No. 20
In the Matter of Karri Beck-Nichols,
Respondent,
v.
Cynthia A. Bianco, &c., et al.,
Appellants.

No. 21
In the Matter of Roxanne Adrian,
Appellant,
v.
Board of Education of City School District of City of Niagara Falls et al.,
Respondents.

No. 27
In the Matter of Keli-Koran Luchey,
Respondent,
v.
Board of Education of City School District of the City of Niagara Falls et al.,
Appellants.

Case No. 20:
Michael F. Perley, for appellants.
Terry M. Sugrue, for respondent.

Case No. 21:
Anthony J. Brock, for appellant.
Michael F. Perley, for respondents.

Case No. 27:
Anthony J. Brock, for appellants.
Michael F. Perley, for respondent.

READ, J.:

These three cases stem from a residency policy that calls for those employees of the School District of the City of Niagara Falls, New York (the District) hired or promoted after the policy's effective date, March 1, 1994, to reside in the City of Niagara Falls (Niagara Falls or the City), and maintain

residency there during their employment. The policy's implementing regulations define "residency" as "an individual's actual principal domicile at which he or she maintains usual personal and household effects."

I.

Beck-Nichols

The District hired Beck-Nichols as a computer operator in July 1994, and promoted her to the position of production control manager in 2005. When she first began to work for the District, Beck-Nichols resided at a house on J. Avenue in Niagara Falls, which she and her husband owned. In 2001, Beck-Nichols and her husband purchased a house in Lewiston, New York, and, upon being asked, Beck-Nichols informed the District's Administrator for Human Resources (the Administrator) that she remained domiciled in Niagara Falls. Beck-Nichols again assured the District she was domiciled in Niagara Falls on December 3, 2003, when she signed a "residency confirmation."

By letter dated June 7, 2004, the Administrator directed Beck-Nichols to attend an "interview conference" for her to present information substantiating compliance with the residency policy. At this meeting, Beck-Nichols, who was accompanied by her attorney, stated that she was residing with her parents and a nephew, of whom she had custody, at her parent's house on C. Avenue in Niagara Falls; that she and her husband were renting out their house on J. Avenue, but intended

eventually to return there; and that her husband and three children were residing at the house in Lewiston, where the children attended school.

On January 21, 2009, Beck-Nichols filed an "Employee Change of Address Form" with the District's Office of Human Resources, claiming residency at the J. Avenue address again. On February 10, 2009, the Administrator wrote to Beck-Nichols, telling her that the District had "reason to believe that [she was] in violation of [the residency] policy"; and scheduling a "residency affirmation meeting" with her for the District "to secure additional information and/or documentation supporting [her] affirmation and continued residency in [Niagara Falls]." This letter was prompted by a Westlaw database search conducted in December 2008, which turned up the Lewiston address for Beck-Nichols.

Beck-Nichols, with her attorney, appeared at the meeting, held on March 25, 2009. To verify compliance with the residency policy, she supplied copies of utility bills and a cable bill addressed to her at the J. Avenue address; a recent voter registration card and driver's license, showing her address as J. Avenue; and a statement for a home equity line of credit for the J. Avenue house, addressed to Beck-Nichols and her husband. At this meeting, the District's attorney brought up the application for exemption from school property taxes under the New York State School Tax Relief Program (STAR), signed by Beck-

Nichols and her husband on May 10, 2001 as "resident owners," in which they certified that they owned the Lewiston property; that it was their "primary residence"; and that they understood their obligation to notify the assessor if they relocated to another primary residence. He also raised information showing that tax bills for the J. Avenue property were sent to Beck-Nichols and her husband at the Lewiston address.

Meanwhile, the District had engaged a private company to conduct surveillance, which took place on four days in February, three in March and one in May. The investigators observed Beck-Nichols at the Lewiston address on the first two days of surveillance in February, which were weekdays that she did not work, and the third day, a Sunday. On the fourth day, the investigators followed Beck-Nichols from work to the J. Avenue address, which she entered and exited eight minutes later, and to another residence in Niagara Falls, which she entered and exited 36 minutes later. The investigators noted that as they continued mobile surveillance, Beck-Nichols "[began] driving at high speeds and somewhat evasively"; and that she "continue[d] to travel at a high rate of speed pulling into [the] driveway and directly into the garage" at the Lewiston address. Surveillance was discontinued at 7:00 P.M.

