

THE STATE OF NEW HAMPSHIRE

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SUPREME COURT

NH SUPREME COURT

Case No. 2021-⁰³⁰⁸~~0309~~, Brief of Louis L. Lafasciano,
the court on this 22nd Day of February, 2022

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In the absence of any further right of appeal in the Matter of Louis L. Lafasciano, Request for Reconsideration from the New Hampshire Retirement System (NHRS) Board of Trustees dated April 6, 2021, the Petitioner respectfully sought a Writ of Certiorari (Sawyer, 170 N.H. 197, 202 (2017) from the New Hampshire State Supreme Court as cited in the determination letter from the NHRS Board of Trustees dated June 9, 2021. Petitioner submitted this written request within the guidelines and timelines set forth under a Rule 10 Appeal outlined in New Hampshire Supreme Court Procedural Rules. Petitioner also met all timely filings as required under RSA 541:4 to the administrative agency and was informed by NHRS that, "This reconsideration action by the Board **exhausts** all NHRS administrative proceedings regarding this appeal. However, the Board's decision may be appealed to the New Hampshire courts by writ of certiorari (sic)". Petitioner has fully prepared this following argument for this Honorable Court Pro Se.

As allowed by a change in law in 2016 Petitioner submitted to NHRS and was granted NHRS an adjustment to his monthly pension entitlement and continued to receive said entitlement each subsequent year thereafter with the careful annual review standardized and implemented under the direction of previous Director George Lagos and with the approval of the NHRS Board of Trustees. After five consecutive years of consistently receiving the approved adjustment under the abovementioned stringent procedures applied by NHRS staff Petitioner was informed of "an administrative decision that the termination of the survivor option for your annuity benefit that was made in November 2016 should NOT have been processed..." (July 16, 2020 Letter to Petitioner). In other words, a mistake had supposedly been made. The same NHRS employees involved in the original decision were still on staff, including both the associate legal counsel who sent the letter to Petitioner and the chief legal counsel who supervised NHRS staff as Interim Director and currently serves as Deputy Director. However, neither NHRS staff or Petitioner's circumstances changed over that five year period. The basis cited for their decision was RSA 127: A entitled, "Protection Against Fraud", Yet, during the Formal Hearing process both the Hearings Officer AND NHRS Legal Counsel admitted that NO FRAUD had been committed by Petitioner. (See Hearing Transcript, page 10, paragraphs 6-14; page 11, paragraph 10-11). Yet, both emphatically agreed with the NHRS associate legal counsel with the application of the statute and advised the NHRS Board of same leading to their decision.

First of all, the statutory construction and interpretation of RSA 127: A, "Protection Against Fraud" is to address the issue of fraud as the law is titled; Petitioner contends its purpose is not to serve as a specious argument for NHRS (or any administrative agency for that matter) to have a "Do-Over" on the legal "Playground" of Jurisprudence when making decisions, especially when the lives of those affected are impacted negatively in an arbitrary and capricious manner. (See Hearing Transcript, page 15, paragraphs 5-12.) Petitioner contends that it was and is an intentional misapplication of the statute creating a chilling effect of intimidation and wrong-doing on the part of Petitioner in an attempt to prevent him from exercising his legitimate right to contest the administrative decision for fear of legal repercussions. This intimidation is a blatant disregard of the NHRS established guidelines supported by law in 2016 which were and continue to serve as the true and accurate basis for the decision made by NHRS staff--said retirement pension adjustment to remain in place until the death of Petitioner. An evidentiary hearing is a moot point now that Petitioner's appeal has reached the level of the New Hampshire Supreme Court.

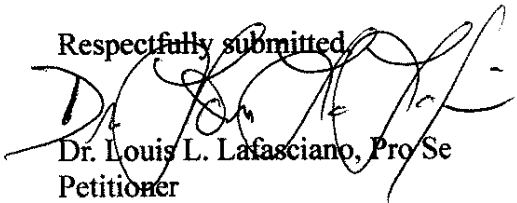
From the beginning the burden of proof has unfairly been placed on Petitioner demanding hours of research and preparation, placing an already dehabiliated Petitioner under extreme emotional and physical strain and draining limited, valuable retirement savings. This is the very reason why it appears very few, if any have taken on the NHRS Board of Trustees and the massive resources at their disposal accumulated from the very members they are chartered to represent!

In conclusion of the issues recited above, the NHRS Board of Trustees have a responsibility, an obligation to the 45,000+ members of the system who have contributed to the benefits of their colleagues interests throughout their working career; Petitioner is just one of many. This NHRS Trustees' decision, if permitted, would have such a deleterious effect on Petitioner when he had and still has reasonable expectation of the established monthly retirement pension decided upon in 2016 to support him in his retirement. That is what Petitioner budgeted and planned for in his final years.

Petitioner respectfully requests that this Honorable Court rescind the NHRS Board of Trustees decision to uphold the recommendation of the Hearing Officer and permit Petitioner to continue receiving his current retirement pension stipend as originally approved in 2016. As the NHRS attorney reinforced in the Hearing, "...as I've often said, any Petitioner in these cases is a client of the System, and we respect that relationship and always want it to continue." (Hearing Transcript, page 11, paragraphs 16-19)

Therefore, Petitioner prays this Honorable Court will indeed allow this relationship to continue and will grant the relief sought by finding in favor of this humble Petitioner.

Respectfully submitted,



Dr. Louis L. Lafasciano, Pro Se
Petitioner