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Ex-Official Levels New Charges Against Pension

By Matt Gunn November 18, 2011

Jeffrey Baker, a former investment officer for the **San Diego County Employees Retirement Association**, has filed a new complaint with the California labor commissioner. This one is related to the circumstances under which he was suspended – and ultimately fired – by the pension.

The pension counters that Baker's allegations, which include whistleblower retaliation and excessive risk assertions, are "simply wrong."

Baker's claims of wrongdoing originated in the spring, when the investment officer went public to charge that San Diego CERA's external CIO, **Lee Partridge**, had exceeded the pension's risk limits in Treasurys and high-yield investments, as [reported](#).

A June 1 complaint filed with the San Diego County civil services commission alleged that, after he brought his concerns to pension superiors, Baker suffered whistleblower retaliation and discrimination that led to him "essentially being fired."

"He is the first investment officer I have seen that has stepped out and said, 'Hey, there's a problem,' and then got fired for it," says **Michael Aguirre**, Baker's attorney and the former city attorney for San Diego from 2004 until 2008.

In its defense, the pension contends that Baker's accusations – particularly the charge that it overextended its risks – are inaccurate.

"The allegations in the complaint about alleged violations of risk policies are simply wrong," says a statement from a spokeswoman for the \$8 billion pension. "This is well documented in public minutes, meeting materials and videotapes of numerous board meetings going back into early 2010."

The civil service dismissed Baker's whistleblower complaint on Nov. 2, after an Office of Internal Affairs investigation failed to find probable cause that "Baker was a whistleblower with respect to the Treasury and high-yield programs," and also ruled that there was no evidence that he suffered whistleblower retaliation from the San Diego Pension. Because of this, Baker's complaint did not warrant a civil service hearing.

Baker in turn escalated his claims, filing a retaliation complaint with the state labor department on Nov. 7. The 39-page complaint charges that Baker was denied the due process of a hearing and ramps up claims of wrongdoing by Partridge and the pension. The new complaint also details how, in Baker's view, the pension took on excessive amounts of risk. It also alleges that, as the pension's funding gap has increased over the past decade, San Diego has not only borrowed

money by way of pension obligation bonds, but it has bet that money on unnecessarily risky investments.

“The complaint is fraught with an array of errors and mischaracterizations,” San Diego’s spokeswoman says in response. “For example, SDCERA has not taken on higher investment risk; in fact, the current policy, adopted in 2010, utilizes a more conservative model that strives for moderate but steady gains in an up market, and protects against losses in a down market.”

As to Baker’s allegations that the pension was going over its risk limits, San Diego’s policy allows for temporary deviations from tracking error targets depending on market conditions and other variables, the spokeswoman says. When tracking error exceeds its limits, it is brought before the board on a quarterly basis. During the periods referenced by Baker’s complaint, San Diego did bring the investments that exceeded the tracking error to its board.

“The investments were performing well, and no changes were made,” the spokeswoman says. “At the June 16, 2011, board meeting, in compliance with the Investment Policy Statement, the board voted to approve the profile in these assets classes.”

Baker contends that the pension flaunted its risky strategies, going so far as to state that the pension is itself transforming into a hedge fund. And while Baker was trying to shed light on what he believed to be wrongdoing, he notes in his complaint that San Diego “celebrated the fact that it (was) recognized as a ‘2011 Rising Stars of Hedge Funds’” by a trade publication at an event hosted at upscale Manhattan restaurant Cipriani.

While the complaint goes into further details surrounding the event itself and even provides a link to online photos of the occasion, San Diego offers a slightly different account of the circumstances. Although the pension acknowledges it received the award, it says it didn’t actually send anyone to the awards dinner.

While pension officials were proud to receive the award, which the spokeswoman says was awarded because of SDCERA’s “demonstrated skill in absolute return investing and an overall ability to construct and manage hedge fund portfolios,” no one from the pension attended the awards ceremony and dinner, “as has been misleadingly referenced by the complainant and his counsel.”

His counsel, Aguirre, certainly knows San Diego’s two public pensions well. In 2005 he sued **Callan Associates** on behalf of the **San Diego City Employees’ Retirement System**, alleging negligence in Callan’s manager oversight. The consulting firm settled by paying the city \$4.5 million.

In 2006, Aguirre sued the city pension over benefit increases that had been made in 1998 and 2002, charging that a conflict of interest among voting board members made the increases illegal.

And earlier this year, Aguirre criticized an alleged conflict of interest in a \$50 million timber investment made by the San Diego County pension with **Molpus Woodlands Group**. The pension’s external CIO, Partridge, works for Houston-based **Salient Partners**, which itself partnered with Molpus, as [reported](#).

Looking beyond the awards and the personalities involved, the case ultimately centers on the circumstances under which Baker lost his job. Baker still believes he was retaliated against and that his superiors fired him after he disclosed that they were engaging in what he says was unlawful and improper conduct.

“What Jeff was trying to do was say, ‘You’re over the risk budget and you need to adhere to it,’” Aguirre explains. “Not only did they fire him, but they tried to take away his unemployment [benefits]. They were so aggressive because they were so worried about what his message was. I think what this is kind of underscoring is the way in which excessive benefits lead to irresponsible risk taking.”

The San Diego County pension is not backing down, though.

“SDCERA stands by the findings of the Civil Services Commission, which is comprised of professional individuals appointed by, but independent of, the County,” the pension’s spokeswoman says. “After an in-depth investigation, the County Office of Internal Affairs concluded to the Commission that: ‘A review of the findings and conclusions show that Mr. Baker was placed on administrative leave and ultimately terminated for actions totally unrelated to his allegations of being a whistleblower and that he was not a victim of whistleblower retaliation... ’”

Both parties are waiting for word on whether the California labor department will take action on Baker’s latest complaint.

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