The first day of surveillance in March, a Sunday, Beck-Nichols was observed at the Lewiston address; the second day, a weekday, she drove after work to the J. Avenue address, which she

entered and exited 29 minutes later; she then drove to the Lewiston address, and "quickly pull[ed] into the garage as the door close[d] behind her"; surveillance was discontinued at 8:00 P.M. On the third day, a weekday, an investigator observed Beck-Nichols leaving the J. Avenue address in the morning, on her way to work. On the single day of surveillance in May, a weekday, Beck-Nichols drove to the Lewiston address after work; she left at 11:40 P.M., "travel[ing] at high rates of speed and rather evasively" toward Niagara Falls. She arrived at the J. Avenue address at 11:56 P.M., where she appeared to "take[] notice" of a second investigator's "surveillance position[,] . . . walk[ing] around [the] vehicle before entering the residence." The investigators then established a different observation point; they discontinued surveillance at 1:00 A.M. since it seemed that Beck-Nichols had retired for the night. In the case summary for the investigation, the author noted that Beck-Nichols "appeared to be very suspicious of our surveillance."

On July 10, 2009, the Administrator wrote Beck-Nichols, enclosing a summary of the March 25th meeting and copies of documents referred to in the summary, as well as a copy of the new STAR application for the Lewiston property, dated June 9, 2009, which she had supplied to him the previous day. This application was signed only by Beck-Nichols' husband as "resident owner[]." The Administrator noted that all this information would be submitted to the Niagara Falls Board of Education (the

Board) for review, and later in July, the Board considered Beck-Nichols' case. Based on the record compiled, the Board concluded that Beck-Nichols did not appear to comply with the residency policy. In accordance with the policy's implementing regulations, the Administrator sent Beck-Nichols a "seven-day letter," dated July 30, 2009, to notify her that the Board had "reason to believe" that she was in violation of the policy, and to give her seven days to respond in writing.

By letter dated August 4, 2009, Beck-Nichols replied that she had maintained the J. Avenue address as her "permanent domicile" throughout 15 years of employment in the District, and had furnished "voter registration, utility bills, driver's license, and other information" to prove this was the case; that her promotion in 2005 led her to believe that the 2004 investigation had ended in her favor; and that she was a tireless worker whose record was "without blemish." She requested the Board reconsider. By letter dated August 14, 2009, the Administrator offered to meet with Beck-Nichols on August 18, 2009, to provide additional documents. At this meeting, Beck-Nichols was given a copy of the surveillance report; she and her attorney acknowledged that, at some point, she knew she was being followed. On August 21, 2009, the Administrator sent Beck-Nichols a "30-day letter" to notify her that, at the Board's September meeting, the Superintendent of Schools (the Superintendent) would recommend termination of her services for

failure to comply with the residency policy.

On September 24, 2009, the Board terminated Beck-Nichols' employment, effective the next day;[1] on December 21, 2009, she commenced this CPLR article 78 proceeding against the Superintendent, the Board's President, the Board and the District, seeking to set aside the Board's determination. Beck-Nichols argued that the termination of her employment was arbitrary and capricious because the District did not prove by clear and convincing evidence that she had abandoned her domicile in Niagara Falls.

Supreme Court transferred the case to the Appellate Division, which annulled the determination, on the law, and granted the petition (89 AD3d 1405 [4th Dept 2011]). The court noted "at the outset" that Supreme Court had improperly transferred the case because the Board's decision did "not involve a substantial evidence issue" (id. at 1406, citing Matter of Krajkowski v Bianco, 85 AD3d 1577, 1578 [4th Dept 2011], lv denied 17 NY3d 712 [2011]). Nonetheless, the Appellate Division reached the merits "in the interest of judicial economy" (id. [internal quotation marks omitted]). The court agreed with Beck-

[1]According to the District's attorney, the Board considered the residency of 27 employees, and final determinations were made with respect to 20 of them. Of these 20, seven were sent letters indicating that they complied with the residency policy; the employment of six employees (including Beck-Nichols) was terminated; court action blocked action in one case; four employees resigned; and one employee agreed in writing to comply with the residency policy within a reasonable period of time.

