, 2001); *Tierney v. Massachusetts Teachers' Ret. Syst.*, No. CR-08-166, at *6 (Div. Admin. Law App. May 24, 2012).

Roche draws on more general legal principles. A legal act taken by a mentally incompetent person is "voidable." *Sparrow v. Demonico*, 461 Mass. 322, 327 (2012). *See Krasner v. Berk*, 366 Mass. 464, 467-68 (1974). *See also* Restatement (Second) of Contracts § 15 (1981). Traditionally described, incompetence is "an inability to realize the true purport of the matter." *Sutcliffe v. Heatley*, 232 Mass. 231, 232-33 (1919). A party does not necessarily possess the requisite competence by virtue of "mere[] comprehension of what is 'going on.'" *Farnum v. Silvano*, 27 Mass. App. Ct. 536, 538 (1989). Rather, the essential inquiry is "whether . . . a person's mental condition has affected the ability to understand the nature of the transaction and its consequences." *Sparrow*, 461 Mass. at 332.

"[R]eliance on medical and expert evidence is routine when addressing issues of mental illness, capacity, and competence." *Id.* Because the underpinnings of such issues are "essentially medical," they "must be interpreted by expert psychiatrists and psychologists." *Id.* (quoting *Vitek v. Jones*, 445 U.S. 480, 495 (1980)). When it comes to a person's mental

condition, "a lay witness is not competent to give an opinion." *Id.* at 331. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Flanders-Borden*, 11 F.4th 12, 22-23 (1st Cir. 2021). The magistrate in *Roche* may have undersold the point when she called "medical opinion evidence . . . very important in determining whether [a member] was incompetent." *Roche v. State Bd. of Ret.*, No. CR-98-648, at *9 (Div. Admin. Law App. Aug. 5, 1999, *aff'd*, Contributory Ret. App. Bd. May 2, 2000).

These principles lead to a firm conclusion that Mr. DiBella was mentally incompetent to choose option (a) in June 2024. The key medical opinion is that of neurologist Dr. Yang, who stated: "Due to Alzheimer's dementia, the patient is not able to make informed financial or medical decisions." Dr. Yang saw Mr. DiBella on July 2, 2024, only eight days after he filed his paperwork; she was confident that, by then, he had a many-months-old "cognitive impairment rendering him unable to make his own informed financial and medical decisions." Dr. Yang's opinions rested on a hands-on evaluation, a diagnostic test, and an MRI. In all of these respects, she was closer to the key facts than the neuropsychiatrist in *Roche*, who confronted the member's case six years after his retirement and three years after his death.

Dr. Yang's opinion is only reinforced by the other experts' analyses. PA Macropoulos was involved in Mr. DiBella's care throughout 2019-2024. She described "a change in [his] health" in early 2024 and believed that, by June of that year, he was not in a position to make independent "legal, financial or retirement decisions." Psychiatrist Dr. Valcheva's more recent report highlights the steepness of Mr. DiBella's "progressive[] decline[]," given that by August 2025, he was a likely candidate for "guardianship," was "unable to recall specifics" of

important events, and could not "understand . . . the implications [of those events] on his current/future socioeconomic status."

The contrasts between Dr. Yang's expert opinion and the testimony on which the board relies are stark. Mr. Jacobs, Ms. O'Brien, and Ms. Gaughan meant well and testified frankly. But they had no trace of medical training. They had no reason to be attuned to Mr. DiBella's cognitive capacity. They conducted no Montreal Cognitive Assessment, MRI, or "[e]xtensive workup." They could offer only the lay opinions that *Sparrow* rejects. 461 Mass. at 331.

By the time Mr. DiBella signed his option-election form, his Alzheimer's disease had deprived him of "the ability to understand the nature of the transaction and its consequences." *Sparrow*, 461 Mass. at 332. The result is that Mr. DiBella's option is voidable at the election of an appropriate representative. *Id.* at 327; *Reed v. Mattapan Deposit & Tr. Co.*, 198 Mass. 306, 314 (1908); *Gurnett & Co. v. Poirier*, 69 F.2d 733, 733-34 (1st Cir. 1934). The retirement law provides special instructions about the individuals who may act as representatives of incompetent members:

> Any option, election or right existing in any member may be exercised or enforced, if such member is incompetent . . . by the spouse of such member if they are living together . . . or if there is no such spouse then by his guardian or conservator, or if there is no such spouse, guardian or conservator then by any other person found by the board to be acting in behalf of and for the best interests of such member.

Mr. DiBella has no spouse, guardian, or conservator. The essential resulting question is whether Mr. Parrish is acting in this case for Mr. DiBella and in his "best interests."

On balance, the answer is yes. Option (a) involves a risk that contributions made by the member will be swallowed up by the retirement system's accounts. The retirement law assumes that most members will wish to avoid that risk: it makes option (b) the default

arrangement whenever "no election of an option is made or . . . none is in effect." G.L. c. 32, § 12(1).

The risk of undisbursed contributions reverting to the board rises in the cases of members whose health is poor or whose tallies of accumulated contributions are high compared to their monthly allowances. In all of these respects, Mr. DiBella was a compelling case for an option other than (a). These points are at the forefront of Mr. Parrish's campaign to "protect [Mr. DiBella's] annuity."

Matters might be different if Mr. Parrish were seeking an option (c) survivor's allowance, as in *Roche*, but he is not. Nor is Mr. Parrish even attempting to name himself as Mr. DiBella's option (b) beneficiary. He recognizes instead that, with option (a) revoked, Mr. DiBella will default to option (b) with no designated beneficiary. If any refund is ever paid, it will flow through Mr. DiBella's probated estate. *See* G.L. c. 32, § 12(2)(b)(i); *id.* § 11(2)(b), (c). Under Mr. DiBella's will as currently written, Mr. Parrish is one of two devisees; at least in theory, the will may still be modified. *See Farnum*, 27 Mass. App. Ct. at 538. I am persuaded that Mr. Parrish is acting to advance the outcome that he reasonably believes a competent Mr. DiBella would have chosen, not the limited and uncertain benefits that might ultimately accrue to Mr. Parrish himself.

Conclusion and Order

In view of the foregoing, the board's decision is REVERSED. The board is directed to vacate Mr. DiBella's election of option (a), to reflect in its records that Mr. DiBella has made

"no election of an option . . . or . . . none is in effect," G.L. c. 32, § 12(1), and to recalculate Mr. DiBella's past and future benefits accordingly.

SO ORDERED.

Dated: December 26, 2025

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
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