

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT(S)**

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8 Attorneys for Respondent GAIL A. OVERHOUSE

9 BOARD OF ADMINISTRATION  
10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

11 In The Matter of the Appeal to Purchase  
12 Community Property Redeposit of Withdrawn  
13 Contributions of

OAH Case No. 2019061232  
CalPERS Case No. 2019-0252

14 GAIL A. OVERHOUSE,

**BRIEF IN OPPOSITION TO ADOPTION  
OF HEARING OFFICER'S PROPOSED  
DECISION**

15 Respondent,

16 and

17 ESTATE OF RODNEY A. OVERHOUSE,

18 Respondent.

19 **I.**

20 **INTRODUCTION**

21 The hearing of this matter was held on Monday, July 22, 2019 before Administrative  
22 Law Judge Erin Koch-Goodman. Respondent Gail A. Overhouse appealed the Determination  
23 Letter (Exhibit 3<sup>1</sup>) by Sharon Hobbs, Assistant Division Chief, which stated that CalPERS had  
24 denied Ms. Overhouse's request to purchase (or redeposit) withdrawn contributions on the  
25 basis that "... CalPERS is legally bound by Government Code Sections 20751 and 21292 of the  
26 California Public Employees' Retirement Law." The Proposed Decision, upholding that

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28 <sup>1</sup> Exhibit references are to the Exhibits admitted at the hearing of this matter.

1 decision, is erroneous because it applies an incorrect interpretation of the relevant statutes.

2 II.

3 FACTUAL BACKGROUND

4 As was noted at the hearing of this matter, the facts in this case are not disputed. Ms.  
5 Overhouse is currently, and at all times relevant to this appeal was, an active CalPERS member  
6 whose marriage to Rodney A. Overhouse was dissolved in 2012. The couple had two children,  
7 Derek and Darby.

8 At the hearing below, Ms. Overhouse testified that her husband was an alcoholic whose  
9 behavior became intolerable, causing her to initiate dissolution proceedings in 2010. After two  
10 years of contentious negotiation, they finally reached a conclusion and their marriage was  
11 dissolved. The negotiations led to a "Stipulated Domestic Relations Order re Division of  
12 California Public Employees' Retirement System Benefits" filed April 10, 2012. (Exhibit 5,  
13 CalPERS000025 – 000031). Pursuant to this Order, Respondent's retirement account at  
14 CalPERS was separated on September 5, 2012.

15 Ms. Overhouse testified that her husband did not want their marriage dissolved and,  
16 though independently wealthy, he would not budge on the division of the retirement account  
17 she had built during her then-30 years of employment with the State of California. Thus the  
18 Order divided that account – Ms. Overhouse's only means of supporting herself during  
19 retirement – so that her former husband obtained 10.549 years of her service credit and  
20 contributions of \$75,936.99, with an equivalent reduction of her own account. (*Id.* at ¶ 6).

21 CalPERS sent a letter to Ms. Overhouse that stated in pertinent part:

22 If the nonmember receives a lump sum distribution by either a refund (or rollover)  
23 of the contributions and interest credited to the nonmember account, you will have  
24 the right to redeposit those contributions, plus interest, and restore the service  
25 credit to your account. Should Rodney Overhouse elect to receive a refund (or  
26 rollover) of their [sic] nonmember account, you may contact CalPERS to request  
27 instructions on how to purchase the service credit that was transferred to their [sic]  
28 nonmember account. Please keep in mind, to be eligible for a Community  
Property Redeposit, the law specifically requires both the nonmember refund (or  
rollover) and your request to purchase the contributions and service be completed  
prior to your effective date of retirement.

1 (Exhibit 6, PERS000034 at fourth paragraph.) As testified by Respondent and  
2 confirmed in the text of the letter sent to her by CalPERS, there was no mention of the statutory  
3 source of the statements made in that paragraph.

