

COMMONWEALTH OF MASSACHUSETTS

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Date: May 24, 2024

Michael McLaughlin

Petitioner

v.

Chelsea Retirement Board

Respondent

Docket No: CR-11-731

Chelsea Housing Authority

Petitioner

v.

Chelsea Retirement Board

Respondent

Docket No: CR-14-206

Michael McLaughlin and

Chelsea Retirement Board

Petitioner

v.

P.E.R.A.C

Respondent

Docket No: CR-14-357

Chelsea Housing Authority

Petitioner

v.

Chelsea Retirement Board and

Michael McLaughlin

Respondent

Docket No: CR-17-308

Michael McLaughlin

Petitioner

v.

P.E.R.A.C. and Cambridge Retirement Board

Respondent

Docket No: CR-20-0301

Chelsea Housing Authority
Petitioner

Docket No: CR-20-0372

v.

Chelsea Retirement Board
Respondent

Summary of Decision

Former executive director of the Chelsea Housing Authority, who ultimately pled guilty to three different federal and state charges related to his service, sought to retire on superannuation, which led to six appeals. After these appeals were filed, the Chelsea Retirement Board decided that he had forfeited his pension under M.G.L. c. 32, § 15(4). His appeal objecting to the Board's refusal to act on his application is dismissed as moot because the Board has acted under Section 15(4). (Docket CR-11-731.) His appeal of the Board's decision that his pension was forfeit under Section 15(7) is remanded to the Board to provide him with appeal rights to district court. (Docket CR-20-0301). The Chelsea Housing Authority's appeals relating to the Board's conduct of the Section 15(4) proceeding are dismissed as moot because those proceeding are now complete. (Dockets CR-17-308 and CR-20-0372). The Housing Authority's appeal of the Board's decision declining to hold that the former executive director's accumulated deductions were forfeit under Section 15(1) (Docket CR-14-206) and PERAC's remand of this matter to the Board (Docket CR-14-357) are remanded to the Retirement Board to hold proceedings under Sections 15(1)(and 15(3).

DECISION

Michael McLaughlin was the Executive Director of the Chelsea Housing Authority from 2000 to 2011. His tenure ended in controversy. As described by the Appeals Court:

During McLaughlin's tenure as the executive director, he and James Fitzpatrick, who was CHA's director of modernization, participated in an inspection-rigging scheme whereby they received advance notice when HUD planned to inspect one of CHA's housing units. Because this gave CHA time to repair the housing unit before the inspection, the inspection would go well. HUD thus classified CHA as a high performer. Due to CHA's status as a high performer, it received additional, undeserved funding from HUD. CHA used at least some of that funding for repairs to CHA's housing units or for capital improvements.

At the same time, McLaughlin and Vitus Shum, who was CHA's director of finance, engaged in a scheme to underreport McLaughlin's salary to DHCD [the Massachusetts

Department of Housing and Community Development]. McLaughlin's employment agreements were executed between McLaughlin and CHA's board of commissioners (board). McLaughlin's first employment agreement, which specified that he would receive a salary of \$77,500, was also submitted to DHCD for approval. Thereafter, McLaughlin regularly sought exorbitant raises, all of which were approved by the board and were memorialized in subsequent employment agreements. By 2011, McLaughlin's salary was \$324,896. McLaughlin, with Shum's and the board's knowledge and approval, hid his exorbitant raises from DHCD by failing to submit any of his subsequent employment agreements to DCHD for approval and by instead submitting budget reports that significantly underreported his salary. The salary that McLaughlin reported to DHCD reflected only that portion of his salary that was paid for using DHCD's funding. The difference between McLaughlin's actual salary and his reported salary was paid for using HUD's funding, and McLaughlin's actual salary moreover did not comply with HUD's reasonableness requirement.

Chelsea Housing Authority v. Michael E. McLaughlin, 97 Mass. App. Ct. 1111

(2020)(unpublished opinion).

Background of Appeals

Needless to say, this has had an impact on Mr. McLaughlin's effort to retire. There are six cases pending at the Division of Administrative Law Appeals (DALA) dealing with different aspects of his retirement.