Nichols that the District was required to muster clear and convincing evidence to show that she had changed her domicile, and did not meet this burden. We subsequently granted leave to appeal (18 NY3d 807 [2012]), and now reverse.

Adrian and Luchey

Adrian

Adrian was appointed a teacher in the District as of September 1, 2003, and later acquired tenure. When hired, she signed an employment agreement, acknowledging that she was required to establish residency in Niagara Falls, within the meaning of the residency policy, within six months of her initial appointment; in this agreement, she identified her domicile at the time as an address in Williamsville, New York. On December 12, 2003, the Administrator wrote to Adrian, reminding her that the six-month grace period ended on March 1, 2004. In response, Adrian requested an extension, which the Board granted. On August 11, 2004, Adrian submitted a change of address form, notifying the District that she resided in Niagara Falls at an address on 73rd Street. On August 15, 2006, she submitted a change of address for mailing only; the mailing address was a post office box in Niagara Falls.

A Westlaw database search, conducted in January 2009, indicated that Adrian still resided at the Williamsville address; a record maintained by the State Education Department, obtained in March, 2009, disclosed that Adrian had apparently used the

Williamsville address when she applied for permanent certification, which was granted in 2007. On April 1, 2009, the Administrator wrote to Adrian, informing her that the District had "reason to believe that [she was] in violation of [the residency] policy"; and scheduling an "interview conference" with her for the District "to secure additional information and/or documentation supporting [her] affirmation and continued residency in [Niagara Falls]."

At this meeting, held on May 12, 2009, Adrian, accompanied by her attorney and union representatives, identified the 73rd Street address in Niagara Falls as her residence. She claimed to live on the second floor in an apartment with a bathroom, bedroom and living room, and a kitchen with a small refrigerator and microwave oven; she produced a lease for the period September 1, 2008 through June 30, 2009, and receipts for rent payments of $350 per month since September 2008. She provided copies of correspondence or documents identifying her address as 73rd Street in Niagara Falls -- i.e., cable bills, a voter registration card, a driver's license and vehicle registration card. Adrian said that she resided at the Williamsville address with a friend only in the summertime, although she helped out the friend, who suffered from migraine headaches, in the morning before going to work; she did not pay rent at Williamsville; and there was a phone listing for her there, but not at the 73rd Street address.

In the meantime, surveillance was conducted on behalf of the District on two days in March, one in April and two in May. The company engaged by the District to perform this investigation reported that Adrian was observed leaving for work from, or returning from work to, the Williamsville address; she was never seen at the 73rd Street address, including the one occasion when a second investigator was stationed there throughout the afternoon/evening hours until 8:00 A.M. the following morning.

Based on the record compiled, the Board in July 2009 concluded that Adrian did not appear to comply with the residency policy. In accordance with the policy's implementing regulations, the Administrator sent Adrian a "seven-day letter," dated July 30, 2009, to notify her that the Board had "reason to believe" that she was in violation of the policy, and to give her seven days to respond in writing. On August 4, 2009, Adrian's attorney wrote to the Administrator, seeking advice "as to what steps [were] necessary to resolve this matter to [his] client's satisfaction." By letter dated August 14, 2009, the Administrator offered to meet with Adrian on August 18, 2009 to provide additional documents. At this meeting, attended by both Adrian's attorney and union representatives, the District's attorney handed over a copy of the surveillance report. By letter dated August 20, 2009, Adrian's attorney furnished the District's attorney with a voter registration card and a letter

and bill from the cable company, all showing a new address for Adrian on C. Avenue in Niagara Falls.

