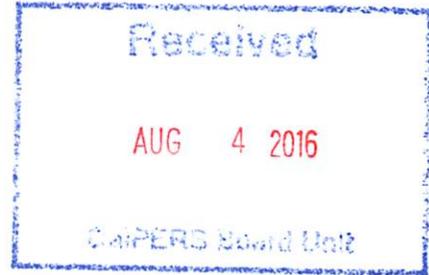


ATTACHMENT C
RESPONDENT'S ARGUMENT

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Gordon Sonne
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8 BEFORE THE BOARD OF ADMINISTRATION OF THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
9 STATE OF CALIFORNIA

10 In the Matter of the Request to Change
11 Retirement Election Option of:

Case No: 2013-1119

12 GORDON SONNE, Respondent

OAH No. 2016010756

13 and

Respondent Gordon Sonne's
Argument against the Proposed
Decision

14 THERESSA MCKINLEY, Respondent
15 _____/

16 Gordon Sonne went to the CalPERS office in Sacramento on November 27,
17 2002 for only one reason. He wanted assistance in completing his retirement
18 application in such a way that his then spouse Theresa Sonne (now Theresa
19 McKinley) would receive 25% of his option benefit payable after his death and his
20 son, Jason, would receive the remaining 75% of those benefits. He met with a
21 CalPERS representative who gave him directions on how to complete the application
22 and before leaving the CalPERS office, he submitted the completed application.
23 However, the application was completed incorrectly and, looking at the application,
24 it is easy to see that the completed application does not achieve Gordon Sonne's goal.
25 It does not name multiple beneficiaries for the option benefits.

26 The Administrative Law Judge has concluded that Gordon Sonne did not meet
27 his burden of demonstrating that a "reasonably prudent person acting under similar
28 circumstances would have made a similar mistake". That conclusion appears to be

1 based solely on the Judge's review of the retirement application itself, rather than a
2 review of the circumstances in this case.

3 A. The following facts were entered into evidence at the hearing in this
4 matter and are uncontradicted:

5 1. Gordon Sonne went to Sacramento to meet with a CalPERS
6 representative specifically because he found the CalPERS retirement application to
7 be so confusing that he simply did not know how to complete it to give Theresa
8 McKinley 25% of the option benefit and to give Jason Sonne the other 75%. At that
9 time, Gordon Sonne was anticipating a divorce after a short term marriage, a marriage
10 which had lasted for about 25% of his full career of 32 years. That was the specific
11 reason why he wanted to name Theresa McKinley as beneficiary to receive 25% of
12 his option benefit. He explained that in detail to the CalPERS Representative.

13 2. While in Sacramento meeting with that representative, he first made one
14 selection on the option election page, then crossed it out, initialed that cross out, and
15 made a different selection, all at the direction of the CalPERS representative who
16 seemed confused and unsure of herself.

17 3. The retirement application and the CalPERS Form 509 ("Beneficiary
18 Designation") were completed at the same time, as one form, and Gordon Sonne
19 wrote in both Theresa Sonne's name and Jason Sonne's name as beneficiaries on the
20 Beneficiary Designation form.

21 4. The application form and the beneficiary designation form which
22 Gordon Sonne completed are CalPERS forms dating from 2000. According to
23 Sabrina Hutchins' testimony, those forms had already been replaced by 2002 forms
24 at the time Gordon Sonne met with the CalPERS representative in Sacramento.
25 However, the CalPERS representative did not give Gordon Sonne the updated forms
26 to complete. It was clearly a breach of her job responsibilities that she did not do so,
27 because the 2002 Form is substantially less confusing and simplifies the process of
28 naming multiple beneficiaries, which is exactly what Gordon Sonne wanted to do.