4 Ms. Overhouse encountered Rodney during the early part of September 2012, and  
5 noticed that he appeared quite ill, so she called her son to tell him that his father needed urgent  
6 medical attention. He was hospitalized in late September and died unexpectedly of liver failure  
7 brought on by his alcoholism on [REDACTED], less than a month after the Agreement was  
8 filed. (Overhouse Testimony; Certificate of Death, Exhibit 7.) At the time of his death he had  
9 not applied for a distribution of his separate account. Several months later, CalPERS sent his  
10 children "Applications for Active-Member/Non-Member Survivor Benefits," which they filed  
11 shortly thereafter with the assistance of Executor (and Rodney's brother) Van Overhouse and  
12 the children's mother. (Exhibits 8 and 9.) The contributions were withdrawn when CalPERS  
13 made lump sum distributions to Derek and Darby Overhouse on July 15, 2013. (Exhibits 11  
14 through 14 , CalPERS000063 – 000073.)

15 Ms. Overhouse testified that the next year, 2014, she contacted CalPERS and tried  
16 unsuccessfully to restore the 10.549 years of service credit and add the \$75,936.99 back into  
17 her retirement account. She spoke with Michelle Gann, Customer Account Service Division at  
18 CalPERS, but her application was denied on the basis that the non-member (Rodney) had "not  
19 elected to receive a refund" of the nonmember funds. (Exhibit 16, June 9, 2014 letter to  
20 Respondent from Michelle Gann, Customer Account Service Division.) She did not understand  
21 the explanation from Ms. Gann, and there was no mention in the letter of any right Ms.  
22 Overhouse might have had to file an appeal of this denial.

23 Ms. Overhouse testified that since she is nearing retirement, she discussed the denial  
24 and looked into it, but could not uncover a reason for it, remaining baffled why she could not  
25 replace the funds. She spoke with CalPERS Benefit Services Division Chief Anthony Suine in  
26 August 2018, who told her that the scenario of a death benefit and withdrawal of funds was  
27 actuarially the same; but her attempt to re-deposit the funds was thwarted once again by letter of  
28 August 22, 2018, this time from Sharon Hobbs, Assistant Division Chief for CalPERS.

1 (Exhibit 3, CalPERS000016 – 000017.) Respondent appealed the denial, and that decision was  
2 upheld in the Proposed Decision.

3 III.

4 LEGAL ANALYSIS

5 1. **Laws Relating To Pension And Retirement Benefits Are To Be Liberally Construed  
6 In Favor Of The Beneficiary.**

7 Laws relating to pension and retirement benefits are to be liberally construed  
8 to the end that the beneficent aims of such legislation may be achieved. (Citations.)  
9 We have observed that ‘pension programs for public employees serve two objectives:  
10 to induce persons to enter and continue in public service and to provide subsistence  
11 for disabled or retired employees and their dependents. (Citation.)’ [Citation  
12 omitted.]

13 Acknowledging this general rule of statutory construction in retirement law,  
14 appellants nonetheless argue that the precise language of the statute prohibits the  
15 repayment plan authorized here. Appellants note that the statute in referring to pre-  
16 retirement payroll deduction, uses the word “installments” in plural form. The  
17 purpose of inducing persons to enter and continue in public service and of providing  
18 subsistence for disabled or retired employees would not be met by adopting the strict  
19 and narrow construction of the language of the statute which appellants favor. The  
20 statute requires that an election to re-deposit benefits must be made while the member  
21 or former member is still an employee; payroll deduction must be authorized and  
22 commenced prior to retirement; after retirement, deductions from pensions must be  
23 continued in the same amount as previously authorized. Therefore, a single deduction  
24 toward re-deposit of benefits, authorized before retirement, does comply with all of  
25 these requirements. A more restrictive interpretation of the language of the sections  
26 would result in severe financial hardship not consistent with the obvious legislative  
27 intent behind California's pension laws. [Citation omitted.]

19 *Henry v. Board of Administration* (1980) 113 Cal.App.3d 658, 664 [169 Cal.Rptr. 889, 892–893].

