



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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December 6, 2024

ELIZABETH MAHER MUOIO  
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*Acting Director*

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lt. Governor*

Sent via email to: [REDACTED]

Howard Zlotkin  
[REDACTED]

RE: TPAF [REDACTED]  
OAL DKT. NO. TYP 05019-24

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Dear Mr. Zlotkin:

At its meeting on November 14, 2024, the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) considered the Initial Decision (ID) of the Honorable Andrea Perry Villani, Administrative Law Judge (ALJ), dated September 4, 2024; all exhibits; the exceptions filed by Deputy Attorney General (DAG) Jakai Jackson, dated October 8, 2024<sup>1</sup>; the reply to exceptions filed by you, dated October 21, 2024<sup>2</sup>; the modified reply to exceptions filed by you, dated October 25, 2024,<sup>3</sup> and the personal statements of DAG Yi Zhu on behalf of DAG Jakai Jackson. After careful consideration, the Board voted to accept the ALJ's factual findings in part, modify the facts in part, and to reject the ALJ's decision recommending reduction of the Board's partial forfeiture of 10% of your monthly pension benefit to sixty-four days.

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<sup>1</sup> The Exceptions were timely submitted under a granted extension.

<sup>2</sup> The Reply to exceptions were timely submitted under a granted extension.

<sup>3</sup> The modified reply to exceptions were filed out of time.

For the reasons set forth below, the Board rejected the ALJ's recommendation to modify the partial forfeiture amount. The Board directed the Secretary to prepare the Findings of Fact and Conclusions of Law as outlined below, which were approved by the TPAF Board at its meeting on December 5, 2024. This will constitute the Board's Final Administrative Determination in this matter.

You were formerly employed by the Jersey City Public School District as a Teacher at Dickinson High School. On April 28, 2021, while conducting virtual instruction through Zoom you engaged in a heated argument with a student, during which you cursed at the student and used a profane gesture. Following the incident, you were suspended and the district initiated an investigation. While the matter was being investigated, you tendered your resignation and filed for retirement, effective July 1, 2021.

In or about September 22, 2021, the State Board of Examiners filed an Order to Show Cause directing you to show cause why your teaching certificates should not be revoked for the incident that occurred in your class on April 28, 2021. On February 9, 2023, an Initial Decision was issued, which was adopted by the State Board of Examiners, sustaining the charge of conducting unbecoming a teacher and suspending your certificates for two years. In the Matter of the Certificates of Howard Zlotkin, EDE 08835-21, Initial Decision (February 9, 2023), adopted, Comm'r (September 14, 2023), [https://njlaw.rutgers.edu/collections/oal/html/initial/ede08835-21\\_1.html](https://njlaw.rutgers.edu/collections/oal/html/initial/ede08835-21_1.html).

On February 2, 2024, the Board weighed the eleven factors of N.J.S.A. 43:1-3 and found that you had engaged in a heated argument with a student, during class in front of students, during which you cursed at the student and used a profane gesture. After careful consideration and balancing of the statutory factors, the Board found that a 10% forfeiture of your monthly pension benefit was warranted.

You filed a timely appeal of the Board's partial forfeiture. At its meeting of April 5, 2024, the Board affirmed its previous decision but granted an administrative hearing based upon the

standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1.1 et seq.

On April 29, 2024, you filed a motion for Summary Decision. On May 6, 2024, after a pre-hearing conference, both parties agreed that no material facts were in dispute, and that the ALJ should render a decision as a matter of law. On June 12, 2024, the Board filed its Motion for Summary Decision. In July 2024, two additional telephone conferences were held to discuss an allegation that was not raised at the previous hearing and not adjudicated. Ultimately, the Board withdrew the allegation in dispute and both parties revised their submissions. On August 1, 2024, you submitted your revised Motion for Summary Decision. On August 14, 2024, the Board submitted its revised Motion for Summary Decision, and the record was closed. ID at 3.

On September 4, 2024, the ALJ issued an ID recommended modifying the partial forfeiture amount to sixty-four days, based on a termination date of April 28, 2021 (the date of the misconduct) and retirement date of July 1, 2021.

### **CONCLUSIONS OF LAW**

N.J.S.A. 52:14B-10(c), provides for the rejection or modification of findings of fact and conclusions of law by the ALJ so long as Board “state[s] clearly the reasons for doing so.” It is well within the right of the Board to “make new or modified findings supported by sufficient, competent, and credible evidence in the record.” *Ibid.* “The order or final decision rejecting or modifying the initial decision shall state in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence at hearing and interpretation of law upon which it is based and precise changes in result or disposition caused by the rejection or modification.” N.J.A.C. 1:1-18.6(b). See In re Carter, 191 N.J. 474, 476 (2007) (finding that the court erred by concluding that the punishment of removal for the sleeping charges was too severe and substituting its own reevaluation of the case for the Board’s opinion that terminated the police officer from his position).

