



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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PHILIP D. MURPHY
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SHEILA Y. OLIVER
Lt. Governor

February 10, 2020

Kathleen Naprstek Cerisano, Esq.
Zazzali, Fagella, Nowak, Kleinbaum & Friedman

[REDACTED]
[REDACTED]

RE: Kristen Barron-Geubtner

[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Naprstek Cerisano:

I am writing in reference to the denial by the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) of your client, Kristen Barron-Geubtner's request to waive accrued interest for the outstanding balance of her pension loan obligation owed as determined by the Division of Pensions and Benefits (Division). The Board initially reviewed and denied Ms. Barron-Geubtner's request at its October 3, 2019 meeting. You appealed the Board's decision via letter dated December 5, 2019. You do not dispute that Ms. Barron-Geubtner took the loan or that she owed interest as originally calculated on the loan. However, you argue that the Division was responsible for calculating the proper amount owed on the loan, and notifying the employer to take the proper deductions from Ms. Barron-Geubtner's paychecks. At its meeting of January 9, 2020, the Board considered your appeal and determined there are no material facts in dispute and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the Board at its February 6, 2020 meeting.

The Board has reviewed your written submissions and the relevant documentation and finds that the statutes, regulations and relevant case law governing the TPAF do not permit the

Board to grant Ms. Barron-Geubtner's request to waive the accrued interest charged by the Division on the outstanding balance of her loan obligation.

FINDINGS OF FACT

The record establishes that Ms. Barron-Geubtner was enrolled in the TPAF on September 1, 1989 as a result of her employment as a Teacher with the Brigantine Board of Education (BOE). Ms. Barron-Geubtner applied for a pension loan in 2000 and was issued a check¹ on May 31, 2000 in the amount of \$5,000.00 plus interest. A Certification of Payroll Deductions (Certification) was issued to her employer², to implement a loan repayment schedule of 24 monthly payments of \$219.81, for a total of \$5,275.44, beginning on September 1, 2000. The loan deductions from Ms. Barron-Geubtner's paycheck began according to schedule. The Division had received 21 of the 24 scheduled loan payments through September 30, 2002. Thus, the loan schedule was not completed, resulting in an outstanding loan balance.

On November 6, 2002, Ms. Barron-Geubtner took a pension loan against her TPAF account in the amount of \$8,350.00³ plus interest. The Division issued a new payment schedule, reflecting the updated loan totals and new loan deductions. The loan deductions were scheduled to begin on December 1, 2002, for a total of 40 payments in the amount of \$232.97⁴, for a total amount of \$9,318.80. The record before the Board establishes that the total amount listed on the December 1, 2002 certification was incorrect since loan payments for the previous loan were anticipated for October through December 2002; however, these payments were not received. Thus, the correct balance should have been \$9,758.42. Interest was charged from October 1, 2002 through December 31, 2002, when no payments were received. The record further indicates

¹ Check Number 168058

² Ms. Barron-Geubtner's employer, the BOE, should have provided her with a copy of the Certification.

³ Check Number 232419

⁴ Ms. Barron-Geubtner's employer, the BOE, should have provided her with a copy of the Certification.

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that Ms. Barron-Geubtner was off payroll from July 1, 2004 through August 31, 2006 and again from December 1, 2006 through August 31, 2008. No loan payments were received via payroll deductions for either period of time. As of June 30, 2010, the outstanding balance of the pension loan was \$1,690.37. Interest of \$665.83 was charged from July 1, 2010 through January 31, 2018 for a total of \$2,356.20. Interest was calculated at 4.00% per year from the date the loan check was issued until the date the loan is satisfied.

On January 2, 2018, an audit revealed that the outstanding loan balance on Ms. Barron-Geubtner's TPAF account as of January 31, 2018 was \$2,356.20 and the Division sent a revised Certification of Payroll Deductions to Ms. Barron-Geubtner's employer to begin payroll deductions on February 1, 2018 for 3 monthly payments at \$785.40. In response to Ms. Barron-Geubtner's inquiry regarding the notification, by letter dated January 31, 2018, the Division provided clarification with regard to the outstanding loan balance. The Division provided Ms. Barron-Geubtner with copies of the Certification of Payroll Deduction for the loan checks issued in 2000 and 2002 along with a breakdown of her pension loan activity.