20 2. **An Executor Like Rodney Overhouse’s Brother Stands In The Shoes of the Deceased.**

21 Respondent’s argument that the Executor of Rodney Overhouse’s estate is his functional  
22 equivalent as a matter of law was not addressed in the Proposed Decision. This was a serious  
23 error. It is well established law in California that an executor stands in the shoes of the deceased.  
24 Cases so holding are numerous. In *Estate of Davies* (2005) 127 Cal.App.4th 1164, 1173–1174 [26  
25 Cal.Rptr.3d 239, 246–247] the court stated “We begin by disposing of the easy issue first. As  
26 Timothy contends, Patricia (as Douglas's surviving spouse and executrix) does indeed stand in  
27 Douglas's shoes and she cannot escape the no-contest clause on the ground she personally is not a  
28 named beneficiary. (Code Civ. Proc., § 377.30 ...)” The court in *Goldstein v. Prien* (1956) 143

1 Cal.App.2d 123, 128 [299 P.2d 344, 347] noted that “The position of respondents, as purchasers  
2 from the executor, is analogous to the position of one purchasing from a bona fide holder, which  
3 subsequent purchaser is held to stand in the shoes of the bona fide holder and like him to take the  
4 property free from the equities of third persons, irrespective of whether the subsequent purchaser  
5 had notice or not.” And in *Estate of McGuigan* the Court stated as follows:

6 “In this case, the son did not die until after the decedent's estate escheated to the  
7 State, and thus, he had a right under section 1355 to file a claim for the escheated  
8 estate. The appellant, as the administrator of the son's estate “stands in the shoes of,  
9 and for the purposes of ... litigation possesses the same but no greater rights, than the  
10 intestate.” (*Anderson v. Nelson* (1927) 83 Cal.App. 1, 5, 256 P. 294.) Therefore, the  
11 appellant, as the administrator of the son's estate, was entitled to assert the son's claim  
12 to the decedent's estate pursuant to section 1355, to the same extent that the son could  
13 have.” *Estate of McGuigan* (2000) 83 Cal.App.4th 639, 653 [99 Cal.Rptr.2d 887,  
14 896], at fn. 11, *as modified on denial of reh'g* (Oct. 3, 2000)

15 Under these authorities, Rodney Overhouse's brother Van, as his brother's executor, stood  
16 in Rodney's shoes in withdrawing his retirement funds from CalPERS. This was simply not  
17 addressed in the Proposed Decision.

18 **3. Applicable Government Code Provisions.**

19 There are only two Government Code sections applicable to this case: sections 20751 and  
20 section 21292.<sup>2</sup> Section 20751 states:

21 If a nonmember, as defined in Section 21291, withdraws accumulated contributions  
22 in accordance with Section 21292, the member may redeposit those contributions  
23 pursuant to this article.

24 Government Code section 21292, in turn states as follows:

25 (a) The nonmember who is awarded a separate account shall have the right to a  
26 refund of the accumulated contributions in the separate account of the nonmember.

27 (b) The nonmember shall file an application on a form provided by this system to  
28 obtain the refund.

(c) The refund shall be effective when this system deposits in the United States mail  
an initial warrant drawn in favor of the nonmember and addressed to the latest  
address for the nonmember on file with this system.

<sup>2</sup> CalPERS neither presented any relevant argument nor evidence supporting the relevance of  
Exhibit 17, the NonMember Refund/Rollover Election Form, at the hearing. Ms. Overhouse  
testified that she was never made aware of that form prior to preparing for the hearing, and there  
was no other evidence provided regarding it. In any event, a mere form cannot change the law.

1 (d) The nonmember is deemed to have permanently waived all rights in this system  
2 and all rights to any future retirement benefits pertaining to the service credit  
3 accumulated contributions, or both, when the refund becomes effective.

4 (e) The nonmember may not cancel a refund once it has become effective.

5 (f) The nonmember shall have no right to elect to redeposit the refunded accumulated  
6 contributions from the nonmember's account after the refund is effective, and shall  
7 have no right to redeposit under Section 20750 or 20752, or to purchase service credit  
8 under Article 4 (commencing with Section 20990) or Article 5 (commencing with  
9 Section 21020) of Chapter 11 after the refund becomes effective.

