

**Giordano-Lubrano v New York City Employees'  
Retirement Sys.**

2025 NY Slip Op 34346(U)

November 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 532666/2024

Judge: Carolyn E. Wade

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At the IAS, Part 84, of the Supreme Court of the State of New York, held in and for the County of Kings, located at 360 Adams Street, Brooklyn, New York on the 10 day of Nov, 2025

Present: HON. CAROLYN E. WADE, J.S.C.

SUPREME COURT OF NEW YORK  
COUNTY OF KINGS

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FRANCINE GIORDANO-LUBRANO, individually and as  
Executor of the Estate of Andrew N. Lubrano,

**DECISION AND ORDER**

Petitioner,

Index No. 532666/2024

-against-

Mot. Seq. 1 and 2

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM,  
THE BOARD OF TRUSTEES OF NYCERS,

Respondents.  
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**WHEREAS**, by Notice of Petition and Verified Petition, filed in the Supreme Court of the State of New York, County of Kings, on December 3, 2024 (Mot. Seq. 1), Petitioner sought an Order, *inter alia*, reinstating her as a survivor of Respondents' member, Andrew N. Lubrano, and to recalculate the benefit(s) from the member's pension; and

**WHEREAS**, by Cross-Motion and accompanying Memorandum of Law, filed on May 23, 2025 (Mot. Seq. 2), Respondents sought to have the Petition denied and the proceeding dismissed on the grounds that, pursuant to Rule 3211(a)(1) of the New York Civil Practice Law and Rules ("CPLR"), Respondents' documentary evidence established a clear defense to Petitioner's claims; and

**WHEREAS**, the Court held oral argument on September 17, 2025, and by Decision and Order detailed below, the Motions (Seq. 1 and Seq. 2) are decided as follows:

### **Factual Background**

Andrew N. Lubrano worked for the New York City Transit Authority (“NYCTA”) and was a NYCERS member. On November 3, 2017, Mr. Lubrano submitted his “Application for Service Retirement” seeking to retire from City service as of December 2, 2017. Respondents’ Exhibit “A.” In the Application for Service Retirement, the applicant selects a temporary retirement option to cover the period between the effective retirement date and when the member submits the Permanent Retirement Election Form. In his application, Mr. Lubrano selected 100% Joint-and-Survivor benefits (designating Petitioner as beneficiary) as his *temporary* option. Respondents’ Exhibit “A” at pg. 2 (emphasis added).

Mr. Lubrano submitted his permanent Retirement Option Election Form on June 19, 2018, where he elected to receive the Maximum Retirement Allowance, agreeing as follows: “I elect to receive the maximum lifetime retirement allowance payable to me. I understand that all payments cease upon my death, and under this election I cannot elect a beneficiary.” Respondents’ Exhibit “B.” On June 19, 2018, Mr. Lubrano also submitted his form to NYCERS for “Designation of Beneficiary(ies) Post-Retirement Lump-Sum Death Benefit” where he named Petitioner as the primary beneficiary and, by signing the form, agreed “I understand that at the time of my death after retirement, the lump-sum death benefit will be paid to my surviving designated Primary Beneficiary(ies).” Respondents’ Exhibit “C.”

Respondents’ records reflect that Mr. Lubrano passed away on January 17, 2023.

By letter dated February 21, 2023, Respondents contacted Petitioner to provide her information and forms to submit the necessary documents in order to collect the pension payment representing the partial monthly amount Mr. Lubrano was entitled to receive prior to his passing. By letter dated July 25, 2023, Respondents notified Petitioner that, as the

designated beneficiary, she was entitled to receive a Post-Retirement Death Benefit (“PRDB”) as a lump-sum one-time payment in the amount of \$40,836.28. The letter included, among other things, an Election of Payment of Death Benefits Form. Respondents’ Exhibit “E.” On August 16, 2023, NYCERS received the Election of Payment of Death Benefit Form, signed and dated by Petitioner, where she elected to have the payment be made to her directly. Respondents’ Exhibit “F.”

On or about September 1, 2023, Respondents paid Petitioner the net lump-sum death benefit of \$33,901.28, payable to her as the beneficiary of Mr. Lubrano. The payment was made via electronic funds transfer. Respondents’ Exhibit “G.” By letter dated September 18, 2023, Respondents notified Petitioner that she would receive a final check within approximately fifteen (15) days in the amount of \$4,394.15, which was the partial monthly amount Mr. Lubrano was entitled to receive prior to his passing in January 2023. Respondents’ Exhibit “H.”

### Analysis

#### **A. Standard for a Motion to Dismiss Based on Documentary Evidence**

Under CPLR Rule 3211(a)(1), a “party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... a defense is founded upon documentary evidence[.]” “[S]uch motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314, 326 (2002). “In order for evidence to qualify as ‘documentary,’ it must be unambiguous, authentic, and undeniable.” *Granada Condominium III Assn. v. Palomino*, 78 A.D.3d 996, 996-97 (2d Dept 2010).