On June 11, 2019, Kaitlyn E. Dunphy, Esq., filed a letter of representation explaining that she was retained to represent Ms. Barron-Geubtner in her appeal. Ms. Dunphy argued that the Division allowing interest to accrue over eight years while failing to realize a balance remained on the loan, and then requiring Ms. Barron-Geubtner to pay said interest, is inequitable, especially since Ms. Barron-Geubtner reasonably believed the loan had been paid in full. Ms. Dunphy also argued that requiring Ms. Barron-Geubtner to pay the accumulated interest would not "turn square corners" and also not construe the pension statutes liberally. Additionally, Ms. Dunphy argued that the doctrine of laches applies to this situation as eight years of interest was permitted to accrue as the Board failed to timely collect the full balance of the loan.

On October 3, 2019, the Board considered the submissions and all documentation; however, the Board denied the request to waive the accrued interest owed on the outstanding

balance of Ms. Barron-Geubtner's loan obligation. The basis of the Board's decision was set forth in its letter dated October 21, 2019.

Thereafter, Ms. Barron-Geubtner appealed the Board's determination. In addition to previous submissions, including those made by Ms. Dunphy, you claim that the Board failed to provide information regarding the closing agreement with the IRS and offered no explanation of why the TPAF would be at risk of losing its tax-qualified status if the accrued interest were to be waived. At its meeting on January 9, 2020, the Board determined that there were no material facts in dispute and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which constitutes the Board's Final Administrative Determination.

CONCLUSIONS OF LAW

The Board denied Ms. Barron-Geubtner's request to waive the accrued interest owed on the outstanding loan balance due her TPAF account. The Board relied upon N.J.S.A. 18A:66-35 and N.J.A.C. 17:3-4.4.

N.J.S.A. 18A:66-35 states in pertinent part:

an amount equal to not more than 50% of the amount of his accumulated deductions, but not less than \$50.00; provided, that the amount so borrowed, together with interest thereon, can be repaid by additional deductions from compensation, not in excess of 25% of the member's compensation, made at the same time compensation is paid to the member. The amount so borrowed, together with interest on any unpaid balance thereof, shall be repaid to the retirement system in equal installments by deduction from the compensation of the member at the time the compensation is paid or in such lump sum amount to repay the balance of the loan but such installment shall be at least equal to the member's rate of contribution to the retirement system and at least sufficient to repay the amount borrowed with interest thereon.

...

Loans shall be made to a member from his accumulated deductions. The interest earned on such loans shall be treated in the same manner as interest earned from investments of the retirement system.

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Further, “[t]he rate of interest for a loan requested by a member prior to the effective date of P.L.2007, c.92 (C.43:15C-1 et al.) shall be 4% per annum on any unpaid balance thereof.” N.J.S.A. 18A:66-35. After the enactment of Chapter 92, the State Treasurer sets “a commercially reasonable rate” on January 1 of each calendar year. Ibid. Additionally, N.J.A.C. 17:3-4.4 states:

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance...

The TPAF is a “qualified governmental defined benefit plan pursuant to sections 401(a) and 414(d) of the federal Internal Revenue Code of 1986, as amended, or such other provision of the federal Internal Revenue Code, as applicable, regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service.” N.J.S.A. 43:3C-18(a). The Director of the Division is “authorized to modify the provisions of the [TPAF], when a modification is required to maintain the qualified status of the [TPAF] under the Internal Revenue Code of 1986, applicable regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service (IRS).” N.J.S.A. 43:3C-18(c).

IRC Section 401(a) and federal tax law require that pension loans comply with IRC Section 72(p). Specifically, IRC Section 72(p)(2)(B) requires pension loans to be repaid within 5 years of issuance and IRC Section 72(p)(2)(A) prohibits total outstanding loan amounts from exceeding \$50,000. Ibid. If a member fails to repay the pension loan within the 5-year period or the amount exceeds the IRS limit, then the loan becomes a “deemed distribution” taxable as income to the member and subject to additional penalties. IRC Section 72(p)(1). The deemed distribution does

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not cancel the loan obligation, which still must be repaid to the Plan, with applicable interest. See Rev. Proc. 2016-51, Section 6.02(1).

