

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Charles Horahan,
Petitioner,

No. CR-21-0549

Dated: June 23, 2023

v.

State Board of Retirement,
Respondent.

Appearance for Petitioner:

Charles Horahan (pro se)
Clarksburg, MA 01247

Appearance for Respondent:

Melinda E. Troy, Esq.
Boston, MA 02108

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

A member of a public retirement system appointed the petitioner as her beneficiary for purposes of G.L. c. 32, § 11(2)(c). The member later applied to withdraw her accumulated retirement contributions, but passed away before the board processed the request. The form appointing the petitioner as the member's beneficiary was valid even though it did not identify the petitioner as a "primary" or "contingent" beneficiary. Under the provisions of § 11(2)(c), the petitioner was entitled to a refund of the member's contributions.

DECISION

The State Board of Retirement denied petitioner Charles Horahan a refund under G.L. c. 32, § 11(2)(c) in connection with the public employment of Christine Smith. Mr. Horahan appeals. The appeal was submitted on the papers, and Ms. Smith's estate was impleaded. 801 C.M.R. § 1.01(9), (10)(c). I admit into evidence the board's proposed exhibits marked 1-7.¹

¹ The petitioner's proposed exhibits were duplicative of the board's.

Findings of Fact

I find the following facts:

1. Ms. Smith worked for the Department of Conservation and Recreation as a seasonal employee. Each year, she was required to file new enrollment paperwork with the board. She reenrolled most recently in April 2019. (Exhibit 5.)
2. The documents that Ms. Smith filed at that time included a “Nomination of Beneficiary” form published by the Public Employee Retirement Administration Commission. That form invites the member to list one or several beneficiaries. The line for each beneficiary’s name is followed by checkboxes labeled “primary” and “contingent,” and also by a field for the beneficiary’s “proportion” of payable benefits. The form instructs the member to provide each beneficiary’s full name and address. It states that “[a] beneficiary blank with corrections or erasures is not acceptable.” It does not provide instructions about the “primary” and “contingent” checkboxes. (Exhibit 3.)
3. Mr. Horahan was Ms. Smith’s significant other. In her April 2019 nomination form, Ms. Smith listed Mr. Horahan as her only beneficiary. She listed his proportion of benefits as “100.” She did not check either the “primary” box or the “contingent” box. The nomination form was properly signed, witnessed, and filed. (Exhibits 3, 4.)
4. During March or April 2020, Ms. Smith filed an application to withdraw her accumulated pension deductions. During May 2020, she passed away. The board had not yet processed the withdrawal application. (Exhibits 1, 5, 6, 8.)
5. Thereafter, unaware of Ms. Smith’s death, the board issued a refund check made out in her name. After further discussions with the executor of Ms. Smith’s estate, the board determined that the estate should receive Ms. Smith’s refunded contributions; the board

reasoned, in part, that Ms. Smith’s April 2019 nomination form was invalid. Mr. Horahan timely appealed. (Exhibits 1, 2, 7, 8.)

Analysis

The retirement law recognizes that a member may pass away before ever retiring. It permits each member to designate one or more beneficiaries who, in that scenario, are entitled to a refund of the member’s accumulated retirement contributions. G.L. c. 32, § 11(2)(c). Such beneficiaries are also entitled to:

any uncashed checks in payment of amounts to which [the member] was entitled from the funds of the system of which he was a member, or any sum payable to his estate from said funds

Id.

Beneficiaries under § 11(2)(c) must be nominated on a “prescribed form.” *Id.* A nomination may be invalid if the member does not “substantially comply” with the prescribed form’s instructions. *See Reis v. New Bedford Ret. Bd.*, No. CR-07-391 (DALA Mar. 12, 2009, *aff’d in pertinent part*, CRAB Nov. 3, 2009); *Smith v. Contributory Ret. Appeal Bd.*, No. 05-3364 (Suffolk Super. May 7, 2007). *See also Blakeslee v. State Bd. of Ret.*, No. CR-19-0409, 2023 WL 3547615 (DALA May 23, 2023); *Robbins v. State Bd. of Ret.*, No. CR-20-0344, 2023 WL 2806503 (DALA Mar. 31, 2023); *Fritz-Elliot v. State Bd. of Ret.*, No. CR-14-368, 2016 WL 3476354 (DALA Apr. 27, 2016).

Ms. Smith’s April 2019 nomination form complied in full with the applicable form’s instructions. The board’s contrary position rests on the fact that Ms. Smith did not check the “primary” or “contingent” checkboxes. But those labels are meaningful only when a member nominates more than one beneficiary: they then designate the order of priority between the several nominees’ entitlements. On a reasonable reading of the form that Ms. Smith completed, the “primary” and “contingent” checkboxes were meant to be completed only by members

designating multiple beneficiaries. *Cf. Blakeslee*, 2023 WL 3547615, at *4; *Lawlor v. State Bd. of Ret.*, No. CR-16-514, 2019 WL 1583072, at *19 (DALA Jan. 25, 2019).²

The remaining wrinkle is the fact that, before she passed away, Ms. Smith applied to withdraw her accumulated deductions. But a § 11(2)(c) beneficiary’s entitlements include any “uncashed checks . . . to which [the member] was entitled from the funds of the system,” as well as any “sum payable to [the member’s] estate from said funds.” The funds that Ms. Smith asked to withdraw fit easily within one or both of these categories.³

Conclusion and Order

For the foregoing reasons, Mr. Horahan is entitled to a refund of Ms. Smith’s accumulated retirement contributions. The board’s contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

² Even if the form had required *all* members to check those boxes, a single-beneficiary member’s failure to comply with that demand would not have threatened his or her “substantial” compliance. *See, e.g., See Reis, supra; Lawlor*, 2019 WL 1583072.

³ Perhaps the board theorizes implicitly that every application to withdraw a member’s accumulated deductions must be construed as a revocation of the member’s earlier designations of beneficiaries. But a member withdrawing her deductions might prefer to leave her beneficiaries in place, so that any refunds payable in the event of the member’s unexpectedly sudden death (as in the instant case) may be delivered directly to the beneficiary, rather than probated through the member’s estate.