On November 4, 2011, Mr. McLaughlin filed an application for superannuation retirement with the Chelsea Retirement Board. The Board declined to act on it due to ongoing investigations by federal and state authorities and the Public Employee Retirement Administration Commission (PERAC). (Docket CR-11-731.)

In 2013, the Chelsea Retirement Board began an investigation to determine whether Mr. McLaughlin should "forfeit all rights ... to a retirement allowance or to a return of his accumulated total deductions" because he had been charged with misappropriation. M.G.L. c. 32, § 15(1). On April 9, 2014, the Board issued a determination that Mr. McLaughlin had not

been charged with misappropriation within the meaning of the statute, and hence Section 15(1) did not apply. It concluded that "charge" meant a criminal charge and hence the Housing Authority's accusation that Mr. McLaughlin had misappropriated its funds was not a charge. As to the one federal criminal charge then pending, a charge of document falsification to which Mr. McLaughlin had already pled guilty, the Board determined that the charge was insufficiently related to misappropriation to form the basis of pension forfeiture under Section 15(1). The Chelsea Housing Authority appealed. (Docket CR-14-206.)

On June 26, 2014, PERAC voted to remand to the Chelsea Retirement Board the Board's decision not to apply Section 15(1) to Mr. McLaughlin's retirement benefit. PERAC believes that criminal charges against a public employee are not a prerequisite for a retirement board to act under Section 15(1). PERAC also understood that after the Board's action, Mr. McLaughlin had pled guilty to other federal and state crimes, and hence it directed the Board to consider whether those additional charges were relevant under Section 15(1). It also urged the Board to grant the Chelsea Housing Authority full status as a party. Mr. McLaughlin and the Chelsea Retirement Board both appealed PERAC's decision. (Docket No. CR-14-357.)

In 2017, the Chelsea Housing Authority moved that the Chelsea Retirement Board grant it intervenor status in any pending¹ proceeding involving Mr. McLaughlin and that it stay any action to forfeit his pension under Section 15(4)(forfeiture of pension upon misconduct)² until the

¹ It is not clear what matter was pending before the Board then regarding Mr. McLaughlin.

² Section 15(4) provides that:

In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement

Board conducted a hearing under Section 15(3)(forfeiture of rights upon conviction)³ to determine how much restitution Mr. McLaughlin owed the Housing Authority. The Chelsea Retirement Board denied this motion, which the Chelsea Housing Authority then appealed. (CR-17-308.)

Sometime thereafter, the Chelsea Retirement Board conducted a hearing under Section 15(7), which provides that in "no event shall any member be entitled to receive a retirement allowance ... , inclusive, which is based upon a salary that was intentionally concealed from or intentionally misrepresented to the commonwealth." On June 10, 2020, PERAC accepted the Board's finding that Mr. McLaughlin had intentionally concealed his compensation from the DHCD, and hence any pension he might receive should be based on the salary he reported to DHCD, rather than the higher salary he actually received. The Board then informed Mr. McLaughlin that PERAC had accepted the Board's findings and that he could appeal this decision to DALA. (Docket No. CR-20-0301.)⁴

allowance under the provisions of section one to twenty-eight, inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member. The said member or his beneficiary shall receive, unless otherwise prohibited by law, a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero.

³ Section 15(3) provides that:

In no event shall any member after final conviction of an offense involving the funds or property of a governmental unit or system referred to in subdivision (1) of this section, be entitled to receive a retirement allowance or a return of his accumulated total deductions under the provisions of sections one to twenty-eight inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member, unless and until full restitution for any such misappropriation has been made

⁴ DALA treated the respondent in CR-20-0301 as PERAC, but the appeal is literally from the decision letter of the Chelsea Retirement Board. I have therefore added the Board as a party.

