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

IN RE: ACCOUNT OF GERALD J. RODICHOK (DECEDENT)  
DOCKET NO. 2021-04  
CLAIM OF THE ESTATE OF SUSAN DALEY

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the Proposed Adjudication and Order of the Hearing Examiner. We note that no party filed exceptions challenging the Proposed Adjudication and Order, including the facts as found by the Hearing Examiner and her legal conclusions. Based on the specific facts of this matter, the Board finds appropriate the Proposed Adjudication and Order and, accordingly, we hereby adopt it as our own.

IT IS HEREBY ORDERED that Claimant's appeal is GRANTED; Decedent's November 20, 2019 *Nomination of Beneficiaries* form is void; and Decedent's beneficiaries last designated in writing to the Board at the time of his death are those beneficiaries listed on his March 16, 2017 *Nomination of Beneficiaries* form.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 3/16/2022

DocuSigned by:  
By: Christopher SantaMaria  
EA7CDA4A8979417  
Christopher SantaMaria, Chairman

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM**

In Re: Account of Gerald J. Rodichok  
Claim of Estate of Susan Daley

: Case No. 2021-4

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EXECUTIVE OFFICE

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**Proposed Adjudication and Order**

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**Ember S. Jandebaur  
Hearing Examiner**

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF STATE  
Office of Hearing Examiners  
P.O. Box 2649  
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## HISTORY

Gerald J. Rodichok (“Rodichok”) became a member of Public School Retirement System (“PSERs”) on October 1, 2002. NT 9. On October 23, 2002, Rodichok filed a Nomination of Beneficiary (“NOB”) naming his three daughters at a death benefit of 33 1/3 % each. On March 16, 2017 he filed a second NOB naming his three daughters (Intervenors) at 25% each and Susan C. Daley at 25%.

On November 11, 2019 Rodichok was admitted to the hospital and on the 19<sup>th</sup>, entered hospice care. NT 88-89. On November 20, 2019, four days before his death, Danielle Rodichok created an on-line account for Rodichok and changed the NOB on-line to give 30% to each of the three daughters and the remaining 10% to Susan. C. Daley.

On February 5, 2020 Susan C. Daley appealed the November 20, 2019 NOB. NT 28. Ms. Daley died April 2020 and her son John F. Daley, Jr. was appointed administrator. John F. Daley, Jr. filed this appeal.

The parties comprise PSERs, the Claimant, John F. Daley, Jr., and the Intervenors who comprise Gerald Rodichok’s three daughters. (Danielle Rodichok, Carolyn Denier, and Theresa Bates).

A hearing was conducted September 28, 2021. PSERs appeared represented by counsel and submitted seventeen (17) exhibits; all were entered into the record. PSERs proffered two witnesses who testified under oath on PSERs behalf. The Claimant proffered five (5) exhibits, none were submitted successfully. Exhibit 1 was ruled hearsay and failed to pass several objections and could not be entered into evidence as presented. None of the remaining exhibits were proffered. Claimant testified on his own behalf. The Intervenors proffered eight (8) exhibits; none were entered into the record as Intervenors failed to present a case. The

Intervenors proffered no witnesses. A transcript was produced comprising 104 pages. The parties elected to file briefs and the last brief was received on December 3, 2021, closing the record.

This matter is now ripe for disposition.

## EXHIBITS

### PSERs

1. 10/23/02 NOB
2. 11/18/02 letter
3. 3/16/17 NOB
4. 3/30/17 letter
5. 11/20/19 NOB
6. 11/20/19 email
7. 11/20/19 letter
8. 11/21/19 letter
9. Gerald Rodichok death certificate
10. 2/5/20 letter
11. Susan Daley death certificate
12. Letters testamentary
13. 1/5/21 ESRC determination
14. MSS spec excerpt
15. MSS login history
16. MSS email address
17. Power of attorney

The Claimant proffered no exhibits that successfully made it into the record.

The Intervenors failed to present a case and therefore proffered no exhibits.

