IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

State ex rel. Ohio Attorney General,	**:**	
Plaintiff,	**:**	**Case No. 24CV-3862**
-v-	**:**	**JUDGE KAREN HELD PHIPPS**
Wade Steen, et al.	**:**	
Defendants.	**:**	

DECISION & JUDGMENT ENTRY
AND
NOTICE OF FINAL APPEALABLE ORDER

HELD PHIPPS, J.

I. INTRODUCTION AND PROCEDURAL HISTORY

This matter came before the Court for a bench trial beginning on October 27, 2025, and ending on October 31, 2025, on Plaintiff Ohio Attorney General's ("Attorney General") claims against Defendants Wade Steen and Dr. Rudy Fichtenbaum ("Steen" and "Fichtenbaum," collectively "Defendants") for breach of fiduciary duty.

The allegations against Defendants stem from a long vexing issue facing beneficiaries of the State Teacher Retirement System of Ohio ("STRS"): the continued struggles of STRS to provide full cost of living adjustments ("COLA") to retirees on an annual basis while simultaneously paying bonuses to investment staff of STRS in the form of performance incentive pay.

The Attorney General initiated this matter on May 14, 2024. Each Defendant filed an Answer, Steen on June 20, 2024, and Fichtenbaum on July 9, 2024, and the matter proceeded. Although the Attorney General initially requested payment of damages by

Defendants as a remedy, prompting Defendants to request a trial by jury, the Attorney General later amended his Complaint by interlineation and has only requested a permanent injunction barring Steen and Fichtenbaum from serving as members of the STRS Board. Thus, the matter proceeded as a bench trial.

For his case-in-chief, the Attorney General presented the testimony of Steen as on cross-examination, Fichtenbaum as on cross-examination, Stephen Nesbitt, and Matthew Worley as witnesses. The Attorney General presented Joint Exhibits 1, 5, and 12; Defense Exhibits 87, 169, 213, 324, 329, 345, 377, and 422; and State's Exhibits 1, 6, 9, 10, 12, 13, 15, 21, 22, 24, 26, 27, 29, 30, 31, 37, 38, 53, 55, 56, 58, 62, 63, 64, 65, 66, 67, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, and 86, all of which were admitted.

Steen presented the testimony of Stacey Wideman, Seth Metcalf, and himself as witnesses in his case-in-chief. Fichtenbaum presented the testimony of Robert Stein, Robin Rayfield, Dean Dennis, and himself as witnesses in his case-in-chief. Defendants offered Joint Exhibits 1, 4, and 16; State's Exhibits 12 and 30; and Defendants' Exhibits 138, 139, 166, 213, 345, 372, 428, and 430, which were admitted. Defendants' Exhibit 429 was proffered, but not admitted.

After the trial concluded, the parties submitted written proposed findings of fact, proposed conclusions of law, and closing argument on December 15, 2025.

II. TESTIMONY AND EVIDENCE

A. The Witnesses

Steen is an accountant, CPA, and auditor who was appointed to the STRS Board as the governor's investment expert by Governor John Kasich in August 2016, serving a short unexpired term followed by a full term starting in September 2016. He was

reappointed by Governor Mike DeWine in September 2020 for a term ending in September 2024, so he was not on the STRS Board at the time of his testimony.

Fichtenbaum is a retired professor of econometrics, economic theory, income distribution, and labor at Wright State University, who taught for approximately 35 years. He organized the American Association of University Professors chapter at Wright State University and served as its chief negotiator from 1998 until his retirement in 2015 and also served as president of the Ohio Conference of the AAUP and as president of the national AAUP for four terms. Fichtenbaum was elected to the STRS Board in the fall of 2021.

Robert Stein ("Stein") is a retired teacher with 27 years of experience, holding a master's degree in adolescence development and CFP training, who ran businesses focused on entrepreneurial ventures and alcohol compliance, served as a registered investment adviser from 1985 to 1995, and held Series 7, Series 6, and Ohio 63 securities licenses. He was elected to the STRS Board in spring 2009, beginning service on September 1, 2009, elected to a total of four terms but resigned near the end of the third, and served as chair of every major Board committee, vice chair for three terms, and chair for three terms.

