

Mail Date: MAR 11 2008

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF WILLIAM E. WALLACE (D)
DOCKET NO. 2006-28
CLAIM OF BEVERLY RAWLS

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Opinion and Recommendation of the Hearing Examiner, PSERS' Exceptions to the Opinion of the Hearing Examiner, Intervenor's Exceptions to the Opinion of the Hearing Examiner, and PSERS' Letter Brief Opposing the Intervenor's Exceptions in the above-referenced matter.

The Board hereby notes the following two exceptions made by PSERS to the Hearing Examiner's Opinion and Recommendation in order to conform to the record in this matter:

1. Page 5, footnote 1 states: "[i]ronically, the PSERS letter of November 6, 2006 referenced the account of 'William Wallace, Jr.' in notifying Claimant that it would not accept the Notice signed by 'William Wallace, Jr.,' since it was not signed by the *Member*, 'William Wallace.'" PSERS' letter dated November 6, 2006, does reference the account of "William Wallace, Jr." in the subject line, but clearly states in the body of the letter: "This POA does not comply with Pennsylvania's execution requirements, namely the notice provision required by 20 Pa.C.S. § 5601(c). Specifically, the notice provision was not signed by the member." The November 6, 2006 letter did not

distinguish between William Wallace, Jr. and William Wallace. Thus, the November 6, 2006 letter did not notify Claimant that it would not accept the Notice signed by "William Wallace, Jr.," because it was not signed by "William Wallace" as the Hearing Examiner contends. There is, however, a different letter, dated November 3, 2006, that referenced the account of "William E. Wallace" in the regarding line and stated in the body of the letter: "This POA does not comply with Pennsylvania's execution requirements, namely the notice provision required by 20 Pa.C.S. § 5601(c). Specifically, the notice provision was not signed by the member, William Wallace, but was signed by William Wallace, Jr." This clarifying exception, which does not affect the ultimate result, is granted.

2. Page 6 states: "[t]he testimony revealed that they were in the midst of a bitter divorce and that Ms. Phyllis Wallace did not even visit William Wallace as he lie dying in the hospital (although she testified that she tried to visit, she was apparently stopped by the family, and made no effort to circumvent this limitation)." The testimony and evidence presented revealed that William Wallace was married to Phyllis Wallace at the time of his death, and that although the parties were separated, no action in divorce had been filed between William Wallace and Phyllis Wallace. (N.T. 80; Exhibit 1). This exception also does not affect the ultimate result and is granted.

The Intervenor also excepted on the ground that the Hearing Examiner erred by concluding that the signature on the Power of Attorney was that of the Decedent, claiming that the signatures are not similar. The Board concludes that the Hearing Examiner did not commit an error of law by determining that the Power of Attorney and Notice dated September 12, 2006, were signed by the Decedent, William Wallace. The

Board concludes that Claimant did produce credible evidence that the signature on the September 12, 2006 Power of Attorney and Notice was that of Decedent; and further concludes that Intervenor failed to provide credible evidence to rebut the testimony presented by Claimant and the witnesses that prove that Claimant's exercise of authority was valid.

With the above supplemental comments and clarification, the Board finds appropriate the Hearing Examiner's Findings of Fact, Discussion, Conclusions of Law, and Recommendation. Accordingly, we hereby adopt them as our own.

IT IS HEREBY ORDERED that the Claimant's request to be named as sole beneficiary of Decedent's retirement account is DENIED; that the Intervenor's request to have the Nomination of Beneficiaries form, dated April 1, 2003 and received by PSERS on April 4, 2003, be recognized as effective is DENIED; and that Marjorie F. Wallace, the secondary beneficiary under the Nomination of Beneficiaries form dated September 13, 2006 and received by PSERS on September 19, 2006, is named as the sole beneficiary of Decedent's retirement account.

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Dated: MAR 11 2008

By: Melva S. Vogler
Melva S. Vogler, Chairman

his retirement account, those being Phyllis Wallace (his wife) and Marjorie Wallace (his mother). (N.T. 15, Exhibit PSERS-9)

5. On September 19, 2006, PSERS received a Nomination of Beneficiaries form, dated September 13, 2006, and signed by Claimant as power of attorney for Mr. Wallace, designating Claimant as the sole primary beneficiary of his account, and Marjorie F. Wallace as the sole contingent/secondary beneficiary. (N.T. 11, Exhibit-PSERS 2)

6. On September 20, 2006, PSERS sent Mr. Wallace a letter, indicating that his September 13, 2006 Nomination of Beneficiaries form was not accepted because it was not “signed by the MEMBER or an approved Power of Attorney.” (N.T. 11, Exhibit PSERS-3)