In 2020, the Chelsea Housing Authority again moved to intervene in a matter before the Chelsea Retirement Board. By then, the Board had initiated Section 15(4) proceeding to determine whether Mr. McLaughlin had forfeited his pension because of a "final conviction of a criminal offense involving violation of the laws applicable to his office or position." The Housing Authority sought restitution, a stay of a Section 15(4) hearing, and to intervene in the Board's proceedings. The Retirement Board denied restitution, noting that no Section 15(3) proceeding was pending, denied intervention, and declined to stay the 15(4) proceeding. The Chelsea Housing Authority appealed. (Docket No. CR-20-0372.)

By then, 2020, Mr. McLaughlin had pled guilty to both state and federal charges related to his service as the Executive Director of the Chelsea Housing Authority. On February 19, 2013, Mr. McLaughlin had pled guilty to four counts of falsifying a record in a federal agency matter. These charges involved false reports of Mr. McLaughlin's salary in budget documents submitted to HUD in four separate years. *See* 18 U.S.C. § 1519. On May 12, 2014, Mr. McLaughlin had pled guilty to one count of fraud involving his efforts to learn which Housing Authority units would be inspected and repairing them prior to the inspection. *See* 18 U.S.C. § 371. On June 23, 2014, he had pled guilty to twelve state counts of violating Massachusetts campaign finance laws by, among other things, soliciting campaign contributions while employed as Executive Director and soliciting campaign contributions while in a Chelsea Housing Authority building. *See* M.G.L. c. 55. §§ 13 and 14 and M.G.L. c. 274, § 7.

In 2020, the Chelsea Retirement Board began moving forward with a Section 15(4) proceeding to determine if Mr. McLaughlin had forfeited his pension because of misconduct. On August 30, 2022, the Board decided that, in each of the federal and state convictions, Mr.

McLaughlin had engaged in misconduct related to his job. He had therefore forfeited his entire pension and was entitled only to the return of his accumulated deductions without interest. Mr. McLaughlin appealed these decisions to district court.

Motion Rulings

A. PERAC's Motion

DALA has jurisdiction to hear appeals from final actions by retirement boards except on matters "subject to review by the district court." M.G.L. c. 32, §16(4). "[A]ny member who is aggrieved by any action taken or decision of a board or the public employee retirement administration commission rendered with reference to his dereliction of duty as set forth in section fifteen" may appeal to district court as long as the member's position is in Groups 1, 2 or 4 and the member "has attained age fifty-five and completed fifteen or more years of creditable service." M.G.L. c. 32, §16(3).⁵ Mr. McLaughlin meets each or the criteria needed to allow him to appeal an adverse decision made under Section 15 to district court.

In its motion, PERAC argues that DALA lacks jurisdiction generally to hear matters that can be appealed to district court and urges that now that Mr. McLaughlin has filed an appeal in district court, DALA should not rule on any Section 15 matters as that will simply delay resolution of the pending district court appeal.

Mr. McLaughlin agrees that insofar as any matter now pending can be resolved in district court, he would prefer resolution in district court to facilitate a swift conclusion, but wishes the right to return to DALA if necessary.

⁵ "[A]ny member so classified who has not attained age fifty-five but who has completed twenty or more years of creditable service, or any such member who is a veteran and has completed ten or more years of creditable service," may also if aggrieved,

The Chelsea Retirement Board opposes the motion saying only the member can appeal to district court in a Section 15 matter, and that appeals involving disputes between the Board and the Chelsea Housing Authority cannot be heard in district court and therefore must be resolved at DALA. The Board also objects that PERAC lacks standing to seek to dismiss the three appeals in which it is not involved.

