

## COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Kenneth W. Gaetz, Jr.,**  
Petitioner

v.

Docket No. CR-23-0260  
Date Issued: Aug. 29, 2025

**State Board of Retirement and  
Public Employee Retirement  
Administration Commission,**  
Respondents

### **Appearance for Petitioner:**

J. Timothy Bresnahan, III

### **Appearance for State Board of Retirement:**

John C. Durgin, Esq.

### **Appearance for PERAC:**

Felicia McGinniss, Esq.

### **Administrative Magistrate:**

Kenneth J. Forton

## **SUMMARY**

The Petitioner is required to refund excess earnings of \$9,106.38 to his retirement system. G.L. c. 32, § 91A. The Board's initial decision to attribute all of the family real estate business's income to the Petitioner was not supported by the evidence. Petitioner's wife also contributed a substantial amount of labor to the business. But, because the business's existence depends on the real estate broker's license held by Petitioner, the business profits should be allocated 60% to the Petitioner and 40% to his wife. The Section 179 depreciation deduction taken in 2021 alone is hereby spread across the five-year useful life of the computer and scanner against which the deduction was taken.

## **DECISION**

Petitioner Kenneth W. Gaetz, Jr. appeals the April 6, 2023 decision of Respondent State Board of Retirement that he had excess earnings under G.L. c. 32, § 91A for calendar year 2021 and is consequently required to refund the over-earnings to the Board. Mr. Gaetz timely appealed this decision on April 19, 2023. On February 26, 2025, the Board moved to join the Public Employee Retirement Administration Commission (PERAC) as a necessary party, as it was responsible for the calculation of Mr. Gaetz's over-earnings. This motion was allowed.

I conducted a hearing on June 10, 2025 by Webex video conference. It was digitally recorded. I admitted 27 exhibits into evidence. (Exs. 1-27.) Mr. Gaetz and his accountant, J. Timothy Bresnahan, III, testified at the hearing. With the agreement of the parties, I left the administrative record open so that Mr. Gaetz could submit further details of one of his tax deductions and an affidavit from his wife. Several days later, Mr. Gaetz submitted the two additional exhibits, which I have entered into evidence as Exhibits 28 and 29. The Respondents waived any further hearing on the newly submitted exhibits. The parties submitted closing argument on June 20, 2025.

## **FINDINGS OF FACT**

Based upon the documents and testimony presented at the hearing, I make the following findings of fact:

1. Kenneth W. Gaetz, Jr. began his career in law enforcement as a Fitchburg Police Officer. (Ex. 18; Testimony Gaetz.)
2. On December 8, 1996, Mr. Gaetz became a Massachusetts State Trooper. He worked with the district attorney's office, participating in homicide and drug

investigations. Mr. Gaetz usually worked the 3:00 p.m. to 11:00 p.m. shift. He also took detail jobs in the morning hours. (Ex. 18; Testimony Gaetz.)

3. Mr. Gaetz retired for accidental disability on July 14, 2015 after he was injured in a highway accident while serving on a detail. He sustained multiple injuries, including a serious head injury, as a result of the accident. (Ex. 18; Testimony Gaetz.)

4. Mr. Gaetz met his wife, Katherine Lambropoulos-Gaetz, in 2004. Her family invested successfully in real estate. This inspired Mr. Gaetz and his wife to discuss real estate frequently and decide to eventually invest in real estate rentals and houses for sale. (Testimony Gaetz.)

5. After his retirement, Mr. Gaetz decided to take a real estate course. He passed the exam to become a licensed real estate agent in December of 2017. (Ex. 22; Testimony Gaetz.)

6. He began his real estate career with Keller Williams right away in December of 2017 and worked there until around February 2020. He left to go to William Ravis in February 2020 and worked there until around May 2020. Mr. Gaetz then began working at Sterling Property Group from May 2020 until he became eligible for the broker's exam around February 2021. (Testimony Gaetz.)

7. On February 12, 2021, following his successful completion of the real estate broker's exam, Mr. Gaetz established Royal Rocco Realty, Inc., a firm specializing in real estate brokerage and management services. (Ex. 16.)

8. Ms. Lambropoulos-Gaetz is a 50% shareholder in Royal Rocco Realty, Inc. (Ex. 17.)

9. Mr. Gaetz is the sole officer of Royal Rocco Realty, Inc., serving as president, treasurer, secretary, and director. (Ex. 16.)

10. In 2021 and 2022, Ms. Lambropoulos-Gaetz was employed full-time as a teacher with the City of Fitchburg school system. She was also the sole proprietor of Katerina's Multilingual Consultant Services, Inc. (Exs. 20, 23.)

11. Following his accident, Mr. Gaetz experienced difficulties with organizational skills, prompting his wife to support him in managing the daily operations of Royal Rocco Realty. (Ex. 29; Testimony Gaetz.)

12. Mr. Gaetz does not adhere to a fixed work schedule each week due to the effects of his injury, which causes migraine headaches from prolonged use of computers or phones. (Testimony Gaetz.)