The Board accepts the ALJ's factual findings in part, and modifies the ALJ's factual finding to include the two following corrections: First, ALJ Villani found that you responded to a student calling you privileged by loudly retorting, "F—k you," and holding your middle finger up to the camera, ending the discussion. ID at 5. However, the recording shows that you made the comment in front of a classroom filled with students, specifically targeting a particular student. Therefore, the Board seeks to modify the ALJ's finding from "In turn, Zlotkin loudly retorted, 'F—k you,' and held his middle finger up to the camera, ending the discussion" to "In turn, Zlotkin loudly retorted, 'you know what [Sara] f—k You! I'm privileged? F—k You!!' Along with his verbal response, he also gave two 'middle fingers' to the student." Recording 1 at 0:49; Recording 3 at 0:19.

Second, ALJ Villani found that on April 28, 2021, your lesson plan for that day allowed for student formulation and presentation of a hypothesis and that the 'students' topic or hypothesis was that all white people are privileged." ID at 4. This finding misrepresents the facts presented, and the topic of the class remains unclear. Specifically, in your three briefs, you state that your class "selected a racially charged topic involving student formulation and presentation of a hypothesis" but you fail to specifically state what the topic was. Similarly, in the revocation proceeding, the record only indicates that the students "selected a racially charged topic involving student formulation and presentation of a hypothesis." Zb1 at 3; Zb2 at 5; Zb3 at 6, R-2 at Zlotkin 0115.<sup>4</sup> While it is not disputed that a student did state that "all white people are privileged," the video shows that this comment was made in response to you stating that you were not privileged. Recording 1 at 0:48. Since we do not know if the students actually chose the topic of "all white people are privileged;" the Board modifies the ID as follows: "The issue of privilege was discussed. Zlotkin reacted, for about two minutes he spoke to his students heatedly about several political and racial subjects, espousing his views."

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<sup>4</sup> Zb1 is Zlotkin's April 29, 2024 Brief; Zb2 is Zlotkin's June 28 2024 Brief; Zb3 is Zlotkin's August 1, 2024 Brief.

The Board notes that ALJ Villani appropriately outlined the eleven-point factor test expressed by our Supreme Court in Uricoli v. Board of Trustees, Police and Firemen's Retirement System, 91 N.J. 62 (1982). ID at 9-10. However, ALJ Villani concluded that the Board should modify the partial forfeiture amount to sixty-four days, based on a termination date of April 28, 2021 (the date of the misconduct) and retirement date of July 1, 2021, rather than the 10% forfeiture imposed by the Board.

Pursuant to N.J.S.A. 43:1-3(d), when the Board determines that a partial forfeiture is warranted, it shall order that benefits are be "calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred." Id.; see also N.J.A.C. 17:1-6.1(b). However,

[i]n circumstances where the termination of pension rights as of the date of the misconduct results in no reduction, or a minimal reduction of pension or retirement benefits, or in an excessive forfeiture, as compared to the nature and extent of the misconduct and the years of honorable service, the Board may, in its sole discretion, provide a more equitable relief.

N.J.A.C. 17:1-6.1(c); see also N.J.S.A. 43:1-3(d).

In order to impose a more just and reasonable result, the Board may, in its discretion, consider alternate methods of imposing a forfeiture provided under N.J.A.C. 17:1-6.1(c)(4). Some alternate methods include, but are not limited to, a flat reduction in monthly retirement allowance. N.J.A.C. 17:1-6.1(c)(4). Having considered a forfeiture as of the date of the misconduct a minimal reduction as compared to the nature and extent of the misconduct, the Board decided a flat reduction in monthly retirement allowance would be a more just result. Hence, the 10% forfeiture the Board applied against you.

ALJ Villani found that the Board's intent was for this forfeiture to 'pre-date' your misconduct. ID at 11. However, the Board disagrees and finds that the ALJ failed to consider the Board's discretionary authority to impose a more just result. The Board found that calculating the forfeiture from the date of your misconduct (April 28, 2021) would result in an insignificant

forfeiture. In fact, a forfeiture from the date of misconduct would be less than the partial forfeiture of sixty-four days ALJ Villani intended. You resigned in or about May 21, 2021, and your service termination date was May 31, 2021. Therefore, if the Board were to modify the forfeiture as ALJ Villani suggested (the date of the incident forward) it would result in a forfeiture of 34 days. Accordingly, the Board used its discretion, as permitted under the regulation to impose an alternative forfeiture of 10% of your retirement benefits. This was a flat forfeiture of your retirement benefit that was retroactive to your retirement date of July 1, 2021.

