

HAYSKAR, WALKER, SCHWERER, DUNDAS & McCAIN, P.A.
ATTORNEYS AT LAW

GARRISON M. DUNDAS
STEPHEN G. HAYSKAR
STEVEN R. McCAIN (1949-2016)
ROBERT V. SCHWERER
JAMES T. WALKER

RENAISSANCE FINANCIAL CENTER
130 SOUTH INDIAN RIVER DRIVE, SUITE 304
FORT PIERCE, FLORIDA 34950
TELEPHONE: (772) 461-2310
FAX (772) 461-6790

August 5, 2020

Keith Stephens, Chair of the Board of Trustees
Fort Pierce Retirement System
City of Fort Pierce
100 North U.S. Highway One
Fort Pierce, FL 34950

RE: Proposed Policy Governing Recovery of Unauthorized Payments

Dear Keith:

This letter is addressed to you in your capacity as Chair of the Board of Trustees for the Fort Pierce Retirement System and, through you, the remaining Trustees. My purpose in addressing this letter to you is to respond to discussion of Trustees at their last Board meeting of July 16, 2020, bearing upon expression of interest in establishing a formalized policy governing recovery of unauthorized payments received by survivors of retirants who, unknown to the City, were deceased.

With this in mind, a proposed amended draft of Board Rule 17 (Administration of Benefits) is prepared and enclosed for consideration and possible adoption by the Board. Note that such draft is incomplete: There are two "decision points" which are thought to be added hereafter, based upon decision-making by the Board in the course of deliberation regarding the proposed draft rule. The first such decision point involves the level below which an overpayment should be regarded as "de minimis" so as to forego the cost of collection. For the sake of illustration, it will be recalled that one of our open collection accounts involves the remaining sum of \$.17. Obviously that's not worth pursuing. But at what point does collection effort become worthwhile? It seems to me that this is a question the Board needs to resolve and will add to the final draft rule whatever figure the Board resolves upon.

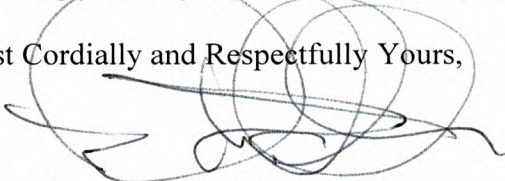
A second point of decision arises out of the question of what pre-suit interest, if any, is to be demanded from unauthorized third parties. Our actuary, Brad Armstrong, was asked for his own view on the subject and a copy of our email exchange there is additionally attached. My recommendation to the Board on that subject is this: Whenever any individual is to be placed into formal collection, that should be posted as an agenda item to be discussed at the meeting. If the Board determines that such individual should be subjected to collection, any motion to such

effect should establish both a schedule for repayment and a pre-suit interest rate. Such rate - reflecting Brad Armstrong's thinking - could range anywhere from 0% to, say, 6% per annum. Only in the event it is necessary to proceed with a formal lawsuit would we then wish to seek the highest interest rate available at law, the "legal rate" (right now, for instance, the "legal rate" of interest is 6.03%).

It is hoped that this letter, with its attachments, is deemed responsive to the Board's interest in the topic but should there be further questions or matters to address, I am pleased to give this such further attention as the Board might find satisfactory.

Thanking you for your attention, I am and shall ever continue to remain, as always,

Most Cordially and Respectfully Yours,

A handwritten signature in black ink, appearing to be "James T. Walker", written over a circular stamp or seal that is mostly obscured by the ink.

James T. Walker, Esquire

JTW/dam

Attachments

cc: Pete Sweeney, City Attorney
Robert V. Schwerer, Esquire

Jim Walker

From: Brad.Armstrong@grsconsulting.com
Sent: Tuesday, July 21, 2020 3:45 PM
To: jimw@jimwalkerlaw.com
Cc: jmorris@cityoffortpierce.com; debbi0903@aol.com; psweeney@cityoffortpierce.com; C0284@grsconsulting.com
Subject: RE: Retirement (Ft. Pierce Retirement System)

Jim,

This is in the domain of individual assumptions versus group assumptions. It is often the case that overpayments or excess payments are not charged interest retroactively in the absence of a judgment there was a deliberate and willful attempt to defraud the Retirement & Benefit System (RBS). So, in presumed innocent cases, basic arithmetic can be used to determine the amount to be collected. If the survivors or the estate are unable or unwilling to make the RBS whole in a lump sum payment, then it is my recommendation to use the current interest rate used to determine the actuarial equivalent of optional forms of payment, which is six percent per annum. It is also referred to as regular interest. If you need any assistance setting up amortization schedules or you have any further clarifications, questions or comments, please let us know.

Healthy regards,
Brad



Brad Lee Armstrong
Senior Consultant & Actuary
One Towne Square | Suite 800 | Southfield, MI 48076
Phone: 248.799.9000 | Direct: 248.226.7513 | Fax: 248.799.9020 | Mobile: 248.921.6876

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From: Jim Walker < >
Sent: Monday, July 20, 2020 11:31 AM
To: Armstrong, Brad (SOP1) < >
Cc: 'Johnna Morris' < >; 'Debra McCain (Debbi)' < >; 'Peter Sweeney' < >
Subject: Retirement (Ft. Pierce Retirement System)

Brad, your thoughts and words of wisdom would be appreciated.

