COMMONWEALTH OF MASSACHUSETTS

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

**James H. Fitzpatrick,**

Petitioner

v. Docket No. CR-16-216

 Date Issued: September 29, 2017

**Chelsea Retirement System,**

Respondent

**Appearance for Petitioner:**

 James H. Fitzpatrick

 104 Whitman Avenue

 Melrose, MA 02176

**Appearance for Respondent:**

Brian P. Monahan, Esq.

86 Nashua Road #156

Londonderry, NH 03053

**Administrative Magistrate:**

**Bonney Cashin**

**SUMMARY OF DECISION**

 The Petitioner timely appealed the Chelsea Retirement System’s decision to not act on his request to reinstate his pension following the Supreme Judicial Court’s decision in *Pub. Employee Ret. Admin. Comm’n v. Bettencourt*, 474 Mass. 60 (2016). The Division of Administrative Law Appeals, however, does not have jurisdiction over the constitutional question presented and considered in *Bettencourt* and, therefore, dismisses the appeal.

**DECISION**

Petitioner James Fitzpatrick timely appeals the Chelsea Retirement System’s decision to not act on his request for a pension reinstatement, issued April 27, 2016. On June 27, 2016, DALA ordered the parties to file pre-hearing memoranda. Mr. Fitzpatrick filed his pre-hearing memorandum on July 18, 2016. On August 30, 2016, the Chelsea Retirement System did not file a memorandum, but rather filed a motion to dismiss the appeal for lack of subject matter jurisdiction. The Chelsea Retirement System’s motion to dismiss is granted pursuant to 801 CMR 1.01(7)(g)(3). The Division of Administrative Law Appeals lacks subject matter jurisdiction to hear Mr. Fitzpatrick’s constitutional claim.

**BACKGROUND**

Mr. Fitzpatrick was convicted on July 6, 2015, following a jury trial, of conspiring to defraud the United States under 18 U.S.C. § 371. Mr. Fitzpatrick was sentenced to three months at a Federal Prison Camp and fined $100.00. After his conviction, under G.L. c. 32, § 15(4), the Chelsea Retirement Board voted to approve the forfeiture of Mr. Fitzpatrick’s pension, which was $3,091.13 per month or $37,093.56 per year. Mr. Fitzpatrick’s pension allowance ended on January 31, 2016. Mr. Fitzpatrick appealed the Board’s decision to District Court.

On April 6, 2016, the Massachusetts Supreme Judicial Court issued a decision holding that pension forfeiture under G.L. c. 32, § 15(4) “qualifies as a ‘fine’ as that term is used in the excessive fines clause of the Eighth Amendment to the United States Constitution.” *Pub. Employee Ret. Admin. Comm’n v. Bettencourt*, 474 Mass. 60, 61 (2016). Mr. Fitzpatrick immediately challenged the forfeiture of his pension allowance, claiming it was an excessive fine.[[1]](#footnote-1) He sought to have his pension reinstated.

On April 27, 2016, the Chelsea Retirement System denied Mr. Fitzpatrick’s request to reinstate his pension. In its view, the Board lacked jurisdiction to determine constitutional law questions posed by forfeiture proceedings. Mr. Fitzgerald timely appealed to the Contributory Retirement Appeal Board.

**DISCUSSION**

The Chelsea Retirement System’s motion to dismiss Mr. Fitzpatrick’s appeal is allowed.

Neither the Division of Administrative Law Appeals (“DALA”) nor the Chelsea Retirement Board, as governmental agencies with limiting organic statutes, has jurisdiction to decide constitutional questions like the one raised by Mr. Fitzpatrick. DALA has held:

The determination of a constitutional challenge to agency action is beyond this forum’s jurisdiction if the challenge is to an operative statute or regulation, if it may be raised for the first time in a court without exhausting remedies at DALA, or if it presents a pure question of constitutional law and requires no specialized factfinding by this tribunal.

*Dep’t of Pub. Health WIC Program v. Toribio*, PH-10-764, Decision at 70-71 (Div. of Admin. Law App., Nov. 4, 2011), citing *Maher v. Justices of the Quincy Div. of the Dist. Court Dep’t.*, 67 Mass. App. Ct. 612, 855 N.E.2d 1106, 1111 (App. Ct. 2006). There is no specialized fact-finding that must occur before DALA in order for the constitutional question to be answered. *See Maher,* 67 Mass. App. Ct. at 621. Furthermore, while the Supreme Judicial Court in *Bettencourt* observed that the legislature could create “procedures to be carried out by administrative bodies such as the local retirement board” to evaluate a claim that pension forfeiture amounts to an excessive fine, it also noted that “there is currently no legislative authorization or direction” for such a process. *Bettencourt,* 474 Mass. at 77.

Additionally, Mr. Fitzpatrick’s constitutional claim for reinstatement, as well as his original forfeiture claim, are before the District Court pursuant to G.L. c. 32, § 16(3). The District Court is able “to ‘hear any and all evidence’ necessary to make the required factual finding” about the constitutional question raised. *Maher,* 67 Mass. App. Ct. at 621 n. 16, quoting G.L. c. 32, § 16(3)(a).

For the above-stated reasons, the Chelsea Retirement System’s motion to dismiss is granted, and Mr. Fitzpatrick’s appeal is dismissed.

Division of Administrative Law Appeals

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Bonney Cashin

Administrative Magistrate

DATED: September 29, 2017

1. The Social Security Administration’s life expectancy for Mr. Fitzpatrick is 84.4 years old. Since he was 66 years old at the time of his appeal, his total projected pension loss is $679,430. [↑](#footnote-ref-1)