COMMONWEALTH OF MASSACHUSETTS

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

**Barbara Fritz-Elliott**,

 Petitioner

v. Docket No. CR-14-368

 Date Issued: Apr. 22, 2016

**State Board of Retirement**,

 Respondent

**Appearance for Petitioner:**

Richard B. Aronson, Esq.

890 Winter Street, Suite 208

Waltham, MA 02451

**Appearance for Respondent:**

Salvatore Coco, Esq.

State Board of Retirement

One Winter Street

Boston, MA 02108

**Administrative Magistrate:**

Kenneth Forton, Esq.

**SUMMARY**

The State Board of Retirement properly determined that Petitioner’s late ex-husband’s retirement account should be paid to his estate – and not to the Petitioner – because the beneficiary nomination form naming the Petitioner as the beneficiary was not witnessed and was otherwise defective. G.L. c. 32, § 11(2)(c).

**DECISION**

 On July 12, 2014, the Petitioner, Barbara Fritz-Elliott, appealed timely under G.L. c. 32, § 16(4) the July 1, 2014 determination of the Respondent, State Board of Retirement, that the accumulated retirement deductions of Ms. Fritz-Elliott’s late ex-husband should be paid to his estate, and not to her.

On August 24, 2015, the Division of Administrative Law Appeals (DALA) ordered the parties to submit pre-hearing memoranda. On October 7, 2015, DALA issued an Order to Show Cause in response to Ms. Fritz-Elliott’s failure to submit a pre-hearing memorandum. On October 12, 2015, Ms. Fritz-Elliott submitted a response; I have marked this submission “A” for identification. On December 31, 2015, the Board submitted a memorandum with five attachments; I have marked this memorandum “B” for identification.

I have marked the following five documents as exhibits:

Ex. 1 Letter from the Board, to Ms. Fritz-Elliott’s attorney, dated July 1, 2014, notifying Ms. Fritz-Elliott of the Board’s determination that her ex-husband’s contributions should be paid to his estate;

Ex. 2 Ms. Fritz-Elliott’s appeal letter to DALA, dated July 12, 2014;

Ex. 3 Enrollment Blank of Michael Bedwell with attached Nomination of Beneficiary form, dated May 29, 1985;

Ex. 4 Letter from Ms. Fritz-Elliott to Jean Simone of the Board, dated May 27, 2014, with attachments; and

Ex. 5 Records of Mr. Bedwell’s retirement account from 1985-2015, including contributions, accrued interest, and annual balances.

After reviewing the evidence, I have determined that there are no disputed issues of material fact and that relief cannot be granted on this claim. I therefore decide the matter on the papers pursuant to 801 CMR 1.01(7)(g)(3).

**FINDINGS OF FACT**

Based on the evidence presented by the parties, I make the following findings of fact:

1. On May 29, 1985, Mr. Bedwell began his employment as a custodian at the Massachusetts College of Art and enrolled with the Board as a member of the State Retirement System. (Ex. 3.)
2. Mr. Bedwell was married to Ms. Fritz-Elliott at the time of his enrollment. As part of his enrollment, Mr. Bedwell completed a Nomination of Beneficiary form, and named Ms. Fritz-Elliott (listed as “Barbara Bedwell”) as the beneficiary of his retirement contributions upon his death. The Nomination of Beneficiary form was not signed by a witness, and the area for Mr. Bedwell to indicate the proportion of his contributions to be paid out to the named beneficiary was left blank. (Stipulation; Ex. 3.)
3. On October 15, 1987, the Probate Court entered a divorce nisi and approved a separation agreement between Mr. Bedwell and Ms. Fritz-Elliott. (Ex. 4.)
4. Mr. Bedwell and Ms. Fritz-Elliott were divorced on February 16, 1988. Mr. Bedwell never remarried. (Ex. 4.)
5. From June 1985 to April 1991, Mr. Bedwell contributed $7,788.78 into his retirement account. By the end of 2015, the accumulated interest on these contributions was $4,883.99, and the total balance of Mr. Bedwell’s account was $12,672.77. (Ex. 5.)
6. On December 13, 1993, Mr. Bedwell died from acute respiratory failure due to chronic obstructive lung disease and coronary artery disease. The informant listed on Mr. Bedwell’s Certificate of Death is his sister Norma C. VanLiew. (Ex. 4.)
7. At the time of his death, Mr. Bedwell had no children, and his parents were deceased. (Ex. 2.)
8. On February 24, 2014, the Board contacted Ms. Fritz-Elliott about her potential claim to Mr. Bedwell’s retirement account. (Exs. 4, 5.)
9. On May 27, 2014, Ms. Fritz-Elliott sent documents to the Board to attempt to establish her claim to Mr. Bedwell’s retirement account. (Ex. 4.)
10. On July 1, 2014, the Board notified Ms. Fritz-Elliott of its determination that “the funds on account which are attributable to Mr. Bedwell” should be paid to Mr. Bedwell’s estate. (Ex. 1.)
11. By letter dated July 12, 2014, Ms. Fritz-Elliott timely appealed the Board’s decision to DALA. (Ex. 2.)

**CONCLUSION AND ORDER**

The Board’s determination that Mr. Bedwell’s retirement account should be paid to his estate instead of to Ms. Fritz-Elliott is affirmed.

 Massachusetts retirement law provides a mechanism for members to designate beneficiaries who will receive their retirement benefits if they die before retiring:

Any member, upon his written notice on a prescribed form filed with the board prior to his death, may nominate, and from time to time change, one or more beneficiaries to receive in designated proportions, or in the alternative, any sum becoming payable under the provisions of this subdivision on his death, and/or any uncashed checks in payment of amounts to which he was entitled from the funds of the system of which he was a member, or any sum payable to his estate from said funds . . . .