10 (g) If at the time of the marriage dissolution or legal separation, the member does not  
11 have the necessary minimum credited service to retire, the nonmember shall receive  
12 a refund of the accumulated contributions placed in the nonmember's account.

13 Rodney Overhouse was a "Nonmember" of CalPERS, having been "awarded a distinct and  
14 separate account reflecting specific credited service and accumulated contributions." (Gov. Code  
15 § 21291.) The separate account was established at CalPERS on September 5, 2012, just one  
16 month prior to his death.

17 **IV.**

18 **ARGUMENT**

19 CalPERS asserts, and the Proposed Decision erroneously found, that the Government Code  
20 sections set forth above forbid Respondent from redepositing the funds that were withdrawn from  
21 her account in 2012, but these sections do not say that. Section 20751 states that the member may  
22 redeposit the withdrawn funds if the nonmember "withdraws" the funds in the separate account.  
23 The statute does not mention a "refund" nor does it further explain the meaning of "withdraw."  
24 Neither the letter sent by Michelle Gann on June 9, 2014 nor the letter from Ms. Hobbs sent on  
25 August 22, 2018 explains the connection between a withdrawal and a refund. The testimony of  
26 CalPERS witness Tana Camargo also did not address this.

27 Rodney Overhouse's account was terminated by his brother Van, the executor of  
28 Rodney's will, by the complete withdrawal of the funds (including interest), and payment in  
full to Mr. Overhouse's children. This left CalPERS in precisely the same position as if Mr.  
Overhouse had withdrawn the funds while living. In doing so, Van was acting as an executor,  
with complete legal authority of his brother Rodney, as though Rodney had himself made the  
withdrawal of the funds.

1 There is no actual difference between a withdrawal of separated funds and a distribution  
2 of the funds pursuant to a direction of the decedent; the deceased – in this case Rodney  
3 Overhouse - could no longer make any claim to CalPERS for future retirement benefits  
4 pertaining to the service credit and accumulated contributions, and if the Fund is reimbursed  
5 fully (which Ms. Overhouse has testified she is prepared to do) there will have been no effect  
6 whatsoever on the system since the 2012 distribution.

7 Ms. Camargo testified that an additional small amount was paid to the beneficiaries  
8 (about \$4,000.00) pursuant to Government Code section 21535, which she described as “bonus  
9 interest.”<sup>3</sup> Section 21535 is simply a mechanism to adjust the interest rate so as to pay out the  
10 amount deposited that was actually earned by the Fund while the amount was on deposit. More  
11 importantly, Ms. Overhouse testified that she would repay that portion of the payment to  
12 CalPERS (payment for one month only), so the Fund will not have lost anything if she is  
13 allowed to restore her service credit.<sup>4</sup> The Proposed Decision correctly did not give any weight  
14 to this argument by CalPERS.

15 Although CalPERS claimed that there would be an impact to the employer were this  
16 appeal granted, it did not establish any such impact. The description of that effect was entirely  
17 speculative, depending on numerous factors completely unrelated to Ms. Overhouse’s situation,  
18 such as when and whether the employer contributions were paid back to the employer, the  
19 interest rates at the times of calculation, apparently even the status of the employer’s account at  
20 CalPERS. In fact, when asked what happened to the employer contribution to Rodney’s  
21 retirement account after his contributions were paid to his children, Ms. Camargo testified that  
22 that they could be paid back to the employer, could remain on deposit and or even paid to other  
23 retirees. The implication of this testimony is that the payout to Rodney’s children actually  
24 benefitted the employer’s account with CalPERS. Thus the impact on the employer of granting

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<sup>3</sup> This is apparently a term of art within CalPERS, for it is not found in the statute.

27 <sup>4</sup> Ms. Camargo testified that Government Code section 20750 governs a repayment to CalPERS of  
28 withdrawn contributions. At the hearing, Respondent stated that she would repay the funds, so  
section 20750 is inconsequential for purposes of this Appeal.