On August 21, 2009, the Administrator sent Adrian a "30-day letter" to notify her that, at the Board's September meeting, the Superintendent would recommend termination of her services for failure to comply with the residency policy. Adrian's attorney then wrote the District's attorney, inquiring as to "what other documentation [would be] necessary" to prevent this from happening; the District's attorney replied on September 10, 2009 that, after reviewing the information submitted by Adrian as to her change of address to C. Avenue in Niagara Falls, the Board "remain[ed] of the opinion" that she was out of compliance with the policy. By letter dated September 11, 2009, Adrian's attorney sent the District's attorney a lease signed by Adrian to rent the C. Avenue property as a personal residence for Adrian and two other individuals.[2]

On September 24, 2009, the Board terminated Adrian's employment, effective the next day; on December 18, 2009, she commenced this CPLR article 78 proceeding against the Board and the Superintendent. Adrian contended that, as a tenured

[2]The rental agreement states that the lease term ran for a six-month period from April 1, 2009 through September 30, 2009, although Adrian claimed at the May 12th meeting that she then resided at 73rd Street in Niagara Falls. The lease, which was signed by the parties on September 1, 2009, also included a rider indicating that its term began as of September 1, 2009 until "move out date."

employee, she was entitled to a pre-termination hearing complying with Education Law §§ 2509 (2), 3020 and 3020-a; that the Board terminated her employment "without sound basis in reason or regard to the facts"; and that the Superintendent failed to establish administrative procedures to carry out the residency policy, rendering both the policy and the Board's action "incomplete, null, void and of no force and effect."

Luchey

Luchey signed an affirmation on November 2, 1999, signifying her understanding that she was required to become a resident of Niagara Falls within six months of her appointment to a position in the District, in accordance with the residency policy. On November 19, 1999, she signed an employment agreement to the same effect; in the agreement, she identified her domicile at the time as North Tonawanda, New York. Luchey's appointment as a school counselor was effective on December 13, 1999. By letter dated March 15, 2000, the Administrator reminded Luchey that the six-month grace period ended on June 13, 2000. In response, Luchey requested an extension, which the Board granted. Before the extension ended, she supplied the District proof of residency at an address on W. Avenue in Niagara Falls; in the fall of 2001, she supplied proof of residency at a new address, P. Road in Niagara Falls. On December 13, 2003, Luchey signed an affirmation in which she declared that her residence was P. Road in Niagara Falls.

A Westlaw database search, conducted in December 2008, indicated that Luchey resided at an address in Amherst, New York. On April 1, 2009, the Administrator wrote to Luchey, informing her that the District had "reason to believe that [she was] in violation of [the residency] policy"; and scheduling an "interview conference" with her for the District "to secure additional information and/or documentation supporting [her] affirmation and continued residency in [Niagara Falls]." At this meeting, held on April 28, 2009, Luchey, accompanied by her attorney and union representatives, identified an address on L. Avenue in Niagara Falls as her residence. She submitted her driver's license, car registration, voter registration card, bank statements and other bills or documents listing, or addressed to her at, this address. Luchey described her residence at L. Avenue as a heated basement, with its own shower and kitchen, in a single-family home; she stated that she paid her rent in cash, and had no receipts. Luchey also represented that she and her ex-husband had reached an oral agreement for their seven-year-old son to reside with him in Amherst, although Luchey retained full custody; her son attended school in Amherst.

Prior to the meeting, surveillance had been conducted on behalf of the District during five days in March (four workdays and a Sunday). In four separate observations (on one of the workdays, the investigator was unable to locate Luchey's vehicle in the school's parking lot), Luchey was never seen at

her purported Niagara Falls address; instead, she left for work from, and returned from work to, the Amherst address discovered in the database search.

On July 10, 2009, the Administrator supplied Luchey with a summary of the April 28th meeting, and asked for further documentation verifying rent payment. Based on the record compiled, the Board in July 2009 concluded that Luchey did not appear to comply with the residency policy. In accordance with the policy's implementing regulations, the Administrator sent Luchey a "seven-day letter," dated July 30, 2009, to notify her that the Board had "reason to believe" that she was in violation of the policy, and to give her seven days to respond in writing.