Furthermore, the Board properly attributed more weight to Uricoli factors seven, eight, and nine. Corvelli v. Bd. of Trs., Police & Firemen's Ret. Sys., 130 N.J. 539, 552-53 (1992). In contrast, ALJ Villani relied heavily on factors two (the basis of retirement), factors five and six (your long record of public service in two pension systems), the second part of factor seven (the number of occurrences), and factor nine (a lack of nefarious motive). Although ALJ Villani agreed that the substantiality of the offense weighs in favor of a more severe forfeiture, she ultimately found that a single incident weighs in favor of a more lenient forfeiture. ID at 10-11. The Board however, concludes that ALJ Villani improperly gave significant weight to the misconduct being a single occurrence. The Board finds that your misconduct, while only a single occurrence, was significant enough to warrant a 10% forfeiture. Specifically, factor eight (the relationship between the misconduct and the member's public duties) is uncontested and strongly supports a finding of a more severe penalty. ID at 10. It is without dispute that the relationship was direct, as you were a teacher and your misconduct occurred during class, in front of your students.

Further, factor nine (quality of moral turpitude or the degree of guilt or culpability), ALJ Villani found that your comments were an emotional outburst to a statement, directed at you, which you took personal offense and were attempting to explain how the statement was inaccurate, hurtful, and disrespectful. ID at 4. The Board however determined that your behavior involved a "high degree of guilty and culpability and that his motivation was to humiliate the student." Ibid. As a teacher, your actions violated and showed a complete disregard for the public

trust given to you by the administration, the students' parents, and the students themselves. Additionally, given that you are an experienced teacher, you should recognize the negative impact of your highly inappropriate comments to a high school-age student.

Accordingly, the Board used its discretion and granted more weight to factors seven, eight, and nine and determined that those factors support a 10% forfeiture. The Board notes that 90% of your pension was left intact, and that a 10% penalty is reasonable.

The Board also rejects ALJ Villani's reliance on Cooke v. Bd. Of Trs., A-3167-18T3, 2020 LEXIS 662 (App. Div. April 14, 2020) and Flax v. Bd. Of Trs. A-1585-19, 2021LEXIS 1645 (App. Div. August 3, 2021). ALJ Villani noted that in Cooke, the Appellate Division upheld a ten percent pension forfeiture, in a case where Cooke used racial epithets to disparage a fellow teacher on two separate occasions. ID at 8. Next, ALJ Villani noted that in Flax, the Appellate Division upheld the twenty-eight-month forfeiture imposed on Flax, a corrections officer that had a seven-month romantic relationship with an inmate which included hundreds of telephone calls to the inmate and several written letters. ID at 8. ALJ Villani further noted that Flax's twenty-eight-month forfeiture is "similar to the twenty four-month forfeiture" that the Board sought in this case. However, ALJ's Villani's analysis is faulty for several reasons.

First, the Board issued a flat 10% forfeiture and not a forfeiture based on months of forfeited service. As previously established, if the Board imposed a forfeiture as of the date of the misconduct (April 28, 2021) it would have resulted in a minimal reduction compared to the nature and gravity of your misconduct. It is important to note that just because the Appellate Division determined that a 10% forfeiture was appropriate for Cooke's actions, this does not mean that the use of offensive language towards a fellow teacher on two occasions is the standard that must be met for the Board to impose a similar ten percent forfeiture. Similarly, Flax's actions in engaging in a seven-month romantic relationship with an inmate do not set the standard for receiving a comparable penalty.

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The Board's decision to impose a partial forfeiture of 10% is reasonable given the serious nature of your misconduct, which was directed at a student you were entrusted to teach and mentor. Moreover, your actions resulted in negative attention for the school district on a national level, causing embarrassment. The Board reasonably used its discretionary authority to impose a more severe penalty that is appropriate for the seriousness of your misconduct.

For the foregoing reasons, the Board rejected the ALJ's recommendation to modify the forfeiture amount.

You have the right to appeal this administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,



Saretta Dudley, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

G-2/SD

c: J. Ehrmann (ET)  
DAG Jakai Jackson (ET)  
OAL, Attn: Library (ET)