Stephen Nesbitt ("Nesbitt") is the CEO of Cliffwater, LLC, ("Cliffwater") a firm he founded 21 years before trial, where he manages the company and provides investment advisory services primarily to large public pension systems, endowments, foundations, and corporate plans, as well as managing alternative investments. Nesbitt testified that Cliffwater provided consultation work for roughly half of state public pension systems in the United States. He previously worked at Wilshire Associates for over 20 years providing similar investment services and as a portfolio manager for index funds at Wells

Fargo Bank and holds an MBA from The Wharton School at the University of Pennsylvania and a BA in mathematics and economics from Eisenhower College. STRS retained Cliffwater in 2018 to provide advisory services on alternative investments, including due diligence on potential outside managers of those investments.

Matthew Worley ("Worley") holds an undergraduate degree in finance and an MBA from Ohio State University, is a Chartered Financial Analyst awarded after a rigorous three-year program by the CFA Institute and was a licensed state retirement system investment officer until his retirement. He worked at the STRS for 31 years, serving as Chief Investment Officer and Deputy Executive Director of Investments for almost four years. As CIO, his job was to implement the STRS Board investment policy and supervise the investment department, which consisted of approximately 190 individuals.

Stacey Wideman ("Wideman") is the Chief Legal Officer at the State Teachers Retirement System of Ohio, a position she has held for a little over five years, where she manages the legal department including six attorneys, oversees outside litigation, and supports the board. She has been on staff at STRS since December 2013, previously serving as Deputy General Counsel of Operations from July 2017 to July 2020.

Robin Rayfield ("Rayfield") is a retired educator with 30 years of experience as a classroom teacher, building administrator, school superintendent, and university professor. He is a recipient of STRS benefits and has served as the Executive Director of the Ohio Retirement for Teachers Association ("ORTA") since 2017, an organization formed in 1947 to advocate for STRS beneficiaries, both active and retired.

Dean Dennis ("Dennis") is a retired teacher residing in Cincinnati, Ohio, who has served as the executive chair of the ORTA since 2008. He became involved in pension advocacy after STRS suspended regular COLA.

Seth Metcalf ("Metcalf") is the co-founder and managing director of QED Technologies ("QED"), a startup investment firm established in 2020. He previously served as Deputy Treasurer of the State of Ohio under former Treasurer Josh Mandel from 2011 to 2019. He earned a political science degree from Ohio State University in 2001, and a Juris Doctor from Cornell Law School in 2004. He has been a licensed attorney in Ohio since November 2004. He previously held property and casualty insurance licenses for admitted and surplus lines in all 50 states as well as a Certified Treasury Professional designation from the Association of Financial Professionals.

B. STRS Background and the COLA Problem

The STRS and its Board is a statutorily created retirement system for Ohio's public-school teachers. The STRS Board is comprised of eleven members. R.C. 3307.05. At all times relevant to this case, the value of the funds controlled by STRS was approximately $95 billion. In the ordinary course, R.C. 3307.67(A) requires STRS to annually increase each allowance or benefit payable for the cost of living. R.C. 3307.67(E) allows the STRS Board to "adjust the increase payable under this section if the board's actuary * * * determines that an adjustment does not materially impair the fiscal integrity of the retirement system or is necessary to preserve the fiscal integrity of the system."

Over the years, STRS has struggled where other state retirement systems have not: the ability to provide COLA benefits to its retiree beneficiaries. Rayfield testified that he believed he was legally entitled to a 3% adjustment annually. He also testified that he has not seen a 3% increase in his benefits, but lesser percentages and sometimes no increases

at all. Indeed, STRS suspended regular 3% COLA in 2017, in order to sustain the fund. There have been some adjustments since then, but not a regular 3% annual COLA.[1]

At the same time, investment employees of STRS received performance-based incentive payments. Steen and Fichtenbaum, thus, were members of the STRS Board at a time of great frustration for retired beneficiaries of STRS with a lack of COLA on one hand and performance-based incentive payments for investment staff of STRS on the other hand.

This frustration with performance-based incentive payments to STRS investment personnel while simultaneously failing to fund COLA in full extended to Steen and Fichtenbaum, who felt that they were not getting straight answers from STRS staff concerning how the performance-based incentives were calculated and paid out to investment staff.