13. Ms. Lambropoulos-Gaetz works for Royal Rocco Realty an estimated 25-30 hours per week, mostly after 5:00 p.m. on weekdays and also on weekends. She is the company's bookkeeper; she oversees accounts payable and receivable monthly. She performs all administrative duties such as client letters, advertising, computer maintenance, lead generation, scheduling, appointments, and filing and proofreading all documents. She cold-calls potential clients and does other market research. She is also fluent in several languages and can translate those languages for the business. (Ex. 29; Testimony Gaetz.)

14. For calendar year 2021, Royal Rocco Realty, Inc. reported ordinary business income of \$103,222 on IRS Form 1120-S. (Ex. 5.)

15. In the same year, Royal Rocco Realty, Inc. took a Section 179 depreciation deduction (discussed below) of \$2,716 for a computer system and a scanner. These items have a useful life of five years. (Exs. 9, 27.)

16. Royal Rocco Realty, Inc. distributed its ordinary business income under Schedule K-1, divided equally, to Mr. Gaetz and Ms. Lambropoulos-Gaetz, at \$51,611 each. It included the Section 179 deduction on the K-1, which was also divided 50/50 between them, \$1,358 each. This left each of them with net taxable income from the business of \$50,253. (Exs. 9, 27.)

17. As a disability retiree, Mr. Gaetz is subject to earnings limits under G.L. c. 32, § 91A. The figures required to perform this calculation are the current salary for the position from which he retired, his annual retirement allowance, and any additional earned income. The parties agree that the 2021 salary for the position was \$123,135.22 and Mr. Gaetz's retirement allowance was \$85,635.00. After adding the additional statutory allowance of \$15,000 earned income, this leaves allowable earnings of \$52,500.22 under § 91A. (Ex. 10.)

18. Mr. Gaetz timely submitted the necessary tax forms to PERAC. To calculate his excess earnings, PERAC attributed all of the ordinary business income of \$103,222 to Mr. Gaetz. It did not attribute any of the business income to his wife. It did this because it had concluded that Mr. Gaetz performed all of the work, and generated all of the income, of the business. PERAC also did not allow any of the Section 179 deduction to flow to Mr. Gaetz because it did not know on which equipment Royal Rocco Realty took the deduction. (Ex. 10.)

19. Consequently, PERAC calculated excess earnings of \$50,721.78, based on \$103,222 earned income minus allowable earnings of \$52,500.22. PERAC notified Mr. Gaetz of its final calculation on February 6, 2023. (Ex. 10.)

20. On February 23, 2023, the Board notified Mr. Gaetz that he could either pay the full amount of the excess earnings or request a hearing with the Board. Mr. Gaetz did neither, so the Board notified him that it would withhold his retirement allowance until it recovered all of his excess earnings. Mr. Gaetz timely appealed. (Exs. 12, 13, 14, 15.)

### **CONCLUSION AND ORDER**

Mr. Gaetz is bound to the post-retirement earning restrictions set forth in G.L. c. 32, § 91A, which limit the “earnings from earned income” of a disability retiree. Should those earnings, when combined with the retirement allowance, exceed the amount of regular compensation he would have received had Mr. Gaetz continued in his prior position, plus an additional \$15,000, he will be required to refund the excess portion of his retirement allowance for the preceding year. Moreover, until this refund is settled, his pension or retirement allowance may be retained as security for the owed amount.

“Earnings from earned income” is not defined in Chapter 32. PERAC has defined that phrase in 840 CMR 10.16(4) as:

income that implies some labor, management or supervision in the production thereof, not income derived from ownership of property. . . . Profits derived from the operation of a business through some labor, management or supervision of such profits are earned income, regardless of how a retiree categorized such income for income tax or other purposes.

The purpose of § 91A is to prevent the overpayment of retirement benefits to persons who are, by their labor, management, or supervision, earning a significant

amount of money while simultaneously receiving a disability allowance. *Boston Ret. Bd. v. Contributory Ret. App. Bd.*, 411 Mass. 78, 83 (2004). PERAC's definition furthers this purpose because it prevents disability retirees from circumventing the statute by incorrectly labeling their earnings as passive income or attributing the retiree's earned income to other persons. *Id.*

