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

Decided and Entered: November 12, 2026 CV-24-1319

In the Matter of MICHAEL PASINKOFF,
Appellant,
v OPINION AND ORDER

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM,
Respondent.

Calendar Date: September 16, 2026

Before: Reynolds Fitzgerald, J.P., Fisher, McShan, Mackey and Corcoran, JJ.

Michael Pasinkoff, Fort Lauderdale, Florida, appellant pro se.

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

Reynolds Fitzgerald, J.P.

Appeal from a judgment of the Supreme Court (Roger McDonough, J.), entered June 25, 2025 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of the Comptroller denying petitioner's application for a refund of certain pension contributions.

Petitioner was employed as an assistant district attorney in New York County beginning in September 2007 and, in connection with that employment, joined the New York City Employees' Retirement System (hereinafter NYCERS) as a tier 4 member in

June 2009.[1] In January 2020, petitioner transitioned to state employment with the State Division of Human Rights and enrolled in respondent as a tier 6 member. Approximately two years later, in March 2022, petitioner applied to transfer his NYCERS membership to respondent (*see generally* Retirement and Social Security Law § 43), and respondent approved that request in June 2022. Notably, under the Retirement and Social Security Law, once an individual successfully transfers their membership to respondent, they will be deemed to have been a member of respondent for "the entire period of membership service credited to [them] in the system from which [they] ha[ve] transferred" (Retirement and Social Security Law § 43 [b]). As a result, when respondent approved petitioner's transfer, it changed his date of membership to June 2009 and his membership status from tier 6 to tier 4.

Critical to this case, unlike tier 6 members who must contribute a certain percentage of their annual wages for all years of public service (*see* Retirement and Social Security Law § 613 [a]), under article 19 of the Retirement and Social Security Law, tier 4 employees who achieve 10 or more years of membership or 10 or more years of credited service with respondent are no longer required to contribute (*see* Retirement and Social Security Law § 902 [b] [1]). The date from which the member is no longer required to contribute, known as the "[c]essation date," is calculated as the later of either (1) "the beginning date of an eligible employee's first payroll period commencing on or after October[1, 2000]"; (2) "the effective date as of which such employee becomes eligible for the benefits contained in [Retirement and Social Security Law § 902 (b)]"; or (3) "the date on which the eligible employee attains [10] years of membership or, if earlier, [10] years of credited service" (Retirement and Social Security Law § 900 [f]). Retirement and Social Security Law § 902 (b) (2) provides that "[n]o contribution made to a retirement system by an eligible employee prior to the eligible employee's cessation date shall be refunded," with exceptions not relevant here.

Upon petitioner's transfer, respondent calculated his cessation date to be March 1, 2022 and issued a refund of all contributions made after that date, approximately $2,550. Petitioner sought a hearing and redetermination pursuant to Retirement and Social Security Law § 74, asserting, as relevant here, that his cessation date was the date he joined respondent in January 2020. He therefore requested a refund of *all* contributions he made since joining respondent – approximately $20,000, plus interest.

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[1] He later purchased additional service credit dating back to the commencement of his employment.

Following a hearing, the Hearing Officer determined that petitioner had not met his burden of demonstrating that respondent incorrectly calculated his cessation date. According to the Hearing Officer, respondent reasonably interpreted Retirement and Social Security Law § 902 (b) to conclude that petitioner became a tier 4 member and attained 10 years of membership only after the date on which his transfer from NYCERS became effective in March 2022. Before that date, the Hearing Officer explained, petitioner "was a [t]ier 6 member and not eligible for the contribution cessation benefit provided under [Retirement and Social Security Law] § 902 (b) (1)." Furthermore, because "[t]ier 4 members have their contributions set to the first day of the month, it reasonably follow[ed] that [petitioner's] cessation date was set on the first day of the month on which his transfer became effective" – i.e, March 1, 2022.[2] The Comptroller adopted the Hearing Officer's decision, and petitioner commenced this CPLR article 78 proceeding seeking to annul the Comptroller's final determination on the basis that it was not supported by substantial evidence. Supreme Court dismissed the petition, and petitioner appeals.[3]

"The exclusive authority to determine applications for retirement benefits is vested in the Comptroller, and if the determination is supported by substantial evidence it must

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[2] The Hearing Officer also rejected any argument by petitioner that he was entitled to equitable relief based on employees of respondent providing him with erroneous counsel as to the extent of any refund to which he was entitled. In this proceeding, petitioner does not make any such contentions.