Jurisdiction over Section 15 appeals is complex, but not incomprehensible. If a retirement board determines that a member's pension is forfeit and the member meets the group, age, and creditable service requirements, the member's appeal should be to district court. If the member instead appeals to DALA, DALA should decline jurisdiction. For example, when a member was informed by his retirement board that his pension was forfeit and he could appeal to either district court or DALA, DALA dismissed his appeal and ordered the retirement board to grant him 30 days to appeal to district court. *Bigos v Chicopee Retirement Board*, CR-00-945 (DALA undated) (affirmed by CRAB, Jan. 14, 2002). If a member whose pension has been declared forfeit by the member's retirement board does not meet the group, age, and creditable service criteria set forth in Section 16(3), the member's appeal is to DALA, not the district court. *See Padellaro v. Lawrence Retirement Bd.*, CR-00-787 (DALA, Apr. 13, 2001). Likewise, if someone else is aggrieved by a forfeiture decision, there is no provision for such an appeal to go to district court, and hence the appeal is to DALA. *See Essex County Retirement Bd. v. PERAC and Lynn Retirement Bd.*, CR-99-725 (DALA July 14, 2000).

Before deciding which, if any, appeal is properly before DALA, I note two things. First, I must consider whether the Chelsea Retirement Board's determination that Mr. McLaughlin had forfeited his pension under Section 15(4) and his appeal to district court may have mooted some

appeals to DALA. Second, whether or not PERAC has standing to object to DALA's jurisdiction over an appeal in which it is not a party, DALA may on its own consider whether jurisdiction at DALA is proper in any appeal.

a. *Docket CR-11-731*

Mr. McLaughlin's initial appeal objecting to the Chelsea Retirement Board's refusal to act on his superannuation retirement application is now moot because the Board has acted by declaring his pension forfeit under Section 15(4). I therefore dismiss this appeal.

b. *Docket CR-14-357*

Mr. McLaughlin also appealed from PERAC's remand to the Chelsea Retirement Board the application of Section 15(1) to Mr. McLaughlin's retirement benefit, and thus the potential forfeiture of his accumulated deductions. Because PERAC did not decide whether Mr. McLaughlin had forfeited his accumulated deductions, he could not have appealed this decision to district court. Likewise, the Chelsea Retirement Board's appeal of PERAC's decision was to DALA. I will take this matter up further when considering the Chelsea Retirement Board's motion.

c. *Docket CR-20-0301*

Mr. McLaughlin's only other appeal was of the Chelsea Retirement Board's decision that decided his pension was forfeit under Section 15(7) for intentionally concealing his compensation from the DHCD, and hence any pension he might receive should be based on the salary he reported to that state agency, rather than the higher salary he actually received. There are no present consequences to this decision. It will matter only if the district court rules that Mr. McLaughlin's pension is not forfeit under any of the three bases on which the Chelsea

Retirement Board relied. However, the appeal should not have been made to DALA. It was made here because the appeal rights listed on the Board's decision told him the appeal was to DALA. As noted above, appeal is to district court by "any member who is aggrieved by any action taken or decision of a board or the public employee retirement administration commission rendered with reference to his dereliction of duty as set forth in section fifteen." M.G.L. c. 32, § 16(3). Section 15(7) is part of Section 15, and hence the appeal should have been to district court. Therefore, just as in *Bigos*, I remand this appeal to the Chelsea Retirement Board and order the Board to give Mr. McLaughlin 30 days to appeal its decision to district court.

The remaining appeals were bought by parties other than Mr. McLaughlin. They could only have been made to DALA and none of the issues raised in the appeals would appear to be before the district court at present. Hence, they are not subject to dismissal for the reasons advanced by PERAC.

B. *Chelsea Retirement Board's Motion*

The Chelsea Retirement Board maintains that the three appeals by the Chelsea Housing Authority should be dismissed for multiple reasons. It asserts that the Housing Authority lacks standing, in part, because the Retirement Board never granted it anything more than participant status in the matters before it and because it was not clear that the Housing Authority was aggrieved by Mr. McLaughlin's outsized salary increases that the Housing Authority approved. It argues that its ultimate decision that Mr. McLaughlin had not forfeited the return of his accumulated deductions was correct because Section 15(1) required that a misappropriation "charge" be a criminal charge, not the mere accusation by the Housing Authority that Mr. McLaughlin had misappropriated Authority funds, and that the one federal criminal charge

pending when the Board acted was for document falsification, a charge that did not involve misappropriation.

