COMMONWEALTH OF MASSACHUSETTS

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

Melissa Mattei,
Petitioner,

v.

State Board of Retirement,
Respondent.

No. CR-23-0428

Dated: September 13, 2024

ORDER OF DISMISSAL

Petitioner Melissa Mattei appeals from a decision of the State Board of Retirement (board) determining that she is not entitled to a survivor's allowance under G.L. c. 32, § 12(2)(d). The board moves to dismiss for failure to state a claim. *See* Standard rule 7(g)(3).[1] For the reasons that follow, the motion is meritorious.

The petitioner and Keith Mattei divorced in August 2019. Mr. Mattei was a public employee. According to a letter from the petitioner to the board, she and Mr. Mattei remained close. In September 2022, Mr. Mattei passed away. He had not yet retired.

When a public employee dies without retiring, the disposition of his or her retirement-related entitlements depends on whether he or she has nominated an option (d) beneficiary under G.L. c. 32, § 12(2)(d). If the answer is yes, that beneficiary is entitled to a periodic allowance.[2] If not, a refund of the member's accumulated contributions becomes payable either to the member's estate or to a beneficiary nominated for that purpose under G.L. c. 32, § 11(2)(c).

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[1] In accordance with G.L. c. 30A, § 9, the "standard rules" in this context are the provisions of 801 C.M.R. § 1.01.

[2] The people who are eligible to be serve as option (d) beneficiaries are limited to the member's "spouse[,] former spouse who has not remarried, child, father, mother, sister or brother." § 12(2)(c), (d).

A member may nominate one individual as an option (d) beneficiary and one or more other individuals as § 11(2)(c) beneficiaries. The Public Employee Retirement Administration Commission thus publishes separate preprinted forms for option (d) nominations and for § 11(2)(c) nominations. Both pertinent sections of the retirement law require members to make their nominations by filing the "prescribed form" with the appropriate board. §§ 11(2)(c), 12(2)(d).

When Mr. Mattei died, the board examined its records to determine how to distribute his entitlements. The board located a form nominating the petitioner as Mr. Mattei's beneficiary for purposes of § 11(2)(c) refunds. However, according to a letter from the board to the petitioner: "Mr. Mattei did not execute the prescribed form naming [the petitioner] as the [option (d)] beneficiary." The board therefore issued a decision stating that the petitioner is not entitled to an option (d) allowance.[3] This appeal followed.

An appeal is properly dismissed if it "fail[s] . . . to state a claim upon which relief can be granted." Standard rule 7(g)(3). In the posture of a motion to dismiss, "the matters pleaded [by the petitioner] . . . [are] taken as true." *White v. Somerville Ret. Bd.*, No. CR-17-863, at *5 (DALA Nov. 16, 2018). This principle is borrowed from the judicial courts, which have clarified that they "look beyond the conclusory allegations in the complaint and focus on whether the factual allegations plausibly suggest an entitlement to relief." *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011). *See Gill v. Armstrong*, 102 Mass. App. Ct. 733, 735 (2023).

[3] Although the decision letter is not perfectly clear on this point, it tends to suggest that Mr. Mattei's daughter is entitled to accept an allowance under G.L. c. 32, § 12B.

The petitioner could become entitled to relief in this appeal only by establishing that Mr. Mattei nominated her as his option (d) beneficiary on a prescribed form filed with the board. § 12(2)(d). Her serial arguments do not plausibly suggest that she could so establish.

The petitioner first outlined her case in her letter to the board. She wrote there that she and Mr. Mattei "still have listed each other as [beneficiaries]." In an effort to explain why the couple did not file forms "re-upping each other as beneficiaries" after their divorce, the petitioner wrote: "We already were so that is why we didn't." The important implication of these statements is that the petitioner did not then distinguish between option (d) beneficiaries and § 11(2)(c) beneficiaries. She assumed incorrectly that, if she was Mr. Mattei's beneficiary for one purpose, then she was also his beneficiary for the other.

Represented by counsel, the petitioner offered a more nuanced argument in her notice of appeal, writing there:

> [T]he board has stated that [the petitioner] is not entitled to receive the [option (d) allowance] because [Mr. Mattei] did not execute the prescribed form naming [the petitioner] as the option (d) beneficiary . . . . It is our position that [Mr. Mattei] did indicate his desire to have [the petitioner] as the beneficiary by maintaining [the petitioner] as the listed beneficiary post-divorce . . . .

Although the argument could have been drafted more precisely, its message is reasonably clear: namely, that although Mr. Mattei failed to appoint the petitioner formally as his option (d) beneficiary, he "indicate[d] his desire" for her to receive an option (d) allowance by keeping her on as his § 11(2)(c) beneficiary. This argument is not legally viable. The law maintains a clear distinction between the beneficiaries under sections 12(2)(d) and 11(2)(c), requiring each nomination to be made on its own prescribed form.

The most up-to-date version of the petitioner's case appears in her opposition to the motion to dismiss. She says:

> The petitioner . . . was to the best of her knowledge the option (d) beneficiary of [Mr. Mattei] at the time of his passing. . . . [The board] has produced no documents . . . to substantiate their claim that the petitioner is not the named beneficiary.

Here the petitioner does plead the factual allegation that, if true, would support her entitlement to relief: i.e., that Mr. Mattei in fact made her his option (d) beneficiary. But this allegation is too conclusory to survive dismissal. The petitioner describes no subsidiary facts that could support the inference that Mr. Mattei completed and filed the prescribed form. The careful wording of her brief and the substance of her prior submissions make clear that the petitioner is not capable of identifying any such facts, whether from personal knowledge or otherwise. The petitioner's allegations thus do not plausibly suggest an entitlement to relief. *See Curtis*, 458 Mass. at 676; *Gill*, 102 Mass. App. Ct. at 735.

It may be important to recognize that this appeal is not necessarily governed by Mr. Matteo's wishes. It is perfectly plausible that he would have wanted the petitioner to receive an option (d) allowance. But the Legislature chose to build strict procedural barriers around option (d) and related benefits. Administrative agencies have no authority to override such barriers based on sympathy or fairness. *See Massachusetts Water Res. Auth. Emps. Ret. Syst. v. Public Emp. Ret. Admin. Comm'n*, No. CR-19-320, 2024 WL 2956654, at *2 (CRAB June 3, 2024). "[W]e must apply the law as written, even where the result may appear harsh." *Roussin v. Boston Ret. Syst.*, No. CR-23-28, 2024 WL 2956657, at *2 (CRAB June 3, 2024).

The motion to dismiss is ALLOWED and this appeal is hereby DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate