



# State of New Jersey

PHILIP D. MURPHY  
*Governor*

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
P. O. BOX 295

ELIZABETH MAHER MUOIO  
*State Treasurer*

SHEILA Y. OLIVER  
*Lt. Governor*

TRENTON, NEW JERSEY 08625-0295  
Telephone (609) 292-7524 / Facsimile (609) 777-1779  
TRS 711 (609) 292-6683  
[www.nj.gov/treasury/pensions](http://www.nj.gov/treasury/pensions)

JOHN D. MEGARIOTIS  
*Acting Director*

January 16, 2020

Sent via Email to: [REDACTED]

ZAZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN  
Richard Friedman, Esq.,  
[REDACTED]

RE: Rory Maradonna  
PERS [REDACTED]  
OAL DKT. NO. TYP 09272-2014S

Dear Mr. Friedman:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At its meeting on December 11, 2019, the Board of Trustees of the Public Employees' Retirement System (PERS) reviewed the Initial Decision (ID) of the Hon. Elia A. Pelios, ALJ, dated October 7, 2019, together with the evidence submitted by the parties, the exceptions submitted by your office and Alison Keating, Esq., Deputy Attorney General for the Board, on November 4, 2019 and November 4, 2019, respectively. Thereafter, the Board voted to adopt the ALJ's factual findings as well as his legal conclusion which affirmed the Board's determination that Mr. Maradonna's retirement should be cancelled, that he should be reenrolled in PERS and that he is liable for repayment of the retirement benefits he has received and for pension contributions on the salary he earned during his improper post-retirement employment.

However, the Board voted to reject the ALJ's legal conclusion regarding the application of an equitable remedy which limits Mr. Maradonna's liability for repayment from April 1, 2008 through November 22, 2011, and reaffirmed its original determination regarding the total amount that Mr. Maradonna is required to reimburse the PERS. As such, the Board directed the Secretary to prepare the Findings of Fact and Conclusions of Law as outlined below, which were approved by the PERS Board at

its meeting on January 15, 2020. These Findings of Fact and Conclusions of Law constitute the Final Administrative Determination in this matter.

### **FINDINGS OF FACT<sup>1</sup>**

Briefly summarized, Mr. Maradonna was enrolled in the PERS when he began his employment with Rutgers as Assistant Director of the Student Center in 1974. R-1.<sup>2</sup> In 1986, Maradonna signed a one-page Election of Retirement Coverage form by which he elected to “remain in the [PERS] . . . and waive [his] statutory right to participate in the Alternate Benefit Program [ABP],” a separate pension system for which full-time employees of Rutgers are generally eligible. R-2; P-6. Under this waiver, Maradonna remained in PERS until his retirement date. On December 14, 2007, Maradonna filed an application for retirement from PERS, effective March 1, 2008. R-4. While his retirement application was pending, Maradonna accepted an employment offer as Manager of Academic Programs, with a start date of April 1, 2008. R-9. Without knowledge that Maradonna returned to employment, the PERS Board approved Maradonna’s retirement application on May 21, 2008. The Board’s approval letter noted to Maradonna that he:

should expect to be reenrolled in the PERS if you accept employment after retirement with the State or any of the local participating public employers in a PERS covered position and your total salary from all public employment exceeds \$15,000 in a calendar year.

If you return to public employment following your retirement, you must notify our Office of Client Services immediately ...

[Ibid.]

In November 2011, after Maradonna’s name appeared on an exception list from the Department of Labor which indicated he earned more than the statutory minimum for PERS retirees from a public employer, the Division of Pensions and Benefits (Division) commenced an investigation into Maradonna’s post-retirement employment for compliance with N.J.S.A. 43:15A-57.2. ID at 4; R-

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<sup>1</sup> The Board adopted the ALJ’s Findings of Fact and the same are incorporated but not repeated herein. The summary is provided for context to the Board’s Final Administrative Determination.

<sup>2</sup> “R” and “P” refer to the evidence in the ID’s Exhibit List.

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6; R-7. Rutgers University provided the requested information on or about February 1, 2012. ID at 4;  
R-7. The Division notified Maradonna of the results of the Division's audit via letter dated September 24, 2013. P-1. In the letter, the Division advised Maradonna that:

Based on information provided . . . by your employer, Rutgers, the Division has determined that your PERS retirement from your employer effective March 1, 2008 was not bona fide; that you remained an active member of PERS after your retirement date.

[Ibid.]

The Division also noted that, although the position he held post-retirement was eligible for coverage under the ABP, the fact that Maradonna had elected to irrevocably waive eligibility for the ABP prevented him from accepting an ABP position. Ibid. Thus, the PERS post-retirement employment rules applied to his return to employment. The Division further found that

[o]n March 25, 2008, or twenty four days after [Maradonna's] retirement date, an administrator from Rutgers completed and signed a payroll authorization to re-hire [Maradonna]. This confirms [Maradonna] and Rutgers had already been planning for [his] continued employment at Rutgers prior to [his] retirement becoming due and payable.

Ibid.

Based on its investigation, the Division determined that Maradonna's retirement should be cancelled and that he must re-enroll in the PERS, and therefore he is not eligible to receive his retirement benefit until he again retired. ID at 8. The Division sought to recover all retirement benefits paid to him from March 1, 2008 and projected to October 1, 2013. Ibid. In addition, the Division concluded that Maradonna was required to make pension contributions on the salary earned while he remained employed in a PERS-eligible position, beginning March 1, 2008 until he again retired. Ibid. Finally, the Division advised Maradonna that because he should have been reenrolled in PERS, effective March 1, 2008, the amount he owed the Division would increase the longer he remained employed. Maradonna appealed the Division's decision to the Board. The Board affirmed the Division's decision and Maradonna appealed the decision to the Office of Administrative Law.

The ALJ affirmed the Board's decision that Maradonna had signed an irrevocable waiver of his right to enroll in the ABP, and therefore his post-retirement employment would be governed under PERS rules. The ALJ found that Maradonna failed to separate from service as required and simply continued as an active PERS member while simultaneously receiving both a pension and a salary. ID at 13. Accordingly, the ALJ found that Maradonna's retirement should have been cancelled effective April 1, 2008, that he was not entitled to receive his retirement benefit because he had not separated from service, and that he would be required to remit pension contributions on salary earned post-retirement. ID at 22.

Although the ALJ found that Maradonna simply continued employment in a PERS-covered position rather than retiring from service and was required to return the pension benefits he was not entitled to, the ALJ then applied equitable principles and limited the repayment period to April 1, 2008, to November 22, 2011. Ibid. The ALJ relied upon the November 22, 2011 date to limit the repayment period, finding that it was the date the Division first notified Rutgers of the Division's audit of his post-retirement employment. Ibid. The ALJ found that a five-year repayment schedule should be implemented, as it was undisputed that beginning in 2008, Maradonna's annual salary plus his pension benefit ranged upward towards \$190,000. ID at 22.

### **LEGAL CONCLUSIONS**

After careful consideration, the Board voted to adopt the ALJ's Findings of Fact and the Conclusion of Law regarding Maradonna's waiver of enrollment in ABP and the PERS return to employment provisions applying to Maradonna, but to reject the ALJ's Conclusion of Law applying equitable principles to reduce the amount of pension benefits Maradonna received while he worked in a PERS-covered position in violation of the PERS return to employment rules.

As noted above, the ALJ limited the repayment period to the date of Maradonna's retirement, April 1, 2008, through November 22, 2011, which coincides with the date the Division notified Rutgers regarding its investigation into Maradonna's post-retirement employment. The Board found that the

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circumstances in this case do not meet the threshold to apply equitable principles to limit Maradonna's liability. Although the total amount of repayment is a large figure, it is clear that rather than stop working, Maradonna continued to be in violation of PERS rules for years, even after being informed of the Division's investigation and its finding that he was not in compliance with the PERS return to work rules. The Board notes that such action is exactly what the return to employment statutes and regulations are designed to prevent.

In making its determination, the Board noted that well-settled case law does not support the application of the equities here as in Vliet v. Board of Trustees, Public Employees' Retirement System, 156 N.J. Super. 83 (App. Div. 1978), Knox v. Board of Trustees, Public Employees' Retirement System, No. A-1444-10 (App. Div. Feb. 23, 2012), and Chiappini v. Board of Trustees, Public Employees Retirement System, No. A-3983-09 (App. Div. July 29, 2011), all of which are readily distinguished on its facts.

The Board particularly noted that Maradonna earned over \$200,000 in combined salary and pension benefits each year, whereas our courts have applied equitable remedies wherein it would not have been reasonable for the member to place their pension at risk for a salary far less than their pension benefit. For example, in Vliet, the Appellate Division concluded "total reimbursement would be inequitable" because Vliet would not have accepted "part-time employment at \$2,000 a year if he had known that he would have to give up a pension of approximately \$5,300 a year." 156 N.J. Super. at 90. The court held Vliet was required to "pay to PERS all moneys earned by him while employed" by the county and collecting PERS benefits instead. *Ibid.* The court stated the remedy "restore[d] Vliet to full pension status . . . without [the] earnings . . . which would otherwise have interrupted his retirement benefits." *Ibid.*

Likewise, Knox retired from full-time employment as an assistant prosecutor with the Union County Prosecutor's Office ("UCPO") and began "work with the UCPO . . . as a 'seasonal employee in the forfeiture unit' at a salary of \$20,000 per year, based upon twenty hours of work per week, with no fringe benefits" before the effective date of his retirement. Knox, slip op. at 3 (alteration in original).

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Knox earned a total of \$54,160 while employed by the UCPO before the effective date of his retirement. *Id.* at 13. Consequently, the Board sought repayment of the \$258,191.93 in retirement benefits Knox collected while employed by UCPO before the effective date of his retirement. *Ibid.* As in *Vliet*, the Appellate Division held Knox's proper repayment obligation was the salary earned before the effective date of his retirement and not the retirement benefits Knox collected. *Id.* at 19-20.

Similarly, Chiappini retired from full-time employment as a teacher with the Juvenile Justice Commission and began work as a part-time adjunct professor at Cumberland County Community College ("CCCC") before the effective date of his retirement. Chiappini, *slip op.* at 2-4. Chiappini earned a total of \$8,775 while employed by CCCC before the effective date of his retirement. *Id.* at 2. As a result, the Board sought repayment of the \$32,479.95 in retirement benefits Chiappini collected. *Ibid.* The Appellate Division again held the appropriate remedy was instead for Chiappini to pay PERS the salary he earned while employed by CCCC before the effective date of his retirement. *Id.* at 22.

The Board rejected the ALJ's equitable remedy here as it ignores well-settled legal precedent. The three cases cited above are inapposite of the circumstances herein. The *Vliet*, *Knox*, and *Chiappini* courts noted that there was no rationale as to why each of the members would have placed their pension at risk in order to return to employment and earn a salary much lower than their pension benefit. In each case, repayment of salary earned was permitted in light of the gross disparity between the pension benefit and the member's post-retirement salary.

In stark contrast to the precedent mentioned above, Maradonna's annual salary exceeded his annual pension benefit and there is no basis upon which to conclude that he would have declined the more lucrative employment with Rutgers in favor of receiving his PERS retirement benefits, especially in light of his wife's loss of employment. The Board, therefore, rejects the ALJ's application of an equitable remedy and reinstates its original decision requiring Maradonna to repay the pension benefits he received while simultaneously receiving a salary post-retirement.

While Maradonna never severed service with Rutgers to become eligible for a retirement benefit, even if he had, his return to employment would have required his re-enrollment in PERS pursuant to N.J.S.A. 43:15A-57.2, which states, in pertinent part:

a. Except as provided in subsections b. and c. of this section, if a former member of the [PERS], who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the [PERS], his retirement allowance . . . shall be canceled until he again retires.

Such person shall be re-enrolled in the [PERS] and shall contribute thereto at a rate based on his age at the time of re-enrollment. . . .

. . . .

b. The cancellation, re-enrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the [PERS] who, after having been granted a retirement allowance, becomes employed again by: (1) an employer or employers in a position or positions for which the aggregate compensation does not exceed \$10,000 per year . . . .

[Ibid.]

Our courts have long noted that “[T]he effect of the statute is that one who has begun receiving pension benefits . . . may not continue receiving those benefits ‘while continuing in employment’ in the same position or in any other position requiring PERS membership.” Stevens v. Bd. of Trs., Pub. Employees’ Ret. Sys., 309 N.J. Super. 300, 303 (App. Div. 1998) (quoting Vliet, 156 N.J. Super. at 89). “The purpose is to prevent professionals from manipulating the pension system by working part-time for governmental agencies while receiving a public pension.” Ibid. Certainly, the same principles would apply with respect to full-time employment which exceeds the member’s pension benefit.

Maradonna’s earnings greatly exceeded the salary exemption provided for in N.J.S.A. 43:15A-57.2(b). Thus, this was not the case of a member who missed compliance with the return to employment rules by a few days, and even if Maradonna waited until thirty days after his retirement was approved on May 21, 2008, the statute requires that his retirement would be cancelled and he would be reenrolled in the PERS as he accepted employment in a position governed by the PERS.

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The Board also rejected the ALJ's equitable remedy because unlike in Vliet, Knox, and Chiappini, the remedy does not "restore[] [Maradonna] to full pension status . . . without [the] earnings . . . which would otherwise have interrupted his retirement benefits." Vliet, 156 N.J. Super. at 90. Contrarily, the equitable remedy recommended by the ALJ provides Maradonna with a windfall by weighing "the financial impact repayment would have on him" over the harm to PERS. (ID at 17). The Board has a "fiduciary duty to its members to protect the financial integrity of the fund." Francois v. Bd. of Trs., Pub. Employees' Ret. Sys., 415 N.J. Super. 335, 357 (App. Div. 2010) (citing Mount v. Trustees of Pub. Employees' Ret. Sys., 133 N.J. Super. 72, 86 (App. Div. 1975)).

Finally, the remedy as imposed by the ALJ has the effect of allowing Maradonna to keep all of the PERS retirement benefits he collected after November 22, 2011, while he continued working and earning a salary at the same time he received his pension benefit. There is no question his failure to comply with the PERS post-retirement rules greatly increased the amount of money he had to repay. The ALJ's remedy ignores the court's admonishment in Vliet that members should not "play heads I win tails you lose with the Division of Pensions." Vliet, supra, 156 N.J. Super. at 90. Here, even after Maradonna knew that the Division found he was in violation of the return to employment statute and regulations, he continued working for many years while the litigation continued and the amount he would be required to repay increased. An equitable remedy under such circumstances, where the member expects to "benefit from retirement and public employment simultaneously," simply cannot be sustained. *Ibid.*

For these reasons the Board adopted the ALJ's Findings of Fact and Conclusion of Law as outlined above, but rejected the ALJ's application of an equitable remedy. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.



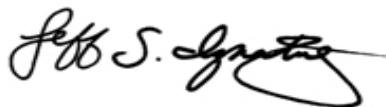
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You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey.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

Superior Court of New Jersey

Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz". The signature is fluid and cursive, with a large loop at the end.

Jeff Ignatowicz, Secretary  
Board of Trustees  
Public Employees' Retirement System

G-2/JSI

C: DAG Amy Chung (ET); Sharon Fenstermacher (ET); D. Dinkler (ET)  
L. Barnett (ET); Rory Maradonna