Luchey's attorney wrote to the Administrator on August 4, 2009, submitting four receipts for rent paid by Luchey, prepared by the owner of the residence at the L. Avenue address; and requesting copies of the documentation relied on by the District. By letter dated August 14, 2009, the Administrator offered to meet with Luchey on August 18, 2009 to provide additional documents related to her compliance with the residency policy. When Luchey did not attend the meeting, apparently because her attorney was unavailable, the surveillance report was telefaxed to a union representative.

On September 24, 2009, the Board terminated Luchey's employment, effective the next day; on December 18, 2009, she commenced this CPLR article 78 proceeding against the Board and

the Superintendent. Like Adrian, Luchey contended that, as a tenured employee, she was entitled to a pre-termination hearing complying with Education Law §§ 2509 (2), 3020 and 3020-a; that the Board terminated her employment "without sound basis in reason or regard to the facts"; and that the Superintendent failed to establish administrative procedures to carry out the residency policy, rendering both the policy and the Board's action "incomplete, null, void and of no force and effect."

Decisions Below

Although Adrian's and Luchey's lawsuits were not consolidated, their claims were identical, and Supreme Court considered and granted their petitions together. The judge noted that petitioners were not entitled to pre-termination hearings because the residency requirement was "merely a condition of employment," citing Matter of Felix v New York City Dept. of Citywide Admin. Servs. (3 NY3d 498 [2004]). But considering the basis for petitioners' job loss, he characterized the policy's definition of residency as creating a "vague and ambiguous" standard which, coupled with the Superintendent's failure to develop adequate procedures and guidelines, "resulted in varied and subjective interpretations leading to disparate results." The judge therefore held that the residency requirement was unenforceable, and that any termination of Adrian's and Luchey's employment based on it was therefore arbitrary and capricious. He directed their reinstatement with full back pay and benefits.

The Board and Superintendent appealed.

The Appellate Division considered these appeals separately. One panel reversed the judgment as to Adrian (92 AD3d 1272 [4th Dept 2012]). In the court's view, the District established that Adrian was not domiciled in Niagara Falls, and therefore the Board's determination was not arbitrary and capricious. The court also rejected Adrian's alternative ground for affirmance -- i.e., that the District did not conduct a pre-termination trial-type hearing -- on the ground that this was not mandated by law. We granted Adrian leave to appeal (19 NY3d 804 [2012]), and now affirm. The other panel affirmed the judgment as to Luchey, without opinion (92 AD3d 1276 [4th Dept 2012]). We granted the Board and Superintendent leave to appeal (19 NY3d 804 [2012]), and now reverse.

II.

A residency policy for municipal workers serves "the legitimate purpose of encouraging city employees to maintain a commitment and involvement with the government which employs them by living within the city [citations omitted]" (Felix, 3 NY3d at 505, quoting Mandelkern v City of Buffalo, 64 AD2d 279, 281 [4th Dept 1978, Simons, J.]). The District's residency policy states simply that "[t]he Niagara Falls Board of Education requires that employees hired or promoted after the effective date of this policy[] be residents of the City of Niagara Falls and maintain their residency during their term of employment." The

implementing regulations, as noted earlier, define "residency" as "an individual's actual principal domicile at which he or she maintains usual personal and household effects." This definition may be criticized for redundancy or surplusage, but not ambiguity. The word "domicile" alone is enough to convey the sense that the Board mandates that District employees live in Niagara Falls "with intent to make it a fixed and permanent abode" (see Matter of Newcomb, 192 NY 238, 250 [1908]).

Further, the regulations provide for notifying employees of the residency policy upon initial appointment and promotion; give employees six months after appointment to come into compliance, and allow the Board, in its discretion, to extend this grace period for another six months; provide for a "seven-day letter" to afford an employee the opportunity to respond to allegations of non-compliance; include a hardship waiver; and exempt non-administrative employees hired prior to the policy's effective date, subject to certain conditions. The regulations also include detailed forms to carry out the policy. These forms, in one way or another, call for employees to acknowledge that they have read, understand and agree to fulfill their responsibilities under the policy.