7. PSERS then received a General Power of Attorney, dated September 12, 2006, designating Claimant as Mr. Wallace’s power of attorney. (N.T. 12, Exhibit PSERS-4)

8. After sending the Power of Attorney to the legal department for review, PSERS sent a letter to Decedent, dated October 13, 2006, indicating that the Power of Attorney was not accepted because it did not comply with “the notice provision required by 20 Pa. C.S. § 5601(c) and the acknowledgement by the agent required by 20 Pa. C.S § 5601(d).” (N.T. 13, Exhibit-PSERS 5)

9. On October 23, 2006, PSERS received another General Power of Attorney, again dated September 12, 2006. (N.T. 13, Exhibit PSERS-6)

10. This second Power of Attorney was sent to the legal department for review. (N.T. 13-14)

11. PSERS sent another letter to Decedent, dated November 3, 2006, indicating that the second Power of Attorney was rejected because “the notice provision was not signed by the member, William Wallace, but was signed by William Wallace, Jr.” (N.T. 14, Exhibit PSERS-7)

12. PSERS then sent a letter to Claimant, dated November 6, 2006, indicating that since the Power of Attorney was deemed invalid because it was not signed by the Member, the Nomination of Beneficiaries form that she signed as Power of Attorney for Decedent was also deemed invalid, and thus Decedent’s account would be divided based on the April 4, 2003 Nomination of Beneficiaries form. (N.T. 14-15, Exhibit PSERS-8).

13. Claimant filed a Request for Administrative Hearing on the above issue, dated November 15, 2006.

14. On December 14, 2006, Attorney Douglas P. Earl filed a Petition to Intervene in the Administrative Appeal, on behalf of Phyllis Wallace.

15. On December 17, 2006, Marjorie F. Wallace filed a document that was accepted as a Petition to Intervene in the Administrative Appeal filed by Claimant.

16. On January 10, 2007, Claimant filed a Response to the Petition to Intervene filed by Attorney Earl on behalf of Phyllis Wallace.

17. On February 6, 2007, the Board granted the intervention for Phyllis Wallace and for Marjorie Wallace.

18. On June 13, 2007, a hearing on the above-referenced Administrative Appeal was held before Independent Hearing Examiner Michael L. Bangs, Esquire.

Discussion

The law regarding Powers of Attorney is set forth in the Pennsylvania statutes. In order to be valid, a Power of Attorney “shall be signed and dated by the principal by signature or mark, or by another on behalf of and at the direction of the principal. If the power of attorney is executed by mark or by another individual, then it shall be witnessed by two individuals, each of whom is 18 years of age or older.” 20 Pa.C.S. § 5601(b). Additionally, all Powers of Attorney must have a “Notice,” that is signed by the principal (or, if not signed by the principal but later challenged, the agent has the burden of proving that his exercise of authority was proper). 20 Pa.C.S. § 5601(c). Finally, “[a]n agent shall have no authority to act as agent under the power of attorney unless the agent has first executed and affixed to the power of attorney an acknowledgement...” 20 Pa.C.S. § 5601(d). If a valid Power of Attorney exists, a third party (in this case, PSERS) must comply with the directive of the agent. 20 Pa.C.S. 5608.

William Wallace signed the initial Power of Attorney received by PSERS (Exhibit 4), and although not necessary, his signature was witnessed by two others, Marjorie Wallace and Denise Williams. Even more significantly, Mr. Wallace’s signature was witnessed by Notary Public Denise R. Burgess, who signed and sealed in witness thereof. However, this Power of Attorney did not have the Notice or the Acknowledgement required by Pennsylvania Statute, and was therefore properly rejected by PSERS.

The second Power of Attorney received by PSERS (Exhibit 6) was the same initial document with Mr. Wallace’s signature, the signature of the two witnesses, and the notarization by Ms. Burgess. However, this second Power of Attorney also had an Acknowledgment by the Agent, Claimant Beverly Rawls, dated September 12, 2006. This second Power of Attorney also

had the “General Durable Power of Attorney Notice”, signed by Mr. Wallace, that is the subject of contention in this Appeal.