The Chelsea Housing Authority responds that it has standing as an employer, and has suffered financially by Mr. McLaughlin's actions and is thus aggrieved. It contends that the Retirement Board's decision to treat the Housing Authority as simply a participant is irrelevant to determining standing here. It asks that DALA allow it to proceed to demonstrate that Mr. McLaughlin has misappropriated Housing Authority funds and asserts that, if it can show this, the Retirement Board has the authority to provide it with restitution.

d. *Docket CR-17-308*

Before analyzing the merits of these arguments, I turn to the impact the Retirement Board's Section 15(4) proceeding has had on these appeals. In Docket No. CR-17-308, the Chelsea Housing Authority appeals from the Chelsea Retirement Board's refusal to stay any action to forfeit his pension under Section 15(4)(forfeiture of pension upon misconduct) until the Board conducted a hearing under Section 15(3)(forfeiture of rights upon conviction). The Board not only denied the motion, it went ahead and determined that Mr. McLaughlin had forfeited his pension under Section 15(4) without ever determining under Section 15(3) that he had been convicted of any crime involving misappropriation from the Housing Authority. Although a Section 15(3) proceeding can still be held, DALA cannot turn back the clock and order the Retirement Board to act under Section 15(3) before it acts under Section 15(4). Because the Board has already acted under Section 15(4), this appeal is moot and I therefore dismiss it.

e. *Docket CR-20-0372*

Similarly, Docket CR-20-0372 is moot as well. The Housing Authority sought to

intervene in the Section 15(4) proceeding then pending at the Chelsea Retirement Board, requested that the matter be stayed and requested that the Board, when it acted, award restitution to the Housing Authority. The Board declined to allow the Housing Authority to intervene, declined to stay the matter and rendered a Section 15(4) determination without determining that any restitution was owed the Housing Authority because no Section 15(3) proceeding was pending. Because the Section 15(4) proceeding has already concluded and the Board's determination has been appealed to district court, there is no relief DALA can grant the Housing Authority with respect in this appeal, and hence I dismiss it as moot.

f. *Dockets CR-14-206 and CR-14-357*

The same cannot be said for the Housing Authority's appeal of the Chelsea Retirement Board's decision declining to find that Mr. McLaughlin had forfeited his accumulated deductions because he had misappropriated public funds (Docket No. CR-14-206) or the related appeal by the Retirement Board from PERAC's remand of this decision to the Board (Docket CR-14-357).

I reject the Retirement Board's contention that the Housing Authority lacks standing to make a claim under Section 15(1) and that the Board, even if it found that Mr. McLaughlin had forfeited his accumulated deductions, lacked authority to grant restitution to the Housing Authority. As a general matter, a disappointed retirement system member may appeal an adverse final decision by his or her retirement board. Any other appeal can be made only by someone aggrieved or who has been granted rights in the matter by statute or regulation. The public employee retirement statute provides at Section 15(2) that:

Proceedings under this section may be initiated by the board, by the head of the department, by the commission or board of the commonwealth or of any political subdivision thereof wherein the member is employed or was last employed if not then in

service.

The "section" referred to in this sentence is Section 15 in its entirety. The quoted language is broad enough to give public employees standing to initiate proceedings under Section 15(1) against an employee who has misappropriated from his employer. It also gives the employer standing to appeal an adverse decision on this issues. Furthermore, a public employer from whom an employee had misappropriated funds is aggrieved by the employee's wrongful action. Thus, the Chelsea Housing Authority is a proper party in Section 15 matters concerning whether Mr. McLaughlin has misappropriated Housing Authority funds.

If misappropriation can be shown by Mr. McLaughlin, then his accumulated deductions are forfeit under Section 15(1) or 15(3), but only so much as is needed to make whole the victim of the misappropriation, which is what makes the remedy restitution. *Doherty v Retirement Board of Medford*, 425 Mass. 130, 136-137 (1997) (Section 15(1)); *Gaffney v. Contributory Retirement Appeal Ed.*, 423 Mass. 1, 5 (1996) (Section 15(1) and 15(3)). The retirement statute gives retirement boards explicit authority to make restitution to a wronged public employer by assigning so much of retirement benefits as are determined to be needed to make restitution following a Section 15(1) or 15(3) decision. It provides that:

No assignment of any right in or to any funds, annuities, pensions or retirement allowances under any system shall be valid except such assignment as may be made for the purpose of making restitution in the case of dereliction of duty by any member as set forth in section fifteen.