In short, the residency policy and its implementing regulations make clear that District personnel are expected to be domiciled in Niagara Falls within no more than a year after appointment, and throughout their subsequent employment. Nothing

in the policy or regulations might reasonably lead a prospective employee into supposing that a mail drop or pied à terre in the City was sufficient. Indeed, the policy would be pointless if this were enough to satisfy the residency obligation.

Next, we have held that a residency requirement defines eligibility for employment, and so is "unrelated to job performance, misconduct or competency" (see Felix, 3 NY3d at 505; see also Matter of New York State Off. of Children & Family Servs. v Lanterman, 14 NY3d 275, 282 [2010]). Consequently, Adrian and Luchey were not entitled to hearings complying with Education Law §§ 2509 (2), 3020 & 3020-a, which deal with teacher discipline (see O'Connor v Board of Educ. of City Sch. Dist. of City of Niagara Falls, 48 AD3d 1254 [4th Dept 2008] lv dismissed 10 NY3d 928 [2008]). And due process mandates only notice and some opportunity to respond (see Matter of Prue v Hunt, 78 NY2d 364, 368 [1991] [applying Cleveland Bd. of Educ. v Loudermill, 470 US 532, 543 (1985)]).

Here, the Administrator notified Beck-Nichols, Adrian and Luchey that they were suspected of violating the residency policy. There ensued individual meetings at which they appeared with counsel (and union representatives in two instances), where the District received and offered evidence bearing on their residency. Information developed as a result of the meetings and through surveillance was shared with the employees and submitted to the Board, which concluded that there was reason to believe

that Beck-Nichols, Adrian and Luchey were violating the policy. The Administrator then sent a "seven-day letter," which afforded a last-chance opportunity for these employees to make the case that they, in fact, resided in Niagara Falls within the meaning of the policy. When the evidence or argument presented in response to the letters proved unpersuasive, the Administrator issued a "30-day letter" to inform Beck-Nichols, Adrian and Luchey that the Superintendent would recommend at the next Board meeting that their services be terminated for failure to comply with the residency policy. These notice-and-hearing procedures, which are more extensive than the regulations' provision for a single notification and opportunity to respond via a "seven-day letter," easily comply with due process.

Finally, the proper standard for judicial review in these cases is whether the Board's determination was arbitrary and capricious or an abuse of discretion (see CPLR 7803 [3]). This standard is, of course, an extremely deferential one: "The courts cannot interfere [with an administrative tribunal's exercise of discretion] unless there is no rational basis for [its] exercise . . . or the action complained of is arbitrary and capricious, [a test which] chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact" (see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester

County, 34 NY2d 222, 231 [1974] [internal citations and quotation marks omitted] [emphases added]). Beck-Nichols seeks to create a higher standard by arguing that because she was concededly domiciled in Niagara Falls when hired (unlike Adrian and Luchey), the District was obliged to prove by clear and convincing evidence that she abandoned her domicile; that the District did not meet this standard; and so the Board's decision to end her employment was perforce arbitrary and capricious. She relies principally on our decision in Matter of Curry v Hosley (86 NY2d 470 [1995]).

In that case, Hosley sought an order disqualifying Curry, the district attorney of Hamilton County, from acting in that capacity on the basis that Curry was, in fact, a resident of Warren County, and so did not satisfy the residency requirements of Public Officers Law §§ 3 and 30. Section 3 (1) provides that "[n]o person shall be capable of holding a civil office who shall not . . . [be] a resident of the political subdivision . . . of the state for which he shall be chosen"; section 30 (1) (d) concomitantly specifies that "[e]very office shall be vacant upon . . . [the incumbent's] ceasing to be an inhabitant . . . of the political subdivision . . . of which he is required to be a resident when chosen." Curry owned residences in both Hamilton and Warren Counties. Supreme Court decided that Hosley had not met the burden of proof necessary to declare that Curry was a non-resident of Hamilton County. The Appellate Division

reversed, declaring that "Supreme Court's conclusion could not be reached under any fair interpretation of the facts," which were essentially undisputed (207 AD2d 116, 118 [3d Dept 1995]).

