

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: December 26, 2024

CV-23-1699

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In the Matter of SARAH M.  
MARIANI,

Petitioner,

v

MEMORANDUM AND JUDGMENT

NEW YORK STATE AND LOCAL  
RETIREMENT SYSTEM et al.,  
Respondents.

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Calendar Date: November 19, 2024

Before: Aarons, J.P., Reynolds Fitzgerald, Ceresia, McShan and Mackey, JJ.

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*Sarah M. Mariani*, Greenwich, Connecticut, petitioner pro se.

*Letitia James*, Attorney General, Albany (*Alexandria Twinem* of counsel), for respondents.

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Aarons, J.P.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller denying petitioner's application for a refund of certain pension contributions.

In August 2008, petitioner began working as an administrative law judge for the Office of Temporary and Disability Assistance and enrolled as a tier 4 member of respondent New York State and Local Employees' Retirement System. As such, 3% of petitioner's gross salary was deducted from each of her paychecks for 10 years for contribution to the Retirement System. In July 2018, petitioner reached her cessation

date, that is, the date on which she attained 10 years of credited service and was relieved from further mandatory contributions to the Retirement System (*see* Retirement and Social Security Law §§ 900 [f]; 902 [b] [1]).

Meanwhile, in May 2017, petitioner inquired with the Retirement System about purchasing 7.75 years of prior service credit based upon her employment as an assistant district attorney by the New York County District Attorney's office from 1988 to 1997. After a delay occasioned by misplaced and missing required documents, the Retirement System quoted petitioner \$36,506 to purchase 7.75 years of service credit, which amount petitioner paid between November 2018 and March 2020.

Theorizing that Retirement and Social Security Law § 902 (b) (1) imposed a 10-year cap on her contributions and that, by purchasing past service credit, she had made 17.75 years of contributions, petitioner demanded a refund of her contributions to the Retirement System from her most recent 7.75 years of credited service. The Retirement System rejected that demand, and petitioner sought a hearing and redetermination. The Hearing Officer found that petitioner had not established her entitlement to a refund and concluded that petitioner's legal arguments were unavailing. The Comptroller adopted the Hearing Officer's findings of fact and conclusions of law and denied petitioner's refund application. Petitioner then commenced this CPLR article 78 proceeding to review the Comptroller's determination, and, after issue was joined, the proceeding was transferred to this Court (*see* CPLR 7804 [g]). We confirm.

Contrary to petitioner's view, the Comptroller's determination is not affected by an error of law and the factual findings upon which the determination relies are supported by substantial evidence (*see* CPLR 7803 [3]; *Matter of Gallante v DiNapoli*, 228 AD3d 1169, 1170 [3d Dept 2024], *lv denied* 42 NY3d 909 [2024]). Petitioner's claim that Retirement and Social Security Law § 902 (b) (1) bars the Retirement System from retaining contributions in excess of 10 years is without merit (*see Matter of Ratzker v Office of the N.Y. State Comptroller [N.Y. State & Local Retirement Sys.]*, 106 AD3d 1321, 1324 [3d Dept 2013], *lv denied* 22 NY3d 854 [2013]). There is no dispute that tier 4 members like petitioner are not required to contribute to the Retirement System after attaining 10 or more years of Retirement System membership or credited service (*see* Retirement and Social Security Law § 902 [b] [1]). Still, pursuant to Retirement and Social Security Law § 902 (b) (2), "[n]o contribution made to a retirement system by an eligible employee prior to the eligible employee's cessation date shall be refunded, except as otherwise allowable pursuant to" certain other provisions that petitioner does not allege – and the record does not show – apply to her (*compare* Retirement and Social

Security Law §§ 504-d [8]; 604-g [e] [5]; 604-h [e] [5]; 604-j [e] [5]). Petitioner's cessation date in July 2018 was unaffected by her voluntary purchase of 7.75 years of past service credit, as that time was not credited to her until she finished paying for it in March 2020 – two years after she attained 10 years of credited service (*see* Retirement and Social Security Law §§ 609 [b] [2]; 900 [f]). The statutes regulating the Retirement System involve matters within the Comptroller's expertise, and, as we conclude that the Comptroller's interpretation of the applicable statutes is reasonable, that interpretation is entitled to deference (*see Matter of Porco v New York State Teachers' Retirement Sys.*, 140 AD3d 1457, 1458 [3d Dept 2016]; *Matter of Escalera v Hevesi*, 9 AD3d 666, 667 [3d Dept 2004], *lv denied* 3 NY3d 608 [2004]). We therefore decline to disturb the Comptroller's determination denying petitioner's refund application.

For similar reasons, petitioner cannot sustain her argument that she is entitled to a refund of interest charged for the year the Retirement System lost her application paperwork. Before petitioner's past service could be credited to her, she was required to pay 3% of the wages for the past service as a contribution, plus 5% interest per annum compounded annually from the date of service until the date of payment (*see* Retirement and Social Security Law § 609 [b] [2]). No statute authorizes the Comptroller to waive or refund the interest petitioner was required by law to pay in order to receive credit for her past service, and therefore the Comptroller did not act arbitrarily in denying petitioner's request to do so (*see Morrissey v New York State Emp. Retirement Sys.*, 298 NY 442, 449 [1949]; *Matter of Henry v State of New York*, 15 AD3d 764, 765 [3d Dept 2005], *lv denied* 4 NY3d 711 [2005]).

Petitioner next asserts that respondents' retention of her most recent 7.75 years of retirement contributions violated her due process rights. We disagree. Petitioner's due process rights were vindicated by the hearing she requested and received before the Comptroller issued a final determination on her claim that the Retirement System erroneously retained 7.75 years of retirement contributions (*see Matter of Davis v County of Westchester*, 42 AD3d 791, 794 [3d Dept 2007], *lv dismissed* 9 NY3d 953 [2007]). Given the command of Retirement and Social Security Law § 902 (b) (2), we reject petitioner's unsupported contention that due process required notice at the time she joined the Retirement System that attaining more than 10 years of service credit by purchasing credit for past service would not entitle to her a refund of any of her contributions. Even if that were the case, an official with the Retirement System testified that petitioner was sent the packet of new member information containing information about past service credit, including the importance of purchasing past service credit early. Thus, substantial evidence supports finding that due process was satisfied (*see generally Matter of*

*Gallante v DiNapoli*, 228 AD3d at 1170). Petitioner's remaining contentions have been reviewed and are without merit.

Reynolds Fitzgerald, Ceresia, McShan and Mackey, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court