

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Decedent, Patricia L. Franzen was employed by the Antioch Unified School District as a Head Custodian and by virtue of that employment was a local miscellaneous member of CalPERS. Ms. Franzen died on September 10, 2012, and was survived by her two sons, Respondent Phillip Garrido (Respondent Phillip) and Respondent Ronald Garrido (Respondent Ronald). Respondent Phillip appealed a determination made by CalPERS to accept the 2010 will of Patricia L. Franzen and supersede a 1997 beneficiary designation.

Ms. Franzen retired in 1997 and at that time, designated Respondent Phillip as the beneficiary of her death benefits.

On August 29, 2009, Respondent Phillip was arrested, pled guilty, and was sentenced to 431 years in prison. Almost a year later, Ms. Franzen executed a will, which divested any gifts to Respondent Phillip if he remained institutionalized for one year after her death, at which point any gifts become part of the residue of the estate. Respondent Ronald was designated as the beneficiary to receive the residue of the estate.

In a letter dated December 24, 2012, CalPERS informed Respondent Phillip that despite being named as the death benefit beneficiary in 1997, CalPERS has received and accepted the 2010 will and explained the following: "A 'writing,' such as a member's will or trust, may be accepted as a written beneficiary designation for the CalPERS death benefits if the writing shows the member's intent to designate the CalPERS benefits. Such intent would be demonstrated if the CalPERS benefits were specifically named as an asset to be administered by the will or trust, or if the otherwise entitled beneficiary(ies) are specifically disinherited. Therefore, based on the language contained in your mother's will, we accepted her will as a beneficiary designation of her estate. ..."

CalPERS received written communications from Respondent Phillip that asserted Ms. Franzen was not of sound mind at the time she executed the 2010 will and could not have been legally competent to create a valid will.

CalPERS then received written statements from the two individuals that witnessed Ms. Franzen execute her will in 2010. The witness statements indicated that Ms. Franzen had a "very good grasp of the reality and gravity of these things and the fact that she did not want to leave anything to Phillip if he were to remain in prison."

Prior to the hearing, CalPERS provided Respondent Phillip with a copy of the administrative hearing process pamphlet. CalPERS received written statements from Respondent Phillip that were addressed to the Administrative Law Judge (ALJ). Respondent Phillip requested that Counsel for CalPERS submit the written statements during the hearing on his behalf, which was done.

At the hearing, Respondent Ronald testified that Ms. Franzen's 2010 will was not contested, and the two witnesses of the will were life-long friends of his mother.

The ALJ determined that when all the evidence is considered, the determination that CalPERS made that it was the intent of Ms. Franzen when she executed her 2010 will to disinherit Respondent Phillip and designate Respondent Ronald as the beneficiary of her death benefits was reasonable.

The ALJ concluded that Respondent Phillip's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondent Phillip may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 18, 2015



CHRISTOPHER PHILLIPS
Senior Staff Attorney