Arguments were made that it was not actually Mr. Wallace who signed the Notice provision on September 12, 2006. Testimony was given by Phyllis Wallace, who had been married to William Wallace, that it was not his signature on the Power of Attorney or the Notice provision. (N.T. 86, 90) However, it is understandable that Mr. Wallace’s signature may not look as it did previously, when he was in good health. The signatures on the Power of Attorney and on the Notice provision are very similar, with the only significant difference being the addition of “Jr.” on the one. Furthermore, both of these signatures were signed and sealed by a Notary Public, and it would be a stretch of the imagination to believe that the Notary Public was colluding with Claimant in order to forge the signature of the Decedent.

The basis for PSERS denial of this Power of Attorney was that it was not signed by the “Member,” Mr. William Wallace, but rather by “William Wallace, Jr.” However, this is not of import, as it is apparent that Mr. Wallace was known both as “William Wallace,” as well as “William Wallace, Jr.” The most obvious example of this is the PSERS letter of November 3, 2006, which was addressed to “William E. Wallace,” while the PSERS letter of November 6, 2006, referring to the same person, referenced “William Wallace, Jr.”¹ Furthermore, in Phyllis Wallace’s own exhibit, their Marriage Record of 2003, Decedent signed as “William E. Wallace, Jr.”

¹ Ironically, the PSERS letter of November 6, 2006 referenced the account of “William Wallace, *Jr.*” in notifying Claimant that it would not accept the Notice signed by “William Wallace, Jr.,” since it was not signed by the *Member*, “William Wallace.” (Emphasis added).

Even if not convinced that his signature was valid, Claimant need only prove, under Pa. C.S. § 5601(c) that her exercise of authority was valid. The exercise of authority under review in this case is Claimant's completion of Mr. Wallace's September 13, 2006 Nomination of Beneficiaries form via the Power of Attorney. It is hardly unbelievable that Mr. Wallace wanted to eliminate Phyllis Wallace as a beneficiary of his account. The testimony revealed that they were in the midst of a bitter divorce, and that Ms. Phyllis Wallace did not even visit William Wallace as he lie dying in the hospital (although she testified that she tried to visit, she was apparently stopped by the family, and made no effort to circumvent this limitation). (N.T. 88)

Accepting the Power of Attorney as validly executed, the issue becomes the September 13, 2006 Nomination of Beneficiaries Form. Acting as Mr. Wallace's Power of Attorney, Claimant completed this Form, naming herself as Primary Beneficiary of his Account. However, under Paragraph 11 of the Power of Attorney, the Agent (Claimant) "shall be prohibited...from (a) gifting, appointing, assigning or designating any of my assets, interests or rights, directly or indirectly, to my Agent...." Thus, Claimant's nomination of herself as beneficiary must fail, resulting in the reversion of the account to the Contingent or Secondary Beneficiary, Marjorie F. Wallace.

Conclusions of Law

1. To be valid, a Power of Attorney must be signed by the Principal, and contain a Notice provision and an Acknowledgement. 20 Pa.C.S. § 5601.
2. The Principal must also sign the Notice provision of the Power of Attorney, or, if not, the Agent must prove that her exercise of authority was proper. 20 Pa.C.S. § 5601(c).
3. Decedent's second Power of Attorney was validly issued, and contained a Notice provision and an Acknowledgement.
4. The Notice provision of the Power of Attorney was signed by the Decedent, and witnessed and sealed by Notary Public Denise Burgess.
5. The second Power of Attorney satisfied all of the statutory requirements, and thus validly named Claimant Beverly W. Rawls as Power of Attorney for decedent William E. Wallace, Jr.
6. As the Power of Attorney, Claimant had the authority to complete the Nomination of Beneficiaries Form on behalf of Decedent.
7. PSERS is required to follow the directive of a validly executed Power of Attorney. 20 Pa.C.S. § 5608.
8. The Nomination of Beneficiaries Form completed by Claimant as Power of Attorney named herself as the sole primary beneficiary, and Marjorie F. Wallace as the sole contingent/secondary beneficiary.
9. Under the Power of Attorney, Claimant was prohibited from making herself the beneficiary of Decedent's account.

10. Because Claimant was prohibited from naming herself as the beneficiary of Decedent's account, the account passes to the Secondary Beneficiary, Marjorie F. Wallace.

Recommendation

This Hearing Examiner recommends that Power of Attorney be upheld, and that the September 13, 2006 Nomination of Beneficiaries form be accepted as validly executed by the Power of Attorney. However, Paragraph 11 of the Power of Attorney prohibits Claimant from naming herself as the beneficiary of the account, and thus the account should pass to the Secondary Beneficiary, Marjorie F. Wallace.

Respectfully submitted,

BY: Michael L. Bangs
MICHAEL L. BANGS
Hearing Examiner

Date: 12/17/07