THE COMMONWEALTH OF MASSACHUSETTS

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

Debra Maddox,

 **Petitioner**

v. Docket No. CR-15-301

 DATED: November 2, 2016

Massachusetts Teachers’

Retirement System,

 **Respondent**

**Appearance for Petitioner:**

*Pro Se*

15 Edgewood Street

Worcester, MA 01602

**Appearance for Respondent:**

James H. Salvie, Esquire

General Counsel

Massachusetts Teachers’ Retirement System

500 Rutherford Avenue, Suite 210

Charlestown, MA 02129-1628

**Administrative Magistrate:**

Judithann Burke

 **Case Summary**

The Petitioner, who defaulted on her original installment agreement with the MTRS, is not entitled to purchase the remainder of her state service at the earlier-imposed interest rate.

Rather, she is bound by the statutorily-imposed current actuarial interest rate.

 **DECISION**

The Petitioner, Debra Maddox, is appealing from the June 12, 2015 decision of the Respondent, Massachusetts Teachers’ Retirement System (MTRS) denying her request for an updated invoice of her Refund Buyback. (Exhibit 16.) The appeal was timely filed on June 18, 2016. (Exhibit 17.) I held a hearing on October 20, 2016 at the offices of the Worcester Registry of Deeds, 90 Front Street, Worcester, MA. I marked Exhibits 1-19. The Petitioner testified and argued in her own behalf. The MTRB presented no witnesses. The parties submitted pre-hearing memoranda of law. (MTRS-Attachment A; Petitioner-Attachment B.)

The hearing was digitally recorded.

 **FINDINGS OF FACT**

 Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Petitioner, Debra Maddox, was employed as a social worker/probation officer for the Commonwealth from 1986 to 1993. During this period of employment, she was a member of the State Employees’ Retirement System. When she left the position, she took a refund of her contributions.
2. The Petitioner began teaching at the Abby Kelley Foster Charter School in 1996. She became a member of the MTRS.
3. On September 9, 2010, the Petitioner received an invoice in the amount of $33,324.15 in response to her request to redeposit her contributions to the State Employees’ Retirement System. (Exhibit 1.)
4. The invoice provided the Petitioner the option to pay the amount due to purchase her 6.5389 years of state service in a lump sum or a five-year installment plan. (*Id.*)
5. The Petitioner opted to pay the amount due through installments over five years. She signed an Installment Billing Agreement which, among other things, defined a “default” as a failure to make an annual payment and warned her that, if she defaulted, the Installment Agreement would be “null and void.” (*Id.*)
6. The first of the installment payments was due on December 31, 2010. However, in a letter to Chris Hawes of the MTRS dated January 4, 2011 she requested an extension of the payment deadline due to financial difficulties. (Exhibit 2.)
7. The MTRS extended the Petitioner’s payment deadline by a year, to December 31, 2011. (Exhibit 3.)
8. Although the Installment Billing Agreement required that installment payments be made each year on December 31 and the Petitioner received annual invoices for the amounts due, she was several months late with each payment from 2011 through 2014. The December 31, 2011 payment was remitted on April 4, 2012. The December 31, 2012 payment was remitted on April 4, 2013. The December 31, 2013 payment was remitted on March 6, 2014. (Exhibits 3-7.)
9. The Petitioner stopped working at the Abbey Kelley Foster Charter School in 2012 and became an inactive member of the MTRS.
10. On October 20, 2014, the MTRS sent the Petitioner a reminder and invoice for her next installment payment that was due on December 31, 2014. (Exhibits 8 and 9.)
11. On December 15, 2014, the Petitioner had a representative at her financial institution, National Financial Services, LLC, sign the MTRS “Direct Rollover Acknowledgement Form” (a form that tells the MTRS that the money comes from a type of plan that can do pre-tax rollovers). The Petitioner signed the form on December 29, 2014. (Exhibit 10.)
12. Also on December 29, 2014, the Petitioner signed a rollover request form (“One-Time Distribution Request”) with National Financial Services, Inc. She left almost the entire form blank. (Exhibit 11.)
13. The MTRS issued a notice of default to the Petitioner on January 15, 2015. She was informed that, if she did not pay the invoice by February 14, 2015, her installment agreement would become null and void and, if she still wished to complete her service purchase, she would “become subject to higher, actuarial interest.” The actuarial rate of interest in effect at that time was 8.000%. (Exhibit 12.)
14. On April 6, 2015, the MTRS sent National Financial Services, LLC a letter therein indicating that, as the operator of a Qualified Plan in accordance with Section 401(a) of the IRS Code, it was eligible to receive a rollover distribution. (Exhibit 13.)
15. In a letter dated April 15, 2015, Cambridge Investment Research, Inc. notified the MTRS that it was unable to complete the transfer of funds and requested updated signatures from within the previous thirty days on the documents that the Petitioner had already completed. (Exhibit 14.)
16. In an email dated June 1, 2015, Thomas M. Valentine, Jr., President and Wealth Manager at Forward Financial Services, requested that the MTRS send him another rollover acknowledgement form and a letter of instruction to rollover the funds to MTRS. He noted that their back office had “some issues” and that they were requesting new paperwork. (Exhibit 15.)
17. In an email dated June 2, 2015, the MTRS notified Mr. Valentine and the Petitioner that