First, we held that the terms "resident" and "inhabitant" in sections 3 and 30 were "properly understood to be synonymous with domicile" (Curry, 85 NY2d at 451). Next, we interpreted these statutory provisions to incorporate the definition of domicile and standard of proof specified in Newcomb, a will contest where the decedent's domicile at death was disputed. As a result, we held that Hosley, who was alleging a change in Curry's domicile from Hamilton to Warren County, bore the burden to demonstrate by "clear and convincing evidence" that the district attorney possessed a "present, definite and honest purpose to abandon the Hamilton County domicile and make the Warren County residence his fixed and permanent home" (id. at 452). We "conclude[d] that Supreme Court's determination that [Hosley] failed to sustain the burden more nearly comport[ed] with the weight of the evidence" (id.; see also CPLR 5501 [b]).

Beck-Nichols invites us to extend Curry, which involved the interpretation of statutes governing public officers, to municipal residency requirements applicable to public employees and enforced through administrative decisionmaking. We decline to make this leap. In any event, there is clear and convincing and, indeed, dispositive evidence that Beck-Nichols abandoned her domicile in Niagara Falls after her initial appointment; namely,

in May 2001 she and her husband signed a STAR application in which they certified that the Lewiston address was their "primary residence." The Board was certainly entitled to disregard the new STAR application filed for the Lewiston property in June 2009 and signed only by Beck-Nichols' husband. This happened after, and the Board might have reasonably concluded solely because, the District's attorney questioned Beck-Nichols about the 2001 application at the meeting held in March 2009 to review her residency status. Additionally, of course, Beck-Nichols' husband and family lived at the Lewiston residence; her children attended school in Lewiston; and Beck-Nichols, who apparently early on figured out that she was being followed and sought to evade surveillance, spent little time at the J. Avenue address in Niagara Falls.

Likewise, the Board rationally concluded that Adrian did not comply with the residency policy. She lived in Williamsville when initially appointed, and the evidence developed during the investigation, discussed earlier, might have reasonably caused the Board to conclude that she never abandoned her domicile there. The trial judge did not decide whether the Board's decision with respect to Luchey's residency was rational because he disposed of her case (and Adrian's) on the ground the policy was unenforceable. We can surmise that the Appellate Division affirmed in Luchey on alternative grounds, given its decision in Adrian upholding the Board's application of the

policy. The Appellate Division affirmed in Luchey without opinion, though, so we do not know the basis for its ruling. In light of this circumstance, we must presume that the Appellate Division, like Supreme Court, did not consider the merits; therefore, we remit for Supreme Court to resolve in the first instance whether the Board's determination that Luchey did not comply with the residency policy was arbitrary and capricious or an abuse of discretion.

Accordingly, in Beck-Nichols the judgment of the Appellate Division should be reversed, with costs, and the petition dismissed; in Adrian, the order of the Appellate Division should be affirmed, with costs; and in Luchey, the order of the Appellate Division should be reversed, with costs, and the matter remitted to Supreme Court for further proceedings in accordance with this opinion.

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For Case No. 20: Judgment reversed, with costs, and petition dismissed. Opinion by Judge Read. Chief Judge Lippman and Judges Graffeo, Smith and Pigott concur. Judge Rivera took no part.

For Case No. 21: Order affirmed, with costs. Opinion by Judge Read. Chief Judge Lippman and Judges Graffeo, Smith and Pigott concur. Judge Rivera took no part.

For Case No. 27: Order reversed, with costs, and matter remitted to Supreme Court, Niagara County, for further proceedings in accordance with the opinion herein. Opinion by Judge Read. Chief Judge Lippman and Judges Graffeo, Smith and Pigott concur. Judge Rivera took no part.

Decided February 19, 2013