G.L. c. 32, § 11(2)(c).

 Mr. Bedwell’s Nomination of Beneficiary form indicates that he attempted to designate Ms. Fritz-Elliott as his beneficiary when he joined the State Retirement System in 1985. (Ex. 3.) However, Mr. Bedwell failed to indicate the proportion of his benefits to be paid to Ms. Fritz-Elliott upon his death, and the form was not signed by a witness. These omissions are fatal, and as a consequence the Nomination of Beneficiary form is without effect. *See Sullivan-O’Grady v. State Bd. of Retirement*, CR-07-1126 (CRAB 2012), *aff’d* 14-P-1420 (Mass. App. Ct. 2015) (concluding that no valid option D beneficiary nomination had occurred because “there was no evidence that Sullivan took any of the necessary steps to effectuate an option D designation, including . . . having the option D form witnessed.”); *McHugh v. Middlesex County Retirement System*, CR-08-692 (DALA 2014) (concluding that petitioner’s application for membership was incomplete, and therefore ineffectual, because it did not bear the required signature of his employer’s Payroll Department). Without a properly completed Nomination of Beneficiary form, Mr. Bedwell died with no beneficiary of record.

If there is no beneficiary of record, the retirement law directs that the decedent’s retirement account be paid to his “legal representatives.” G.L. c. 32, § 11(2)(c). The Board has interpreted that term to mean the executor or administrator of the member’s estate. In similar circumstances, the Massachusetts Uniform Probate Code designates a “personal representative,” who is defined as the “executor, administrator, successor personal representative, special administrator, special personal representative, and persons who perform substantially the same function under the law governing their status.” G.L. c. 190B, § 1-201(37). I agree with the Board’s interpretation, and conclude that Mr. Bedwell’s accumulated retirement contributions must be paid to his estate.

Ms. Fritz-Elliott argues that she is entitled to her ex-husband’s account because she has the greatest claim to it. She asserts that since Mr. Bedwell had no children, his parents are dead, and there is no way to find his sister, there is no one to inherit Mr. Bedwell’s retirement funds, and so the money would escheat to the Commonwealth. *See* G.L. c. 190B, § 2-105 (if there is no taker, the intestate estate passes to the commonwealth). She insists that “[e]quity dictates that [she] has a greater claim to her former husband’s retirement account proceeds than the Commonwealth of Massachusetts.” (Ex. 2.)

Neither the Contributory Retirement Appeal Board (CRAB) nor DALA have the authority to grant equitable relief that is contrary to the clear wording of the statute. *Petrillo v. Public Employee Retirement Admin.*, CR-92-731 \*1 (CRAB 1993) *affirming* CR-92-731 (DALA 1992) (CRAB does not have the “authority to employ an equitable remedy in the face of specific statutory language [to the] contrary.”). Because the statute clearly states that absent a beneficiary of record the money must be paid to Mr. Bedwell’s “legal representative,” distributing the account to Ms. Fritz-Elliott would be contrary to the “specific statutory language.” Furthermore, her assertion that Mr. Bedwell has no living heirs to inherit his estate is unsupported by record evidence and is premature.

Next, Ms. Fritz-Elliott argues that DALA should overlook the lack of a witness signature on the Nomination of Beneficiary form, because “[t]he purpose of having a witness sign is to make certain that the signature is not a forgery or is not being signed under other improper circumstances,” and “[a]s Mr. Bedwell was designating his wife to benefit from his retirement account, it is somewhat obvious that he did, in fact, execute the form that he submitted to the Retirement Board.” (Ex. 2.) This again asks for an equitable remedy that is contrary to the statutory language. G.L. c. 32, § 11(2)(c) grants members the option to nominate a beneficiary, provided that they do so “upon . . . written notice *on a prescribed form* filed with the board . . . .” (*Emphasis added*.) The “prescribed form” provided by the Board requires that the member’s signature be witnessed; DALA does not have the authority to ignore the form’s requirements. *See Petrillo*, CR-92-731. Furthermore, the cases cited above confirm that a Nomination of Beneficiary form is not valid if it is missing any required information or signatures. *See Sullivan-O’Grady*, 14-P-1420; *McHugh*, CR-08-692.

Finally, Ms. Fritz-Elliott argues that the Board had a duty when Mr. Bedwell submitted his Nomination of Beneficiary form to notify him that it was incomplete, and therefore Mr. Bedwell, and by extension Ms. Fritz-Elliott, should not be punished for the Board’s negligence. DALA has repeatedly addressed the argument of whether retirement boards owe members a general fiduciary duty, and has consistently rejected it. *See, e.g., Picheny v. Teachers’ Retirement System*, CR-12-46 \*9 (DALA) (“[I]t is well established that ‘retirement boards do not owe any general fiduciary duty to their members, except as regards the investment of the boards’ funds.’” (quoting *Abele v. Newton Retirement Bd.*, CR-08-495 \*8 (DALA 2009)). It was Mr. Bedwell’s responsibility to ensure that his form was complete and accurate, not the Board’s.

In conclusion, the Board properly determined that Mr. Bedwell’s accumulated retirement contributions should be paid to his estate – and not to Ms. Fritz-Elliott – because the Nomination of Beneficiary form naming Ms. Fritz-Elliot as the beneficiary was defective. As a result, Mr. Bedwell’s accumulated retirement contributions must be

distributed to his estate. Accordingly, the Board’s decision is affirmed and Ms. Fritz-Elliott’s appeal is dismissed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Kenneth Forton, Esq.

Administrative Magistrate

DATED: Apr. 22, 2016