she was in default on the original installment agreement, and, that payment had been due on February 14, 2015. The MTRS also indicated that, if the Petitioner wished to buy the remaining time, she would need to contact the Member Service Department and request a new invoice. She did so. (*Id.*)

1. In a letter dated June 12, 2015, the MTRS responded to the Petitioner’s updated request. The Petitioner was informed that she was in default of the original installment agreement as of February 14, 2015. The Petitioner was further notified that her request for an updated invoice was denied because she was no longer a member-in-service. The MTRS indicated that, if the Petitioner wished to become eligible to purchase her remaining service, she must be re-employed in a position eligible for membership in the MTRS. The Petitioner was notified of her right to appeal to the Contributory Retirement Appeal Board. (Exhibit 16.)
2. The Petitioner filed a timely appeal of the MTRS decision on June 18, 2015. In her letter she levied criticisms against the MTRS and suggested that she had never been in default. Rather, she indicated that she had been caught up in the bureaucracy and the process of transferring money from her 401K. She added that she was resuming her full time position at the Abby Kelley Foster Charter School in August 2015 and that she did not believe she should be forced to pay the higher interest rate to purchase the remaining service. (Exhibit 17.)
3. The Petitioner returned to work at the Abbey Kelley Foster Charter School in September 2015.
4. At the Petitioner’s request, the MTRS sent her and invoice dated March 2, 2016 for the amount of $42,463.65 which included the actuarial interest rate of 7.75%. (Exhibit 18.)
5. The Petitioner did not pay the invoice or enter into another installment agreement.

**CONCLUSION**

 The Petitioner is not entitled to prevail in this appeal. She voluntarily entered into the Installment Billing Agreement in 2010 and contracted to pay installments at the end of each year. She missed the deadlines in each year that she made a payment. She was notified in January 2015 that, if she did not make the December 2014 payment by February 14, 2015, she would be in default, and, the agreement would become “null and void.”

Accordingly, once the agreement became null and void, it was necessary to pursue an all-new arrangement for payment at the prevailing actuarial interest rate in accordance with G.L. c. 32, § (8)(b).

 The Petitioner has not demonstrated any arbitrary or capricious actions, mistakes or other wrongdoing of the MTRS. Rather, the MTRS has applied the principles of both contract law and retirement law correctly. It should be noted that neither G.L. c 32, § (8)(b) or § 25 (5)(c)(3) provide for any equitable remedies, although no equitable considerations are due in this case. It is also noteworthy that neither the Petitioner nor her “financial advisors” contacted the MTRS between January 15, 2015 and February 2015 in order to work out any late payment arrangements. Further, they failed to alert the MTRS about any difficulties she was experiencing in effectuating the rollover. The Petitioner failed in her obligations to comply with the original agreement, including the effectuation of the rollover, as well as her obligation to remit and/or execute a new agreement after the default in February 2015. *See Bristol County Retirement Board v. Contributory Retirement Appeal Board,* 65 Mass. App. Ct. 413 (2006).

 In conclusion, the MTRS has acted within the boundaries of contract law and retirement law in proposing a new payment agreement and statutory interest rate to the Petitioner. The decision of the MTRS is affirmed.

So ordered.

BY:

Division of Administrative Law Appeals,

Judithann Burke

Administrative Magistrate

DATED: November 2, 2016