

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

ATTACHMENT C

1 J. DAVID HORSPOOL [SBN 98587]
 2 HORSPOOL & HORSPOOL
 3 A Professional Corporation
 4 300 E. State Street, Suite 200
 5 Redlands, California 92373
 6 (909) 792-9660
 7
 8 Attorneys for CHANE BILLOW

(SPACE BELOW FOR FILING STAMP ONLY)



8 BEFORE THE
 9 OFFICE OF ADMINISTRATIVE HEARINGS
 10 FOR CALPERS

11 In the Matter of the)	CalPERS Case No: 2015-1132
)	
12)	OAH Case No. 2016010771
13 Appeal of Death Benefits)		
14 Payable Upon the Death of)		RESPONDENT CHANE BILLOW'S
15 David Duran)		ARGUMENT AGAINST PROPOSED
)	DECISION
16 CHANE BILLOW, CHASE BILLOW AND)		
17 JESSICA CRANE,)		
)	
18 Respondents.)		

19 INTRODUCTORY STATEMENT

20 The Proposed Decision submitted by Administrative Law Judge
 21 Karen J. Brandt should be rejected by the Board of
 22 Administration of the California Public Employees' Retirement
 23 System (Board) for the following reasons:

- 24 1. Judge Brandt incorrectly applied the law in this case.
- 25 2. Judge Brandt made erroneous conclusions based on the
- 26 undisputed facts of the case.
- 27 3. By adopting the Proposed Decision the Board will be
- 28 exposing members of the California Public Employees' Retirement

RESPONDENT CHANE BILLOW'S ARGUMENT AGAINST PROPOSED DECISION

1 System to incidents of undue influence which is becoming more and
2 more prevalent in our society as baby boomers age.

3 The Board has the responsibility to protect its members from
4 instances of undue influence, and should use this case to take a
5 strong stand against the use of undue influence on its members,
6 and thus protect its members from making significant changes in
7 established estate plans in the days immediately prior to their
8 death where the suspicion of undue influence exists.

9 JUDGE BRANDT INCORRECTLY APPLIED THE LAW IN THIS CASE

10 In paragraph 33 of the proposed decision, Judge Brandt
11 quoted a portion of Welfare & Institutions Code §15600, which led
12 her to conclude that the legislature did not intend its
13 provisions to apply to "CalPERS administrative proceedings
14 involving the issues raised in this case."

15 However, the following subsection (j) essentially invites
16 other interested parties to use the provision of Welfare &
17 Institutions Code §15600 et seq to protect elderly and dependent
18 adults from abuse, or seek redress for such abuse already
19 perpetrated against the elderly or dependent adult:

20 (j) It is the further intent of the Legislature in
21 adding Article 8.5 (commencing with Section 15657) to
22 this chapter to enable interested persons to engage
attorneys to take up the cause of abused elderly
persons and dependent adults.

23 The issue is whether or not the definition of "undue
24 influence" as set forth in Welfare & Institutions Code §15610.70
25 should apply to this case. As this is the definition a superior
26 court would consider in determining whether or not undue
27 influence was used to obtain an advantage over a dependent adult,
28 this is the standard the Board should also use. Otherwise,

1 respondents will be forced to present their case twice: once to
2 the Board (generally with the assistance of an administrative law
3 judge) and again in a superior court so the correct law could be
4 applied. So, although there is no specific law which makes the
5 definition of "undue influence" found in Welfare & Institutions
6 Code §15610.70 applicable to CalPERS proceedings, there is
7 nothing to prevent the Board from adopting that standard.

8 Furthermore, the trend in the law is to adopt this
9 definition. At the same time the legislature adopted the new
10 definition of undue influence as set forth in Welfare &
11 Institutions Code §15610.70, it also added a new section to the
12 Probate Code, §86, which adopts the definition found in Welfare
13 & Institutions Code §15610.70 for all purposes under the Probate
14 Code. That section adds: "It is the intent of the Legislature
15 that this section supplement the common law meaning of undue
16 influence without superseding or interfering with the operation
17 of that law." Thus, the legislature intended that for purposes
18 involving transfers of property on death, (such as the
19 designation of a beneficiary of CalPERS benefits on the death of
20 the member), that the common law meaning of undue influence would
21 be supplemented by the definition set forth in Welfare &
22 Institutions Code §15610.70.

23 In this case, Judge Brandt believed that she had to ignore
24 that law, and instead fall back on old case law which has little
25 application under the modern notions of undue influence. The
26 application of the correct law would have led to a different
27 result, finding that the beneficiary designation allegedly signed
28 by David Duran on March 5, 2014 was invalid.

1 JUDGE BRANDT MADE ERRONEOUS CONCLUSIONS BASED ON THE UNDISPUTED
FACTS OF THE CASE.

2

3 In the proposed decision, Judge Brandt made at least four
4 erroneous conclusions. First, Judge Brandt found that the
5 designation of Jessica Crane (Jessica) did not cause her to
6 receive an "undue benefit" from the March, 2014 Beneficiary
7 Designation. However, a review of the totality of the
8 circumstances leads to the opposite conclusion.