Stein, in his capacity as STRS Board chair, received an email around 2020 regarding QED. Jonathan Spring ("Spring") had written the email suggesting that he had a solution to the COLA problem. (T. 667). Stein testified that the QED investment proposal was an innovative alternative strategy designed to improve fund performance and restore COLA by leveraging artificial intelligence, machine learning, and the Ohio Supercomputer to replicate market index returns while generating investment income through automated trading and total return swaps.

[1] Although testimony from several witnesses, and indirect argument by counsel throughout the pendency of this matter, referenced a 3% COLA being required, R.C. 3307.67(A) provides that the COLA is to be 2% unless modified by the board.

C. QED

JD Tremmel ("Tremmel") founded QED. In April 2020 Spring, a representative of QED, contacted Stein and requested to have a conversation about how QED's investment idea/strategy could help STRS solve the COLA problem.

Rayfield testified that he received a call from Metcalf at some point in 2020 or 2021 about QED as a possible solution to the STRS COLA problem. It was the only time he has been pitched an investment idea directly. (T. 804).

Stein asked Worley to evaluate QED's investment proposal, which would be an outside investment manager for STRS if selected. Worley testified that this was the only time in 30 years of service with STRS that he saw Board members pitching a specific investment opportunity. (T. 524).

Worley testified that his evaluation of investment possibilities by an outside manager of funds consisted of an evaluation of what he called the four p's: philosophy, process, people, and performance. He also testified that his operational due diligence consisted of whether the proposed investment itself is sustainable.

Worley had a series of communications with Spring and Tremmel between April 2020 and May 2020 as part of his evaluation of QED. Based upon these communications, Worley discovered that QED did not have the infrastructure that its proposal would require to execute and that QED did not have any clients, track record, or personnel with what Worley felt was a sufficient amount of experience to accomplish what QED claimed it could do. Ultimately, Worley testified that, although there were multiple steps in the vetting process, the QED proposal did not pass his first step. In fact, he considered QED to be a "desk kill" in that he determined it was not worth the substantial time and effort required to fully vet it as a potential investment. (T. 534).

According to Worley, the QED proposal involved a philosophy centered on trading with the market to generate excess returns through machine learning and artificial intelligence, utilizing the Ohio Supercomputer and STRS's existing stock and bond inventory as key components. The process was described as automated trading but remained vague and lacked detailed specifics on implementation.

Worley had two concerns after the meetings with Tremmel. The first was why STRS would do this. As it happens, one of Worley's associates asked Tremmel this question during one of their meetings, and Tremmel responded that there was sufficient voting support from members of the investment committee, which Worley felt was concerning. (T. 522). Second was that, during the meeting, Tremmel had mentioned a STRS derivative sales professional employed by Goldman Sachs by name, which was not public information, indicating that Tremmel had some other source of that information.

In July 2020, QED personnel approached STRS staff again and requested that STRS execute a non-disclosure agreement in order to resume discussions about its proposal. STRS rejected the offer. Also in July 2020, Metcalf became the managing director of QED and reached out to Steen in order to obtain information about STRS.

Nesbitt testified that he first learned of QED through Stein, who introduced its proposed investment strategy involving active indexing in private markets. Stein indicated to Nesbitt that STRS staff did not recommend pursuing QED, but Stein wanted an independent evaluation of QED. (T. 418).

Cliffwater conducted due diligence on QED, which included reviewing materials provided by Steen, interviewing Tremmel and Metcalf, and assessing their professional backgrounds. Nesbitt noted that Tremmel and Metcalf had experience in investment banking and private equity, but that QED was a newly formed entity with no assets under

management, no track record, no SEC registration as an investment advisor, no formal business plan, and no clients.

Metcalf testified that the QED proposal was designed to replicate market indices returns through total return swaps without directly trading stocks, leveraging machine learning, artificial intelligence, and the Ohio Supercomputer to generate investment income.

As a result of his investigation into QED, Nesbitt recommended that STRS should reject the investment proposal. (Joint Exhibit 1). Nesbitt testified that QED was not the appropriate vehicle to reestablish COLA because QED "lacked in every regard." (T. 428).