## FINDINGS OF FACT

1. Gerald J. Rodichok enrolled with PSERs on October 1, 2002. NT 9.
2. October 23, 2002, Gerald J. Rodichok filed a NOB with PSERs. NT 12. PSERs Exh. 1.
3. The October 23, 2002 NOB listed Gerald J. Rodichok's three daughters as equally sharing the death benefit at 33 1/3 % each. NT 13.
4. March 16, 2017 Gerald J. Rodichok filed a second NOB with PSERs.
5. The March 16, 2017 added Susan Cheryl Daley ("Ms. Daley") and the death benefit was to be evenly split with Ms. Daley and the three daughters at 25% each. NT 17.
6. Ms. Daley had a 25–30-year loving and familial relationship with Mr. Rodichok. NT 87.
7. November 20, 2019, PSERs received a third NOB. It was electronically filed by daughter Danielle Rodichok on-line. Ms. Rodichok created the account, changed the NOB form and electronically signed for her father Gerald J. Rodichok. NT 10.
8. The November 20, 2019 NOB filed by Danielle Rodichok, gave each daughter an increased 30% and reduced Ms. Daley to 10% from the previous 25%. PSERs Exh. 5.
9. Ms. Daley appealed the November 20, 2019 NOB to the Executive Staff Review Committee and lost the appeal. NT 28.
10. Ms. Daley died on April 21, 2020. NT 29.
11. July 27, 2020, Ms. Daley appointed her son John F. Daley, Jr. to be her estate administrator. NT 29-30.
12. PSERs does not make competency determinations. NT 35, 37-38.

13. In the 17 years since his first NOB, Mr. Rodichok had not created an on-line member self-service account *until* four days before his death on November 20, 2019. NT 37.

14. On November 20, 2019, Mr. Rodichok was in hospice care, and actively dying. He was incapable of effectively executing the November 20, 2019 NOB. NT 38.

15. PSERs was not aware on November 20, 2019 that Mr. Rodichok was actively dying. NT 38.

16. To sign up for member self-service, the signing up individual needs the member social security number, PSERs ID, and date of birth. There are no other checks to ensure the member is the individual entering the data. NT 44.

17. When signing up for member self-service the individual must present an electronic mail address. The address providing at the November 20, 2019 creation of Mr. Rodichok's member self-service account was [REDACTED]. NT 45.

18. The email given for Mr. Rodichok's member self-service belongs to his daughter Danielle. NT 49.

19. Mr. Rodichok's member self-service account was accessed four times successfully and once unsuccessfully, because the account is cut-off when the member dies. NT 48.

20. John F. Daley, Jr. son of Susan C. Daley spoke with Mr. Rodichok on November 8, 2019. NT 88.

21. Mr. Rodichok was admitted to the hospital on November 11, 2019. NT 89.

22. Mr. Rodichok was dying of cancer and various other physical issues. NT 89.

23. On November 20, 2019, the daughters invited John F. Daley, Jr. and Ms. Daley to visit Mr. Rodichok in hospice at the hospital. NT 89.

24. John F. Daley, Jr. visited Mr. Rodichok in hospice on November 21, 2019. NT 89.

25. The November 21, 2019 visit by John F. Daley and Ms. Daley, was emotionally very hard. Mr. Rodichok was unresponsive, did not know them, could not speak and was uncovered. He was gone as far as they could tell. NT 89-90.

26. On November 21, 2019, when John F. Daley, Jr. visited Mr. Rodichok he had no cellular telephone or computer. His eyes were rolled back, he was jaundiced and actively dying. NT 95.

27. PSERs received a Power of Attorney document on October 20, 2020.

28. To effectuate an on-line member self-service change of beneficiaries there is a multi-step process. NT 57.

29. On November 21, 2019, Mr. Rodichok, who was actively dying of cancer did not have the wherewithal, ability or competency to change his NOB on-line on November 20, 2019, or in any other way. NT 95.

30. Mr. Rodichok did not change his NOB on November 20, 2019, his daughter Danielle changed the NOB, significantly reducing Mr. Rodichok's long-time companion's share from 25% to 10% and increasing her and her sisters' shares.