The law is clear that PERAC may attribute business income to a retiree as § 91A earned income in proportion to the fair value of the retiree's contribution of labor and business expertise to a family business or close corporation that directly results in the success of the business. *Steere v. Dukes County Retirement Bd.*, CR-09-312, at \*11 (Div. Admin. L. App. July 1, 2010). A series of DALA decisions have considered the following factors in determining whether earned income has been distributed in an attempt to avoid the strictures of § 91A: (1) whether the retiree is a passive investor or contributes "labor, management, or supervision" to the enterprise; (2) if the retiree does contribute labor, management, or supervision to the business, what the value of the contribution is; (3) whether the retiree's compensation is commensurate with the value of his contribution; (4) whether the other shareholders of the family business are being overcompensated for their contributions; and (5) the amount, if any, of ordinary income of the business that should be imputed to the retiree based on his ownership interest and/or contributions. *See W. Springfield Ret. Bd. v. PERAC*, CR-11-584 (Div. Admin. L. App. Nov. 9, 2016); *Frazier v. Barnstable County Ret. Bd.*, CR-06-190 (Div. Admin. L. App. Feb. 27, 2008); *Conway v. Medford Ret. Bd.*, CR-04-436 (Div. Admin. L. App. April 12, 2005); *Davis v. PERAC*, CR-03-87 (Div. Admin. L. App. Aug. 20, 2003);

*Langone v. PERAC*, CR-02-629 (Div. Admin. L. App. March 31, 2003); *Freitas v. PERAC*, CR-00-240 (Div. Admin. L. App. Nov. 6, 2000).

After retiring in 2015, Mr. Gaetz embarked on a second career in real estate and ultimately established Royal Rocco Realty, Inc. where he serves as the sole licensed broker and custodian of all corporate records. Although both Mr. Gaetz and Ms. Lambropoulos-Gaetz are 50% shareholders and the corporation distributed 2021 profits equally to the two of them, the Board and PERAC initially assigned 100% of the corporation's earnings to Mr. Gaetz. They concluded that Ms. Lambropoulos-Gaetz was not involved in the business because she was a full-time teacher and ran Katerina's Multilingual Consultant Services, Inc. on the side. They also placed great emphasis on the fact that Mr. Gaetz was the only one with a real estate broker's license.

After the hearing in this matter, however, the Board and PERAC have revised their positions. They now concede that, while Mr. Gaetz is central to the business operations because of his broker's license, Ms. Lambropoulos-Gaetz actually contributes significant labor and management to the business. She spends approximately 25-30 hours per week completing her responsibilities for the business which include accounting, administrative support, marketing, lead generation, and translation services. Given her significant contributions, I agree with the Respondents that it would be inaccurate to attribute 100% of the business's income to Mr. Gaetz. The evidence supports a more balanced 60/40 income split, attributing 60% of the income to Mr. Gaetz. This split properly accounts for the work of both parties. It also recognizes that Mr. Gaetz is the one with the broker's license, is the only formal employee of the business, is responsible for all revenue and sales, and is the sole corporate officer. Though Ms. Lambropoulos-



Gaetz's contributions are significant, there is no business without Mr. Gaetz, and it is therefore unreasonable to split the earnings equally, as Mr. Gaetz urges me to do. This means that 60% of Royal Rocco's earnings of \$103,222, or \$61,933.20, is attributable to Mr. Gaetz.

The Respondents have similarly revised their position on the Section 179 depreciation deduction now that they know the assets to which it pertained: a computer system and a scanner. PERAC is not required to follow the Petitioner's tax treatment of this depreciation, but it must recognize the "reasonable annual cost of ownership" of capital assets, like the computer and scanner, when calculating business profits. *Sarro v. Bristol County Retirement Sys. and PERAC*, Partial Summary Decision and Order, CR-09-242 (Div. Admin. L. App. Mar. 1, 2013), *aff'd* (Contributory Ret. App. Bd. Mar. 28, 2014). With useful lives of five years, annual depreciation of \$543 (20% of the \$2,716 cost of the assets) must be allocated. Mr. Gaetz is entitled to 60% of the \$543 deduction, or \$325.80, per year for the five years beginning in 2021.

On August 25, 2025, PERAC informed DALA and the other parties that it had incorrectly excluded \$5,200 of stipends from the 2021 salary for his position, which it had originally calculated as \$123,135.22. The corrected figure is \$128,335.22.

Applying the § 91A excess earnings formula to these newly calculated figures yields the following result: Royal Rocco 2021 earnings of \$61,933.20 minus the depreciation deduction of \$325.80 minus the amount of allowable earnings \$57,700.22 (\$128,335.22 salary + \$15,000 statutory allowance - \$85,635 disability retirement allowance) equals \$3,907.18 excess earnings. Mr. Gaetz is required to refund these

excess earnings to the retirement system. Until this repayment is completed, the Board is authorized to hold his retirement allowance as security. *See* G.L. c. 32, § 91A.

During and after the hearing, Mr. Gaetz expressed several additional concerns regarding the calculations of his allowable earnings; however, he did not adequately flesh those claims out or provide any supporting evidence for them. At this point, it appears that those concerns have been covered by PERAC's August 25, 2025 communication. However, if they have not been dealt with, Mr. Gaetz may bring these issues to the attention of the retirement system so that it may address them in due course.

For the reasons stated above, the Board's decision is modified to reflect the excess earnings that I have calculated. Mr. Gaetz is hereby ordered to repay the excess without delay.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

---

Kenneth J. Forton  
Administrative Magistrate

DATED: Aug. 29, 2025