Cliffwater issued a memorandum dated November 18, 2021, recommending against investing with QED due to these deficiencies, including risks associated with its startup status, potential conflicts of interest arising from Steen's advocacy and prior communications with QED, and the absence of a demonstrated performance history. Nesbitt presented this recommendation at the STRS Board's November 18, 2021, meeting.

D. Secretive Communications

The evidence showed that Steen communicated with Metcalf and Tremmel via text message, email, and a mobile messaging application known as Signal. [2] Steen testified

[2] Signal has been recognized by at least one court as an auto-deleting messaging app that allows users to operate in secrecy, calling into question the integrity of a governmental institution whose employees use it. *Citizens for Resp. & Ethics in Wash. v. United States Doge Serv.*, 769 F.Supp.3d 8, 27 (DC Dist.2025). The undisputed evidence presented demonstrated that Defendants and Metcalf were communicating using a text messaging application native to the telecommunications device of each Defendant. At a certain point, Metcalf suggested that the parties move their communications to Signal. Metcalf suggested this, he testified, based upon advice he had received from the FBI in order to avoid hacking or other unintended interception or disclosure of messages sent or received in Signal. However, Metcalf later testified that he still uses his native application to send and receive text messages despite the warning he received from the FBI. (T. 983).

that, when Metcalf suggested that they use Signal to communicate, he did not question it. (T. 187). Furthermore, Steen did not let anyone at STRS know that he was communicating with Metcalf or Tremmel in a secretive manner. (T. 1223).

The evidence showed that Metcalf and Tremmel had contemporaneous communications with Steen and appeared to tell him what to do, say, or ask during STRS meetings to get further information and further develop support for pursing an alternative investment proposal, presumably QED.[3] (State's Exhibit 56, bates 891-901 (September 17, 2020); bates 878-890 (October 15, 2020); bates 865-874 (November 18, 2020).

On October 14, 2020, Metcalf sent Steen proposed text for an email message he had drafted for Steen to send to Margaret Tempkin and Gaelle Gravit at STRS's actuarial firm Cheiron. Metcalf wrote to Steen with the draft and said "Wade – as you requested, please find the captioned. I hope that I correctly captured the content you were looking for." (State's Exhibit 6). The email draft in question requested clarification from Tempkin and Gravit concerning a discrepancy in real estate values used in their June 30, 2020, report and information contained in Steen's STRS investment departments Board packet. (Id.). Steen sent an email the same day, copying Metcalf's draft word-for-word. (State's Exhibit 75).

On November 13, 2020, Steen sent an email to Metcalf. The email, in relevant part, stated as follows:

> Seth the email that accompanied these had the appropriate confidentiality disclosures and its intended for me only etc. This I would ask only you look at these and after you've reviewed them to discard them. What I need is a list of

[3] For example, Metcalf sent a text message during a November 18, 2020, meeting suggesting the following: "Wade, what about: Let's address the elephant in the room here. There is a group that has a potential solution to COLA and you're not providing an opportunity to hear it." (State's Exhibit 56, bates 868).

> detailed questions or issues based on these that I can raise next week. It should look like I reviewed them. I can set time to walk tomorrow between 10:30 and 1:00. * * *

(State's Exhibit 12) (sic passim).

Steen subsequently asked at least some of the questions he requested at the next STRS Board meeting, without disclosing the source of those questions. (T. 142).

On November 19, 2020, Metcalf sent an email to Steen, listing two motions he wanted Steen to make at the STRS Board meeting. (State's Exhibit 13). The first motion was a "Motion for Retirement Board to establish an Investment Innovation Committee as a standing committee authorized to negotiate and enter into arrangements with strategic partners by appending the 2020-2021 Appointment and Committees." (Id.) (capitalization sic). The STRS Board minutes from the November 19, 2020, Board meeting reflect that, "Mr. Steen moved that an Investment Innovation Committee be formed to come up with ideas to make more money." (State's Exhibit 77, bates STRS_93201). The minutes do not reflect that Steen disclosed that Metcalf was the source of this motion.

On November 23, 2020, Metcalf emailed Steen eleven questions he had prepared for Steen to send to Brady O'Connell at the STRS consulting firm Callan, LLC. (State's Exhibit 15). Metcalf wrote that, "I think answers to the following questions would help set the table for a productive conversation on benchmarks in December.") (Id). The next day, Steen sent the email to O'Connell with the same eleven questions, with no indication that Metcalf was the source of those questions. (State's Exhibit 76).