1 5. When Sabrina Hutchins was asked at the hearing how an applicant
2 would designate multiple beneficiaries and then indicate the percentage of the option
3 which was being elected for each of those multiple beneficiaries on the outdated year-
4 2000 form, she looked at the outdated form and admitted it was confusing. She
5 actually suggested that the information would need to be shown on the Form 509 but,
6 then, after she looked at the Form 509, she admitted that designating multiple
7 beneficiaries for the option didn't belong on that page either. Finally, she opined that
8 Gordon could somehow write in the percentages elected for each beneficiary on the
9 outdated forms, even though there is no place on the form which asks for that
10 information, and she also suggested that Gordon could have written the multiple
11 beneficiary information on a separate sheet of paper or on the back side of the
12 application form. Based on the fact that she looked specifically at the Form 509 as
13 the place to indicate multiple beneficiaries, it is not unreasonable to assume that the
14 CalPERS representative told Gordon Sonne that he could name multiple beneficiaries
15 by placing both of their names on the Form 509.

16 6. The "Received" stamp on Gordon Sonne's application for retirement
17 shows that it was submitted on November 27, 2002, the date on which Gordon Sonne
18 met with the CalPERS representative in Sacramento. In other words, after Gordon
19 Sonne completed the forms, he submitted the entire application to CalPERS
20 immediately, rather than taking the application with him to be submitted later. As a
21 result, Gordon Sonne did not have an opportunity to review the forms later and realize
22 that the information given to him by the representative was in error and that he had
23 not succeeded in naming two beneficiaries to share Option 4 benefits.¹

24 7. Both Gordon Sonne and Theresa Sonne had placed their notarized
25 signatures on the blank application forms on November 22, 2002, several days before
26 the date that Gordon met with the representative in Sacramento. Gordon went to
27

28 ¹In fact, he did not find out that he had made an error, as he testified at the
hearing, until during the divorce proceedings in 2004.

1 Sacramento with an application which did not have the option election completed, but
2 which was already signed and notarized. That is confirmed both by the application
3 signature page itself and by the following notation on the Customer Touch Point
4 Notes for that date: "member already had notary sections completed, reviewed options
5 and application process" Government Code §21261 states clearly that a spouse
6 must sign the application form specifically for the purpose of acknowledging his/her
7 agreement with the CalPERS Member's elections, unless the spouse cannot be found.
8 Therefore, the representative should not have accepted Gordon's application until that
9 form had been re-signed by his spouse AFTER he made his option election. It is not
10 a stretch to believe that the representative who violated the law in so material a
11 manner would also have made a mistake in directing Gordon on how to complete the
12 application to do what he intended. More importantly, however, if the representative
13 had advised him that the application needed to be re-signed and re-notarized, he
14 would have taken the application with him (instead of submitting it that day) and
15 would no doubt have had a opportunity to read the application and realize that it did
16 not accomplish his goal as intended.

17 B. Until Sabrina Hutchins testified at the hearing, Gordon Sonne did not
18 realize that he had completed and submitted an outdated retirement application form.
19 Subsequent to the hearing date, he has been able to obtain a copy of the application
20 form which actually was current in 2002; that is, the application form which the
21 representative should have given him in place of the outdated form he had brought
22 with him. The "Option Election" pages for both versions of the retirement application
23 are attached for the Board's review. A review of both the outdated form and the
24 updated 2002 form is very instructive.

25 The outdated form (Exhibit A) shows three lines for the names of "Multiple
26 Lifetime Beneficiaries" but does not provide any place to indicate the percentage of
27 the Option 4 which each beneficiary will receive. On the other hand, the updated
28 "6/02" form (Exhibit B) has a space for the applicant to indicate the "specific dollar

1 or %” which each beneficiary shall receive, although the instructions on that form are
2 still somewhat confusing in regards to “court ordered” Option 4 beneficiaries. And,
3 in fact, the application forms have been modified at least once since then and, based
4 on the language on the more current forms, it appears that the changes were made
5 specifically to make the forms less confusing for the applicant. Therefore, as
6 indicated in the most current form (1/15, attached as Exhibit C), the section for “court
7 ordered” beneficiaries is now separated from the section for “Option 4 Multiple
8 Lifetime Beneficiaries” and there is a space for the applicant specifically to set out the
9 dollar or percentage of the benefit which he/she intends for each beneficiary to
10 receive.