The Ft. Pierce Retirement System has on a number of occasions paid out monies to retirants who, unknown to the city, were deceased. Their survivors nevertheless continued to collect the benefits without notifying the System. When the matter is discovered, well, of course collection efforts are initiated. The Trustees recently expressed interest in formalizing the terms and methodology of these collection initiatives. Among other things, this involves setting a standardized interest rate on unreimbursed funds, in those instances where the survivor and City agree to provide for repayment over a period of time. In drafting of a standardized Promissory Note, to support such structured repayments,

might you be able to recommend preferred language about what the Promissory Note should say on the subject of interest?

Sincerely,

/s/

James T. Walker
Gen. Counsel, Ft. Pierce Retirement System

772-461-2310
Hayskar, Walker, Schwerer, Dundas & McCain, PA
130 S. Indian River Dr., Ste 304
Ft. Pierce, FL 34950

Rule 17. Benefit Administration.

Administration of benefits awarded by the Board shall be subject to the following provisions:

Section (a). By annually, once every two years, the Secretary shall verify a beneficiary's continuing entitlement to receipt of pension payments. The Secretary shall send the beneficiary notice to return a provided mandatory information request form by a date certain, for the purpose of receiving payments and to establish continuing entitlement to receipt of such payment. Failure to complete and return the form by the date certain will result in a suspension of the monthly benefit.

Section (b). Each mailing of a benefit payment shall be accompanied by this written notice in large, bold, capped print: WARNING: THIS CHECK MAY BE NEGOTIATED ONLY BY THE NAMED PAYEE, EXCEPT AS OTHERWISE AUTHORIZED BY THE NAMED PAYEE OR THE CITY FINANCE DIRECTOR. PERSONS OTHER THAN THE NAMED PAYEE WHO CASH THIS CHECK, CONVERT THE PROCEEDS OR OTHERWISE APPROPRIATE SUCH MONIES WITHOUT AUTHORIZATION OF THE FINANCE DIRECTOR MAY BE SUBJECT TO CRIMINAL PENALTY FOR VIOLATION OF LAW AND THE CITY OF FORT PIERCE RESERVES ALL RIGHTS TO PROSECUTE SUCH PERSONS AND TO FURTHER PURSUE ANY AND ALL REMEDIES FOR RECOVERY, WITH INTEREST, OF ALL MONIES TAKEN, CONVERTED OR APPROPRIATED WITHOUT AUTHORIZATION.

Section (c). In the event the Secretary finds that there has been an unauthorized taking, conversion or appropriation of retirement benefits by any person other than the intended retirant or beneficiary, the Secretary shall immediately investigate and then report the matter to the Board, except that if the sum is \$ _____ or less, it shall be deemed de minimis and shall not be considered for collection. The Board shall consider the fiduciary interests of the Retirement System, shall take appropriate steps to secure recovery of all such monies, and shall:

- (1). Determine whether such unauthorized person be referred for criminal prosecution; and
- (2) Order commencement of civil collection. Before suit is commenced, the unauthorized recipient of funds shall first be given opportunity to agree to voluntary repayment, by execution of a note, the form of which accompanies this section. The Board shall fix a schedule for repayment and further fix a rate of pre-suit interest. If the unauthorized recipient wishes, upon execution of the note, to thereafter

request the Board to reconsider either or both of the schedule and interest rate, on grounds of hardship, the recipient may petition for modification. Suit shall be initiated promptly upon default of such note and judgment obtained, together with costs, attorney's fees and interest at the legal rate.

PROMISSORY NOTE

\$ _____, Florida

For value received, the undersigned jointly and severally agrees and promises to pay to the order of: **CITY OF FORT PIERCE for the use and benefit of the FORT PIERCE RETIREMENT SYSTEM**, the principal sum of \$ _____ with interest thereon at the rate of _____% per annum from the date hereof until maturity, being payable as set forth below in lawful money of the United States of America at: **the Finance Department for the CITY OF FORT PIERCE, 100 North U.S. #1, Fort Pierce, FL 34950**, or such other address as the holder from time to time may specify by written notice to the maker, the first payment due immediately and with subsequent payments to be made thereafter at thirty (30) day intervals, in accordance with the attached monthly schedule.

The indebtedness evidenced by this note may be prepaid in whole or in part at any time without penalty or premium.

If there be default in payment of any of the sums or interest or in the performance of any agreements contained herein and such default continues for a period of fifteen (15) days then, at the option of the holder of the note, the principal sum then remaining unpaid with accrued interest shall immediately become due and collectible without notice, time being of the essence of this contract, and the principal sum and accrued interest shall both bear interest at the highest rate allowable by law from the date of default until paid. All sums paid under this note shall be credited first to accrued interest and then to principal.

Each maker and endorser waives presentment, protest, notice of protest and notice of dishonor and agrees to pay reasonable attorneys' fees and expenses in the enforcement of this note prior or subsequent to judgment and in any and all trial and appellate tribunals, whether suit be brought or not if, after maturity of this note or default, counsel shall be employed to collect this note.

DATED this _____ day of _____, _____.

MAKER'S ADDRESS: _____ (Seal)

Signature of Maker

WITNESSES: _____ (Seal)

Witness' Address

_____ (Seal)

Witness' Address