There is no dispute that Ms. Barron-Geubtner took a loan from her TPAF account in 2000, and that she started repaying the loan through payroll deductions. Repayments ceased when Ms. Barron-Geubtner was separated from payroll and deductions were not taken from her payroll check. When a member returns from a leave of absence, the Division should be notified of the member's return by either the member or the employer. When the Division is notified of the member's return to employment, the loan balance is recertified to include the additional interest accrued when no loan payments were received. At no point was the Division notified of Ms. Barron-Geubtner's return to employment. Therefore, the Division did not realize at the time that scheduled loan deductions from Ms. Barron-Geubtner's paycheck were not submitted to the Division. When the Division realized Ms. Barron-Geubtner's loan was not being repaid, she was informed by the Division of the outstanding loan obligation, and thereafter the Division implemented a modified repayment schedule to repay her loan.

The Board is also aware that the issue of repayment of loans implicates more than just Ms. Barron-Geubtner's loan. Because the TPAF is a federally tax-qualified plan, as required by N.J.S.A. 43:3C-18(a), the TPAF's failure to comply with all the requirements of the IRC could result in the IRS determining that the TPAF would no longer be a tax-qualified plan under IRC Sections 401(a) and 414(d). To that end, the Board is aware that the State Treasurer and Director of the Division, in accordance with his authority and responsibility under N.J.S.A. 43:3C-18(c) to keep the TPAF tax-qualified, signed a Closing Agreement with the IRS. In addition to setting forth methods to repay certain loans, the Closing Agreement reiterates that the TPAF is subject to IRC Section 72(p). Even when a loan is not properly repaid under the provisions of IRC Section 72(p), and there is a reported deemed distribution, the deemed distribution would not relieve a member of the obligation to repay the loan, with interest.

Ms. Barron-Geubtner asserts that she should only be required to repay the principal and interest as originally calculated when she took the loan in May 2000. Additionally, Ms. Barron-Geubtner contends that the interest that accrued is not a result of her error. While the Board acknowledges that the Division did not realize at the time that scheduled loan deductions were not submitted to the Division, Ms. Barron-Geubtner never made an inquiry to the Division about the status of the loan. Per N.J.S.A. 18A:66-35, interest accrues on any unpaid loan balance. Because loan payments were not made or taken from Ms. Barron-Geubtner's payroll checks, the balance of her loan did not decrease as contemplated by the original loan term. Therefore, per the statutory requirements that govern the loan, N.J.S.A. 18A:66-35, there is additional interest that accrued on Ms. Barron-Geubtner's loan that must be repaid.

The Board also relies on its ability to correct errors pursuant to N.J.S.A. 18A:66-63, which states, in pertinent part:

If any change or error in records results in a member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then on discovery of the error, the board of trustees shall correct it and, so far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

While the Board noted the original arguments, and those in your appeal letter, the Board has no authority to grant your request to waive the amount of accrued interest charged on Ms. Barron-Geubtner's loan because doing so could harm the overall pension scheme. See Sellers v. Bd. of Trs., Police & Firemen's Ret. Sys., 399 N.J. Super. 51, 62 (App. Div. 2008). Reducing interest on the outstanding loan balance would violate N.J.S.A. 18A:66-35, IRC Section 72(p), and the State's Closing Agreement with the IRS, which could result in the TPAF no longer being considered a tax-qualified plan, which would affect the entire State, all employers in the TPAF, and every member and retiree.

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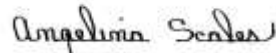
The Board notes that the statute of limitations you cited in your appeal letter, N.J.S.A. 2A:14-1, does not apply to this matter as it is not the filing of civil litigation, and, as noted above, the Board has the authority to correct errors pursuant to N.J.S.A. 18A:66-63.

As noted above, the Board has considered your personal statements and your written submissions and because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the TPAF's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right, if you wish, to appeal this final administrative determination to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625
Phone: (609) 292-4822

Sincerely,



Angelina Scales, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-4/as

c: DAG Amy Chung (ET)
L. Barnett (ET); D. Wood (ET)
Kristen Barron-Geubtner