## B. Documentary Evidence Refutes Petitioner's Claims

The Verified Petition asserts vague and unsubstantiated claims that Respondents “required and requested” Petitioner to sign a waiver of her survivor’s benefits and to “give up any and all rights she would have been entitled to.” Verified Petition ¶¶ 23 and 26. Petitioner claims Respondents denied Petitioner survivor’s benefits and that decision was arbitrary and capricious<sup>1</sup>. However, the documentary evidence contradicts Petitioner’s claims.

Mr. Lubrano’s service retirement application, received by NYCERS on November 3, 2017, demonstrates that Mr. Lubrano selected Petitioner as the beneficiary of the *temporary* option of the pension benefit as “100% joint-and-survivor” benefits, which was in place only in the case of Mr. Lubrano’s death before his pension was finalized and before he made a final option selection or selected, as relevant here, the maximum benefit, which has no joint and survivor beneficiary. Respondents’ Exhibit “A.” On June 19, 2018, Mr. Lubrano filed his “Retirement Option Election Form” and “Designation of Beneficiary(ies) Post-Retirement Lump-Sum Death Benefit” with NYCERS. The top of the page of Retirement Option Election form states, “This Retirement Option Election Form allows you to elect either the Maximum Retirement Allowance or an option that provides a continuing benefit to your designated beneficiary after your death.” Respondents’ Exhibit “B.” Mr. Lubrano selected the checkbox for “Maximum Retirement Allowance,” which, directly next to it, states “I elect to receive the maximum lifetime retirement allowance payable to me. *I understand that all payments cease*

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<sup>1</sup> In the Notice of Petition, Petitioner alleges she was denied the survivor’s benefits she was owed pursuant to RSSL § 605-b, which pertains to accidental disability retirement for New York City uniformed sanitation members and was not the basis of Mr. Lubrano’s retirement application. In the Verified Petition, Petitioner asserts a different legal basis, RSSL § 507c, which pertains to performance of duty disability retirement for New York City Department of Correction employees, which likewise was not the basis of Mr. Lubrano’s retirement application.

*upon my death*, and that under this election I cannot elect a beneficiary.” (emphasis added)

Respondents’ Exhibit “B.”

With respect to the lump sum benefit, Petitioner was named as the Primary Beneficiary for this post-retirement lump sum benefit. This form is signed and dated by Mr. Lubrano on June 19, 2018. Exhibit “C.”

Respondents’ records reflect that Mr. Lubrano passed away on January 17, 2023. By letter dated July 25, 2023, Respondents informed Petitioner that as the designated beneficiary, she was entitled to receive a Post Retirement Death Benefit (“PRDB”) in the amount of \$40,836.28 and that this benefit was a *one-time, lump-sum payment* (emphasis added). Petitioner does not contest that she signed the requested forms and received the PRDB as stated in Respondents’ Exhibits “G” and “H.”

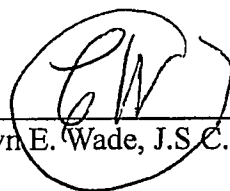
Therefore, Respondents have, “establish[ed] a defense as a matter of law.” *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314, 326 (2002), and the documentary evidence shows that Mr. Lubrano, the only person entitled to make decisions about his retirement payments, elected to receive the maximum lifetime benefit, knowingly agreeing that pension payments would cease after his death. The documents also show that Petitioner was his named beneficiary for the PRDB one-time lump-sum payment, that she elected to receive this payment directly, and that she was paid nearly \$40,000.00, as the remainder of the pension benefits that she was entitled to pursuant to Mr. Lubrano’s retirement option selection. The final payment of the partial month pension due in January 2023 was also paid out to Petitioner. Thus, the crux of Petitioner’s argument— that Respondents had Petitioner waive her benefits or denied Petitioner survivor benefits— is directly disputed by documentary evidence, and this proceeding is

therefore dismissed pursuant to CPLR 3211(a)(1). The Court finds Petitioner's remaining arguments unavailing.

**IT IS NOW HEREBY ORDERED** that Respondents' Cross-Motion to dismiss pursuant to Rule 3211(a)(1) of the CPLR on the grounds that Respondents' documentary evidence established a clear defense to Petitioner's claims is **GRANTED**. Accordingly, the Petition is **DENIED** and the proceeding dismissed.

**ORDERED** that Judgment is entered accordingly. This constitutes the Decision and Order of the Court.

ENTER:



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Hon. Carolyn E. Wade, J.S.C.

HON. CAROLYN E. WADE  
JUSTICE OF THE SUPREME COURT

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