1 this appeal is completely a matter of speculation. As with CalPERS's contention in the prior  
2 paragraph, the Proposed Decision correctly did not give any weight to this argument.

3 No court has interpreted these statutes as CalPERS does. In the face of this, these  
4 statutes must be interpreted to provide Respondent "the beneficent aims of [this] legislation  
5 ...." and "...to provide subsistence for ... retired employees and their dependents." (*Henry v.*  
6 *Board of Administration, supra*, at pg. 664.)

7 V.

8 **THE DECISION OF THE HEARING OFFICER DID NOT RELY ON**  
9 **A CORRECT INTERPRETATION OF THE STATUTES**

10 The Proposed Decision incorrectly addresses Ms. Overhouse's concerns, giving three  
11 reasons for denying Respondent's claim. The first argument is that "... a payout is different  
12 than a refund." (Proposed Decision at pg. 9, ¶ 14.) It is not clear what was meant by "a  
13 payout" since none of the statutory language includes that term. Second, no authority was  
14 referred to for her contention that interest is paid for survivor's benefits but not for a "refund."  
15 Nor is it clear that that constitutes a difference substantial enough to dismiss the argument.

16 It is also unclear why the ability of an executor to make a claim on behalf of a deceased  
17 nonmember would have any effect on this case. Even if such a claim were made, all that would  
18 result is that some erroneous calculations, if proven, would need adjustment. There is nothing  
19 unusual about this when one of the major duties of CalPERS is to provide pension payments to  
20 retired members.

21 The third faulty analysis by the Hearing Officer below was that the statutory language,  
22 being clear, must be followed. However, the argument simply assumes the conclusion; stating  
23 that "a refund of a nonmember account is a condition precedent to the redeposit of community  
24 property taken from a member's account" adds nothing to the analysis, for it simply assumes  
25 the meaning of "refund of a nonmember account," which was the core question presented at the  
26 hearing. When Rodney's Executor performed the acts needed to withdraw the funds from  
27 Rodney's account, he performed substantively the same functions that are set out in Gov. Code  
28 section 21292. The Proposed Decision simply overlooks any analysis of this and elevates form

1 over substance.

2 VI.

3 CONCLUSION

4 Ms. Overhouse should be permitted to redeposit the funds which were withdrawn from  
5 her retirement account in 2012 in order to provide the retirement benefits appurtenant to her  
6 actual years of service for the State. Government Code sections 20751 and 21292 give  
7 CalPERS the authority to grant the Respondent's request to use her own funds to replace the  
8 contributions separated from her account and restore the associated service credit. There will  
9 be no loss to the Retirement Fund by so doing; the funds separated from her CalPERS account  
10 were withdrawn and distributed to Rodney's children in 2013. Respondent merely wishes to  
11 use her own funds to replace those separated earlier, prior to retirement.

12 Dated: November 1, 2019

MESSING ADAM & JASMINE LLP

13  
14 By Steven Kaiser

15 Steven Kaiser

16 Attorneys for Respondent GAIL A. OVERHOUSE  
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**PROOF OF SERVICE**

**In the Matter of the Appeal to Purchase Community Property Redeposit of Withdrawn Contributions of Gail A. Overhouse**

**OAH Case No. 2019061232  
CalPERS Case No. 2019-0252**

**STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 980 9th Street, Suite 380, Sacramento, CA 95814.

On November 4, 2019, I served true copies of the following document(s) described as **BRIEF IN OPPOSITION TO ADOPTION OF HEARING OFFICER'S PROPOSED DECISION** on the interested parties in this action as follows:

Matthew G. Jacobs, General Counsel                      *Attorneys for California Public*  
Kevin Kreutz, Senior Attorney                              *Employees' Retirement System*  
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Office of Administrative Hearings                      *Via OAH Secure e-FILE*  
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Sacramento, CA 95833-4231

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

Executed on November 4, 2019, at Sacramento, California.

  
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NOV - 4 2019

**FACSIMILE TRANSMISSION**

DATE: November 4, 2019

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