[3] As respondent's determination was made following an evidentiary hearing that was required by statute, the petition correctly identified the issue as one of substantial evidence (*see* CPLR 7803 [4]; *Matter of Mariani v New York State & Local Retirement Sys.*, 233 AD3d 1404, 1405 [3d Dept 2024]; *Matter of Myer Funeral Serv. Corp. v Zucker*, 188 AD3d 1488, 1490 & n 3 [3d Dept 2020]; *Matter of Price v New York State & Local Employees' Retirement Sys.*, 107 AD3d 1212, 1213-1214 [3d Dept 2013]; *compare Matter of Rensselaer Socy. of Engrs. v Rensselaer Polytechnic Inst.*, 260 AD2d 992, 993 [3d Dept 1999]; *see generally* David D. Siegel & Patrick M. Connors, New York Practice § 568 [6th ed, Dec. 2024 update]). Therefore, Supreme Court should have transferred the proceeding to this Court (*see* CPLR 7804 [g]). We treat the matter as though it were properly transferred and consider the issues presented de novo (*see Matter of MacKenzie v Tedford*, 208 AD3d 1526, 1527 n [3d Dept 2022]; *Matter of Sullivan County Patrolmen's Benevolent Assn., Inc. v County of Sullivan*, 173 AD3d 1545, 1546 [3d Dept 2019]).

be upheld" (*Matter of Ballard v DiNapoli*, 250 AD3d 1207, 1208 [3d Dept 2026]; *see e.g. Matter of Bohlen v DiNapoli*, 34 NY3d 434, 441 [2020]; *see generally* CPLR 7803 [4]). "[T]he substantial evidence standard is a minimal standard" that requires "less than a preponderance of the evidence, and demands only that a given inference is reasonable and plausible, not necessarily the most probable" (*Matter of Haug v State Univ. of N.Y. at Potsdam*, 32 NY3d 1044, 1045-1046 [2018] [internal quotation marks and citations omitted]; *see e.g. Matter of Villalba v Rite Aid Pharm.*, 248 AD3d 1525, 1526 [3d Dept 2026]). " '[I]f the Comptroller's application and interpretation of the relevant statutes are not irrational, unreasonable or contrary to the statutory language, [the] determination will be upheld' " (*Matter of Denson v DiNapoli*, 129 AD3d 1271, 1272 [3d Dept 2015] [brackets omitted], quoting *Matter of Graziose v DiNapoli*, 110 AD3d 1205, 1206 [3d Dept 2013]). "[W]here substantial evidence exists to support the administrative agency's determination, a court may not substitute its judgment for that of the agency, even if there is evidence supporting a contrary conclusion" (*Matter of Bohlen v DiNapoli*, 34 NY3d at 445; *accord Matter of Glozek v DiNapoli*, 221 AD3d 1231, 1232 [3d Dept 2023]).

The statutes in question – namely, Retirement and Social Security Law §§ 43, 900, and 902 – do not explicitly address the situation before us. Article 19 of the Retirement and Social Security Law does not cross-reference section 43 transferees and, although section 43 (b) deems a person transferred from one retirement system to another "to have been a member of the system to which [they] transferred during the entire period of membership service credited to [them]," the statute is silent with respect to refunds due to such transferees under the subsequently enacted article 19. Accordingly, we cannot agree with either party that the statutory language is clear and unambiguous. Unfortunately, the legislative history also fails to shed light on the specific issue before us.

Nevertheless, we conclude that respondent's interpretation of the relevant statutes was not irrational, unreasonable or contrary to the statutory language and, therefore, we defer to that interpretation (*see Matter of Mariani v New York State & Local Retirement Sys.*, 233 AD3d 1404, 1406 [3d Dept 2024]). As the Hearing Officer explained, petitioner did not become eligible for the enhanced benefits provided for in Retirement and Social Security Law article 19 until his transfer was complete because, before that time, he was a tier 6 member of respondent and therefore had no right to contribution cessation in that retirement system. Thus, respondent could conclude that the phrase "the effective date as of which such employee *becomes eligible* for the benefits" refers to the date respondent deems the transfer to be effective – at least where, as here, the member transfers from another retirement system resulting in their tier changing from tier 6 to 4 (Retirement and Social Security Law § 900 [f] [emphasis added]). Notably, this Court has already rejected

the argument, lodged by petitioner before the agency in this case, that respondent is *always* precluded from retaining contributions made after 10 years (*see Matter of Mariani*, 233 AD3d at 1405-1406). Additionally, the testimony at the hearing and this Court's case law makes plain that respondent has applied the same rule utilized here seemingly since article 19 was enacted nearly 30 years ago (*see generally Matter of Dear v New York State & Local Retirement Sys.*, 115 AD3d 1141 [3d Dept 2014], *lv denied* 23 NY3d 905 [2014]). We also recognize respondent's legitimate concern that petitioner's rule could plausibly open the floodgates to refund requests that seek to claw back years or decades of contributions, plus interest, subjecting respondent's funds to needless and potentially detrimental uncertainty (*see generally* Retirement and Social Security Law § 13 [b]). Accordingly, although petitioner also presents a reasonable view of the statutory language, we are precluded from substituting our judgement for that of the agency where the agency's own interpretation is also reasonable. Petitioner's remaining contentions, to the extent not specifically addressed, have been considered and found to be without merit.

Fisher, McShan, Mackey and Corcoran, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court