31. Between November 9, 2019 and November 21, 2019, John F. Daley, Jr. spoke to Mr. Rodichok "a lot", as Mr. Rodichok called him, they were like family for nearly 30 years. NT 95, 97.

32. Danielle Rodichok improperly changed the NOB and executed a POA specifically to reduce Ms. Daley's death benefit and specifically to increase her and her sisters' benefit, in direct opposition to her father's wishes, intent and properly executed March 2017 NOB.

33. None of Mr. Rodichok's daughters testified. NT 1-104.



## CONCLUSIONS OF LAW

1. Claimant John F. Daley, Jr. was offered notice and opportunity to be heard in the above cited matter. NT 1-104.
2. Claimant met his burden of proof that Gerald J. Rodichok was not mentally competent to change his Notice of Beneficiaries on November 20, 2019, nor able to effectively execute a Power of Attorney on November 13, 2019.
3. Danielle Rodichok violated 20 Pa. C.S. §5601.3(a), (b).
4. The November 20, 2019 Notice of Beneficiaries is null and void and *may not* be considered.
5. The November 13, 2019 POA is voided and *may not* be considered.
6. Gerald J. Rodichok's March 2017 Notice of Beneficiaries operates.

## DISCUSSION

The sole issue in this appeal is whether Gerald J. Rodichok ("Mr. Rodichok") was competent to change his Notice of Beneficiaries ("NOB") on November 20, 2019. For the following reasons, he was not competent/able to effectuate any changes and the November 20, 2019 NOB authored by his daughter and purported Power of Attorney ("POA") Danielle Rodichok, not Mr. Rodichok is null and void.

A brief history will help understand what happened.

Mr. Rodichok was a PSERs member since October 2002. He was an active vested member at the time of his death. On November 11, 2019, Mr. Rodichok entered the hospital for cancer. On November 19, 2019, he was moved to hospice as he was actively dying. Mr. Rodichok was on painkillers and other medications. Mr. Rodichok died November 24, 2019. In the 25-30 years prior to his death, Mr. Rodichok had a loving, on-going familial relationship with

Susan C. Daley and her son John F. Daley, Jr. They never married but were a couple for 25-30 years. Mr. Rodichok and Ms. Daley often talked about their respective pensions and preparing for retirement and old age.

On October 23, 2002, Mr. Rodichok entered a NOB naming his three daughters at 33 1/3 % each. On March 16, 2017 Mr. Rodichok entered a second NOB naming his three daughters and Ms. Daley to each receive 25% of Mr. Rodichok's death benefit. There is no allegation that the 2017 NOB is in any way void, and it was timely entered two (2) years and eight (8) months before his death.

At the time of Mr. Rodichok's death, Ms. Daley contested the November 20, 2019 NOB. As her appeal was pending, she died. Her son was appointed administrator of her estate and continued the appeal. This is the status.

Was Mr. Rodichok competent on November 13 to enter a new POA and was he competent to change his NOB on November 20, 2019. He was actively dying of cancer and other physical ailments. He was on numerous medications affecting his cognitive abilities. Mr. Rodichok entered the hospital on November 11, 2019 and was moved to hospice as he was actively dying on November 19, 2019. While in hospice he was sedated and on palliative pain medication. His eyes were rolled back, and he was jaundiced and uncovered. He was not "there."

It is highly unlikely, i.e., not tenable or believable, that he was mentally aware, savvy and competent to enter a legal document with the myriad and serious effectuations of a POA document on November 13, 2019. He had entered the hospital for advanced cancer on the 11<sup>th</sup>, two days before the execution of the POA, and was moved to hospice care which is for actively dying on the 19<sup>th</sup> and offers palliative pain reducing care only. If Mr. Rodichok wanted an effective POA, he would have done it in 2017 when he made his 2017 NOB. This POA was done

specifically to alter the standing NOB which listed the daughters and Ms. Daley to benefit equally at 25% each. There is nothing in the record to indicate that Mr. Rodichok wanted to change his NOB *or* enter a POA. He had properly and timely taken care of his loved ones in 2017 and nothing in the record indicates differently except as entered by daughter Danielle Rodichok. The POA is null and void for these reasons.