9 In her proposed decision, Judge Brandt lists several factors
10 upon which she relied in reaching this conclusion. However, all
11 of those factors were present when David Duran made his first
12 Beneficiary Designation in September, 2013, naming Chase Billow
13 (Chase) as the beneficiary of the Lump-sum portion of David's
14 death benefits. Those same factors were present in January, 2014
15 when David notified Chane Billow (Chane) that he was going to
16 change the beneficiary designation from Chase to Chane. Those
17 same factors were present when David actually made the change in
18 beneficiary designation in February, 2014. So what changed
19 between February, 2014 and March 5, 2014, to cause David to make
20 yet another change to a person he failed to name on two previous
21 occasions? Only his health, which declined significantly between
22 February 12, 2014 and March 5, 2014, and Jessica Crane's
23 discovery in February, 2014 that Chane was the beneficiary of the
24 lump-sum retirement benefit. Clearly, under these circumstances,
25 Jessica did receive an "undue benefit", as David had not
26 previously named her as his beneficiary for the lump-sum benefit.

27 Second, the very incident that Judge Brandt relied on to
28 conclude that David Duran was able to make his own decisions,

1 that of deciding to be rebaptized in The Church of Jesus Christ
2 of Latter-day Saint, was in fact an opportunity for Jessica to
3 further unduly influence David. Jessica and her husband, Robert
4 Crane, were the individuals on whom David relied for this most
5 significant step. If they had refused to help him, his eternal
6 salvation was in jeopardy (in David's mind). Clearly, David
7 would have done whatever he thought they would have wanted him to
8 do so they would help him take this most important step.

9 Third, Judge Brandt erroneously concluded that Jessica did
10 not isolate David because David was able to see his family.
11 However, she isolated him from the Billow family, who were the
12 true natural objects of his bounty. She refused to allow Nancy
13 Billow, his long-time friend, to visit David after February,
14 2014. Her offer to allow Chase and Chane Billow to continue to
15 visit David was hollow, in that she knew they both lived in the
16 East, and were unable to make the trip. Furthermore, she took
17 David's cell phone, which was his only means of communication
18 with Chase and Chane. She effectively isolated him from those
19 individuals he had previously benefitted, in a blatant attempt to
20 influence David into thinking the Billow family did not care for
21 him as a person.

22 Fourth, Judge Brandt found that undue influence was not
23 proven because Respondent Chane Billow did not present evidence
24 that Jessica had a confidential relationship with David, or that
25 she was his "fiduciary". This is incorrect in light of the
26 facts. A fiduciary is one in whom trust and confidence is
27 reposed with respect to one's affairs. The testimony offered by
28 Jessica herself was that David trusted her, and that she would

1 take care of his banking needs. Furthermore, she arranged for
2 him to take his medication, and as he got sicker, she took a more
3 active role in providing for his care. Clearly, she did have a
4 close and confidential relationship with him and she did act as
5 his fiduciary.

6 BY ADOPTING THE PROPOSED DECISION THE BOARD WILL BE EXPOSING
7 MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO
8 INCIDENTS OF UNDUE INFLUENCE WHICH IS BECOMING MORE AND MORE
9 PREVALENT IN OUR SOCIETY AS BABY BOOMERS AGE.

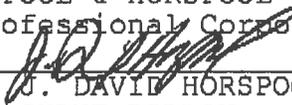
10 The legislature has recognized that undue influence is
11 becoming more and more prevalent as society ages. Those of the
12 "baby boomer" generation are more likely to be financially abused
13 than any other generation in our history. By adopting the
14 proposed decision, the Board will be signaling that it is not
15 concerned with this scourge, in essence turning its back on this
16 most vulnerable population. The Board should reject the proposed
17 decision and direct Judge Brandt to consider the evidence in
18 light of the definition of undue influence found in Welfare &
19 Institutions Code §15610.70 and Probate Code §86 as the more
20 modern application, and issue a new decision on that basis.

21 CONCLUSION

22 For the reasons set forth in the CLOSING ARGUMENT and the
23 REPLY BRIEF filed by Chane Billow, and for the reasons set forth
24 herein, the Board should reject the proposed decision of Judge
25 Brandt. For the reasons set forth above, the Board should make
26 this decision precedential.

27 DATED: *Nov. 4, 2016*

HORSPOOL & HORSPOOL
A Professional Corporation

28 By: 
J. DAVID HORSPOOL, Attorneys for
CHANE BILLOW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)

I am employed in the County of San Bernardino, State of California, where the mailing described below occurred. I am over the age of eighteen (18) years and not a party to this action. My business address is HORSPOOL & HORSPOOL, a Professional Corporation, 300 E. State Street, Suite 200, Redlands, California 92373.

I am readily familiar with the business practice at my place of business for collection and processing correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business with postage thereon fully prepaid.

On 11-4-16, I served the foregoing document, described below, on interested parties in said action by placing a copy thereof enclosed in envelope(s) addressed as follows:

DOCUMENT(S) SERVED

RESPONDENT CHANE BILLOW'S ARGUMENT
AGAINST PROPOSED DECISION

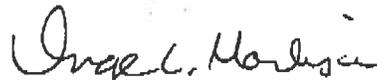
PERSON(S) SERVED

SEE ATTACHED MAILING LIST

On said date, at the offices of HORSPOOL & HORSPOOL, A Professional Corporation, 300 E. State Street, Suite 200, Redlands, California 92373, I placed such envelope(s) for deposit in the United States Postal Service by sealing and placing such envelope(s) for collection and mailing on that date following ordinary business practices.

Executed on 11-4-16, at Redlands, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Inge C. Marlisa

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

ESTATE OF DAVID DURAN
CASE NO.: RIP 1500276

James C. Paul
PAUL BENEFITS LAW CORPORATION
2356 Gold Meadow Way, Ste. 240
Gold River, CA 95670
Attny. for CALPERS

Jeff Grotke
LAW OFFICE OF JEFF GROTKE
320 North "E" St., Ste. 507
San Bernardino, CA 92401
Attny. for Jessica Crane