11 Why did CalPERS modify the forms and replace the 2000 forms and the 2002
12 forms with updated forms? The obvious answer is that Gordon Sonne is not the only
13 “reasonably prudent” applicant who was unable to figure out the forms and who
14 inadvertently made an election which was not his/her intention because he followed
15 the CalPERS representative’s instructions.

16 C. The Touch Point Notes name “Sabrina Stroud” (now Sabrina Hutchins)
17 as the representative who assisted Gordon Sonne. “Sabrina Shroud” was NOT the
18 representative who met with him on that day in 2002, even though her name appears
19 in the Touch Point Notes. The representative who assisted Gordon Sonne was an
20 African-American female. Sabrina Hutchins is not. However, until Sabrina Hutchins
21 took the stand to testify, Gordon Sonne had no way of knowing that Touch Point
22 Notes were not accurate and that she was not the representative who directed him on
23 that date in 2002. Therefore, when CalPERS identified the witnesses who would
24 testify at the administrative hearing, he and his attorney assumed that the witness
25 identified by CalPERS was the person with whom he had met and that he would have
26 an opportunity to cross-examine that person.

27 Because he did not know that the information on the Touch Point Notes
28 incorrectly identified the CalPERS Representative who had given him bad

1 Re: In Re the Matter of the Request to Change
2 Retirement Option Selection of
3 Gordon Sonne and Theresa McKinley
4 Case No: 2013-1110
5 OAH No: 2016010756

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Alameda County, State of California. I am over the age of eighteen years and not a party to the within action. My business address is P.O. Box 2707, Oakland, CA 94602. On August 3, 2016, I served the following:

Respondent Gordon Sonne's Argument Against the Proposed Decision

in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Oakland, Alameda County, State of California, addressed as follows:

Cynthia A. Rodriguez
Senior Staff Attorney
California Public Employees Retirement System
Legal Office
Lincoln Plaza North
400 "Q" Street
Sacramento, CA 95811

Theresa McKinley

I declare under penalty of perjury that the above is true and correct. Executed August 3, 2016, at Oakland, California.



BARBARA A. GINSBERG

EXHIBIT A

Section E - Option Election

I have reviewed the options listed and elect the following retirement payment option.

Unmodified Allowance. I understand this is the highest monthly allowance payable to me, with no benefits payable upon my death (except the Survivor Continuance Benefit, if applicable). There is no return of contributions.

Option 1 Option 2 Option 2W Option 3 Option 3W

Handwritten initials

Option 4 (Please check one of the following)

- Option 2W & Option 1 Combined
- Option 3W & Option 1 Combined
- Specific Dollar Amount to Beneficiary \$ _____ .00
- Specific Percentage to Beneficiary _____ %
- Reduced Allowance for Fixed Period of Time _____ % or Dollar Amount, Through _____ / _____ / _____
- Multiple Lifetime Beneficiaries (complete information below)

_____	_____ / _____ / _____	_____
Name	Date of Birth	Social Security Number
_____	_____ / _____ / _____	_____
Name	Date of Birth	Social Security Number
_____	_____ / _____ / _____	_____
Name	Date of Birth	Social Security Number

Beneficiary Information

Beneficiary's Social Security Number _____

Name Reese Saansi Male Female

Date of Birth _____ Relationship Wife

Mailing Address _____ City _____ State _____ ZIP _____

I understand that my election is irrevocable and that by electing Option 2W, 3W, or 4, I forfeit my right to an increase in my allowance based on the conditions described in the Guide to Completing Your CalPERS Disability Retirement Election Application.

EXHIBIT B

Name: _____ Social Security Number: _____

Section C - Option Election

I elect the following retirement payment option. (Please check one only.) I understand that my election of option is irrevocable and that by electing Option 2W, 3W, or 4, I forfeit my right to an increase in my allowance based on the conditions described on pages 8 and 9 of this booklet.

- Option 1 Option 2 Option 2W Option 3 Option 3W

Beneficiary Information - Single Lifetime Beneficiary (Complete for Options 1, 2, 2W, 3, or 3W).