Moreover, even if the POA was valid, Danielle Rodichok violated the requirements and demands of a properly performing POA in that the change to Mr. Rodichok's NOB was clearly done to benefit herself and her sisters over Mr. Rodichok's longtime companion Susan Daley. There is/was no valid excuse to change Mr. Rodichok's 2017 NOB. Mr. Rodichok properly planned for his demise in March 2017. His estate plans, he thought were set, organized, and would be followed per his wishes. He followed the rules and likely believed all would be well after his passing. He was wholly unaware that Danielle Rodichok was acting in her own and her sisters' nefarious interests in executing an unnecessary POA on November 13, 2019 and he was significantly physically and mentally impaired as much by painkillers and other medication as he was by the active dying process as explained above.

Danielle Rodichok, as a POA agent, was required:

- to act in good faith, and
- to act in accordance with Mr. Rodichok's reasonable expectations,
- to act loyally for Mr. Rodichok's benefit,
- to act so as not to create a conflict of interest that impairs the agent's (Danielle's) ability to act impartially in Mr. Rodichok's interest,
- to preserve Mr. Rodichok's estate plan if preserving the plan is consistent with Mr. Rodichok's best interest. 20 Pa. C.S. § 5601.3

She violated each these POA agent requirements. Mr. Rodichok's reasonable expectations were that his NOB of March 2017 would be honored, not second guessed by a self-serving daughter who wanted more of his death benefit than he had personally accorded her and her sisters. Mr. Rodichok made his choices abundantly clear in that he intended to provide for his longtime companion Susan Daley after his death, and Danielle without due cause and acting in bad faith, changed Mr. Rodichok's estate plan having absolutely no valid authority. Danielle was required to act loyally for Mr. Rodichok's benefit. To do so, she would have honored Mr. Rodichok's timely submitted March 2017 NOB.

Danielle was required to act so as not to create a conflict of interest that impairs the agent's (Danielle's) ability to act impartially in Mr. Rodichok's interest. She clearly created a conflict of interest in her bad faith attempt to change Mr. Rodichok's valid NOB.

Danielle was to act to preserve Mr. Rodichok's estate plan if preserving the plan is consistent with Mr. Rodichok's best interest. There is no record evidence that Mr. Rodichok had any outstanding debts that required addressing, therefore, his March 2017 estate plan is/was valid and should not be tampered with. His best interest is served by honoring his wishes even if they annoy you or lessen your inheritance. There is no record evidence to dishonor Mr. Rodichok's March 2017 NOB. There is ample record evidence to nullify the November 13, 2019 POA and November 20, 2019 NOB. Neither document was made in good faith, both documents are self-serving, and both are voided. The Intervenors (daughters) failed to present a case so there is nothing to rebut. PSERs simply processes the NOB forms; it makes no evaluations of the ability of the PSERs member to execute the NOBs.

John F. Daley, Jr. met his burden of proof that Mr. Rodichok was simply too far into actively dying of cancer to competently effectuate either the November 13, 2019 POA or November 20, 2019 NOB.

Therefore, the March 2017 NOB operates and is competently reflective of Mr. Rodichok's wishes upon his demise. There is no legal or valid reason to alter his wishes. The March 2017 NOB should be completely honored as properly legal and competently executed.

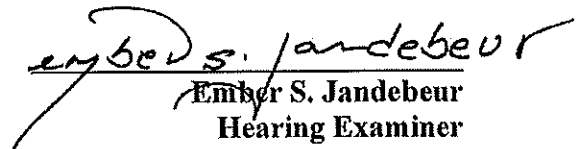
**PROPOSED ORDER**

AND NOW, this 28<sup>th</sup> day of December 2021, the appeal of John F. Daley, Jr. is affirmed.

The November 13, 2019 POA entered by Danielle Rodichok is void. The November 20, 2019 Notice of Beneficiaries is void. The March 2017 Notice of Beneficiaries operates.

PSERs is to properly pay out Gerald J. Rodichok's death benefits in accord with his personally entered and accepted Notice of Beneficiaries March 2017

**BY ORDER**

  
**Ember S. Jandebeur**  
**Hearing Examiner**

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