

Mail Date: MAR 11 2008

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: Account of Thomas J. Maciulewicz
Docket No. 2007-19
Claim of Thomas J. Maciulewicz (Thomas)

Account of Thomas J. Maciulewicz
Docket No. 2007-20
Claim of Tara Maciulewicz (Tara)

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal, requesting that Claimants' Requests for Administrative Hearing be dismissed for legal insufficiency appearing on the face of the Request.

PSERS filed its Motion for Summary Judgment and Brief in Support of the Motion on December 4, 2007, and served a copy on Claimants as required by the General Rules of Administrative Practice and Procedure and this Board's regulations. 1 Pa. Code §§33.32, 33.35-33.36; 22 Pa. Code §§201.1, 201.3. Claimants did not file a response to PSERS' Motion.

Claimant Thomas is a retired member of PSERS. Claimant Tara is Thomas' former wife and is the alternate payee under an approved domestic relations order (ADRO), dated April 6, 2007. Claimants seek benefits that have been forfeited by operation of law under the Public Employee Pension Forfeiture Act (Pension Forfeiture Act), 43 P.S. §§ 1311-1315. Upon sentencing for an offense covered by the Pension Forfeiture Act, all benefits otherwise payable from a claimant's pension benefit, including the equitable distribution portion, are forfeited. 43 P.S. § 1313. On July 25, 2007, Claimant Thomas was sentenced for certain offenses to which he had pled guilty on May 2, 2007, including two counts of first-degree misdemeanor theft by deception of Millcreek

Township School District property and funds. These are offenses that invoke the provisions of the Pension Forfeiture Act. By letter dated August 14, 2007, PSERS notified Claimants that upon Thomas' guilty plea and sentencing for an offense covered by the Pension Forfeiture Act, all benefits otherwise payable from his pension benefit thereafter, including the equitable distribution portion, were forfeited.

The Pension Forfeiture Act requires the forfeiture of pension benefits if a public employee (including a public school employee) is convicted of an enumerated crime related to public employment. *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 (Pa. Cmwlth. 1999), *appeal denied*, 751 A.2d 194 (Pa. 2000). The constitutional validity of the Pension Forfeiture Act is well settled. *Shiomos v. State Employees' Retirement Board*, 626 A.2d 158 (Pa. 1993). PSERS does not have the discretion to waive the sanctions dictated by the Pension Forfeiture Act based on equitable or other considerations. *Apgar v. State Employees' Retirement Board*, 655 A.2d 185 (Pa. Cmwlth. 1994); *Gierschick, supra*. For these reasons, Claimants' contentions that their retirement benefits have been unconstitutionally confiscated must be dismissed. Moreover, the provisions of the Pension Forfeiture Act are expressly incorporated into the Retirement Code and trump any "property" or other right to benefits asserted by Claimants. 24 Pa.C.S. § 8533(b).

Further, because any benefit payable to the alternate payee under an ADRO is wholly derived from the forfeited benefit, 24 Pa. C.S. § 8533.1(a), no further payments can lawfully be made to Tara, the alternate payee. For purposes of the Pension Forfeiture Act, the member and alternate payee under an ADRO do not have separate interests in the member's pension benefit. Where the Pension Forfeiture Act applies, as here, the entire benefit is forfeited, including both the member's and the alternate payee's equitable distribution portions.

There are no disputed material facts at issue in this appeal. In the absence of disputed material facts, this Board has the authority to decide the legal issues in dispute without an evidentiary hearing. In determining whether the party moving for dismissal has met its burden, the Board must examine the record in the light

most favorable to the non-moving party, giving such non-moving party the benefit of all reasonable inferences, and all doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. Thompson v. Nason Hospital, 535 A.2d 1177 (Pa. Super. 1988); El Concilio De Los Trabajadores v. Commonwealth, 484 A.2d 817 (Pa. Cmwlth. 1984).

Accordingly, PSERS' Motion for Summary Judgment is granted.

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ORDER

AND NOW, upon consideration of Claimants' Requests for Administrative Hearing and PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimants' Requests for Administrative Hearing are DISMISSED in compliance with 22 Pa. Code §201.3(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: MAR 11 2008

By: Melva S. Vogler
Melva S. Vogler, Chairman