Social Security Number	Name	Date of Birth	M / F Sex	Relationship
Mailing Address		City	State	ZIP

Unmodified Allowance. I understand that there are no benefits payable upon death with this election (except the Survivor Continuance Benefit, if applicable). There is no return of contributions.

Option 4 - Single Lifetime Beneficiary (Check one of the following and complete the beneficiary information below).

- Option 2W & Option 1 Combined Option 3W & Option 1 Combined
 Specific Dollar Amount to Beneficiary \$_____.00 Specific Percentage to Beneficiary _____%
 Reduced Allowance for Fixed Period of Time _____ (%/or \$ Amount) through ____/____/____

Beneficiary Information (for Option 4 Single Lifetime Beneficiary).

Social Security Number	Name	Date of Birth	M / F Sex	Relationship
Mailing Address		City	State	ZIP

Option 4 - Multiple Lifetime Beneficiaries

Check to elect equal share for each beneficiary or show specific amount or percent in space below.

Option 4 - Court-Ordered Community Property (Refer to instructions for Community Property on page 10 and check one of the following. Complete the beneficiary information below, but do not complete the space for specific dollar or percent).

- Option 4/Unmodified Option 4/Option 1 Option 4/Option 2W Option 4/Option 3W

Beneficiary Information (for Option 4 Multiple Lifetime Beneficiaries or Option 4 Court-Ordered Community Property)

Social Security Number	Name	Date of Birth	M / F Sex	Relationship	Specific Dollar or %
Social Security Number	Name	Date of Birth	M / F Sex	Relationship	Specific Dollar or %
Social Security Number	Name	Date of Birth	M / F Sex	Relationship	Specific Dollar or %

EXHIBIT C

Name: _____ Social Security Number: _____

Section C - Option Election

I elect the following retirement payment option. (Please check one only.) I understand that my election of option is irrevocable and that by electing Option 2W, 3W, or 4, I forfeit my right to an increase in my allowance based on the conditions described on pages 8 and 9 of this booklet.

- Option 1 Option 2 Option 2W Option 3 Option 3W

Beneficiary Information - Single Lifetime Beneficiary (Complete for Options 1, 2, 2W, 3, or 3W).

Social Security Number	Name	Date of Birth	M / F Sex	Relationship
Mailing Address _____				
		City	State	ZIP

Unmodified Allowance. I understand that there are no benefits payable upon death with this election (except the Survivor Continuance Benefit, if applicable). There is no return of contributions.

Option 4 - Single Lifetime Beneficiary (Check one of the following and complete the beneficiary information below).

- Option 2W & Option 1 Combined Option 3W & Option 1 Combined
 Specific Dollar Amount to Beneficiary \$_____.00 Specific Percentage to Beneficiary _____%
 Reduced Allowance for Fixed Period of Time _____ (%/or \$ Amount) through ____/____/____

Beneficiary Information (for Option 4 Single Lifetime Beneficiary).

Social Security Number	Name	Date of Birth	M / F Sex	Relationship
Mailing Address _____				
		City	State	ZIP

Option 4 - Multiple Lifetime Beneficiaries

Check to elect equal share for each beneficiary or show specific amount or percent in space below.

Option 4 - Court-Ordered Community Property (Refer to instructions for Community Property on page 10 and check one of the following. Complete the beneficiary information below, but do not complete the space for specific dollar or percent).

- Option 4/Unmodified Option 4/Option 1 Option 4/Option 2W Option 4/Option 3W

Beneficiary Information (for Option 4 Multiple Lifetime Beneficiaries or Option 4 Court-Ordered Community Property)

Social Security Number	Name	Date of Birth	M / F Sex	Relationship	Specific Dollar or %
Social Security Number _____					
		Date of Birth	Sex	Relationship	Specific Dollar or %
Social Security Number _____					
		Date of Birth	Sex	Relationship	Specific Dollar or %
Social Security Number _____					
		Date of Birth	Sex	Relationship	Specific Dollar or %