M.G.L. c. 32, § 19.

Although the Housing Authority, the Retirement Board and PERAC are at odds about whether the "charge" referred to in Section 15(1) is a criminal charge and whether Mr.

McLaughlin's conviction for falsifying documents is a misappropriation for purposes of that section, matters have moved on since the Board's initial determination making it unnecessary to resolve these disputes. Since then, Mr. McLaughlin has pled guilty to one count of fraud involving learning which Housing Authority units would be inspected and repairing them prior to the inspection. This is a criminal conviction and one that seems more easily connected with misappropriation that is the crux of the matter under Sections 15(1) and 15(3).

Misappropriation is not defined in the retirement statute, but it has been given a broad interpretation by the courts. For example, a policeman who stole a copy of the police entrance exam and gave it to his son who then took the exam and was hired was determined to have misappropriated police department funds because, although the department was out no money as it would have paid the salary of whoever it hired as a police officer, the funds used to pay the policeman's son were misappropriated because he should not have gotten the job or the pay associated with it. *Doherty*, 425 Mass. at 143-145. Here, Mr. McLaughlin's knowledge of which Chelsea Housing units HUD would inspect was key to his plan to repair those units and present a good face to HUD in order that the Housing Authority would obtain more federal funds than it otherwise deserved, and it is out of these funds that his substantial raises were paid. This is an even more obvious instance of misappropriation than the one described in *Doherty*.

The question then becomes what to do next. The Housing Authority urges that I hold further proceedings and rule on the merits as to whether Mr. McLaughlin has misappropriated Housing Authority funds. Although the easiest path to that would be under Section 15(3), no such proceedings was held by the Retirement Board and I see no basis on which one can commence at DALA. There is the Section 15(1) proceeding that the Retirement Board

completed, but it was based on the falsified documents criminal conviction, not the fraud conviction. The better course would be to remand this matter to the Retirement Board to hold a Section 15(1) or a Section 15(3) proceeding on the fraud conviction. *See Donovan v State Bd. of Retirement*, CR-95-043 (DALA Feb. 5, 1996) (remand to conduct Section 15(2) proceeding). The Board has already determined in the Section 15(4) proceeding as to that conviction and, as it seems likely the Board would rule that Mr. McLaughlin has both been charged with and convicted of a fraud charge and that fraud was part of a successful effort to misappropriate federal funds, then a decision adverse to Mr. McLaughlin would be in the forum necessary for him to appeal to district court. I therefore remand this matter to the Chelsea Housing Authority to conduct Section 15(1) and 15(3) proceedings on Mr. McLaughlin's fraud conviction.

I recognize that the Board has been reluctant to determine that any forfeited monies be paid to the very Housing Authority that approved Mr. McLaughlin's substantial raises. However, even a determination that the funds should be paid to the Housing Authority does not mean that they will stay there as the Appeals Court has pointed out that HUD has been seeking the return of the excess money the Housing Authority obtained due to Mr. McLaughlin's machinations, particularly his excess salary. *See Chelsea Housing Authority v, Michael E. McLaughlin*, 97 Mass. App. Ct. 1111.

Conclusion

For the reasons stated above, Docket Nos. CR-11-731, CR-17-0308, and CR-20-0372 as moot. I remand CR-20-0301 for the Chelsea Retirement Board to reissue its decision and grant Mr. McLaughlin appeal rights to district court. I remand Dockets CR-14-206 and CR-14-357 to

the Chelsea Retirement Board to conduct proceedings under Sections 15(1) and 15(3).⁶

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: May 24, 2024

⁶ I note that the Chelsea Housing Authority may commence Section 15(3) proceedings if it wishes.