When elected to the STRS Board in 2021, Fichtenbaum also began to communicate with Metcalf and Tremmel. On May 18, 2021, Fichtenbaum sent an email to Tremmel and Metcalf with a document entitled "Backdating.docx" and requested that they review

and "check what I have written to make sure I got it right." (State's Exhibit 24). Approximately an hour later, Metcalf responded with a two-word message: "Green light." (Id.). On May 19, 2021, Fichtenbaum, recently elected but not yet a Board member, sent an email to then-current Board members, outlining concerns he had about backdating of performance incentive pay matters. (State's Exhibit 79). He did not disclose that the content of his email had been approved by Metcalf.

On May 19, 2021, Fichtenbaum forwarded an email he had received from Neville to Metcalf and Tremmel in response to his "backdating" email. (State's Exhibit 27). Later the same day, Metcalf responded with a multi-paragraph response to Neville, as if it had been written by Fichtenbaum. (Id.). On May 20, 2021, Fichtenbaum sent Metcalf's email to Neville and the other then-current Board members. (State's Exhibit 79). Fichtenbaum did not disclose that Metcalf had written the email.

On June 28, 2021, Fichtenbaum began using Signal to communicate with Metcalf and Tremmel. (State's Exhibit 37). Fichtenbaum joined at Metcalf's request and did not question why such a move was necessary, nor did he disclose to the STRS Board that he was using Signal to communicate with Tremmel and Metcalf. (T. 342-43, 1092-93). The evidence presented showed that Fichtenbaum communicated via Signal with Metcalf and Tremmel regularly during Board meetings. (State's Exhibit 37).

ORTA hired Edward Siedle ("Siedle") in 2021 to conduct a forensic audit of STRS. Siedle produced a report that accused STRS of using improper benchmarks and miscalculating performance data. (T. 724, 847, 1099). Steen would later issue a letter to STRS membership accusing STRS staff of fraud, misfeasance, and acting in their own self-interest rather than the beneficiaries of the STRS. (Defendants' Exhibit 169). Steen would later cite this audit in another letter to the STRS Board Chair, Vice-Chair, and Chair-Elect,

requesting a special meeting for the purpose of allowing he and Fichtenbaum to "lead a discussion" on a possible solution to the COLA issue. (Defendants' Exhibit 139).

Starting in August 2021, Defendants began working with Metcalf and Tremmel to prepare for a presentation promoting the QED proposal to the STRS Board. (State's Exhibit 56, bates 811-812). Metcalf and Tremmel provided the presentation and supporting information for Defendants' presentation to the STRS Board. (T. 345-46). Fichtenbaum testified that the presentation that he, Steen, and Stein were going to make to the STRS Board would be "trying to explain [QED's] idea" to the STRS Board. (Id.). Fichtenbaum officially took his Board seat on September 1, 2021.

On November 12, 2021, Fichtenbaum sent a Signal communication to Metcalf stating, "What we really need to figure out is what can drive a wedge between the staff and Board, i.e., what is it that will cause the Board [sic] lose trust in the staff." (State's Exhibit 37, bates 611; T. 349-50).

On November 18, 2021, Steen and Fichtenbaum made a presentation to the STRS Board that promoted the QED proposal. (Joint Exhibit 12, Defendants' Exhibits 213, 345). The undisputed evidence was that the presentation did not convince the STRS Board to act on the QED proposal. (Defendants' Exhibit 213). In fact, Steen did not make a motion to move the proposal forward based upon the resistance to the proposal expressed at the Board meeting.

E. The Aftermath

Even after the STRS Board did not approve the QED proposal, Steen continued to ask Metcalf and/or Tremmel to author documents to be sent under Steen's name. (T. 206-13).

After the November meeting, Worley noted a stepped-up campaign of "heavy criticism" of investment staff and investment returns in what he felt was an attempt to "poison the well." (T.525). It had a marked effect on the morale and retention of the investment professionals employed by the STRS. (T. 525-26). Worley testified that employees were faced with a volatile work environment and some chose to find employment elsewhere. (T. 526). This "relentless" criticism also made it more difficult for STRS investment staff to obtain investment proposals from outside firms. (T. 526-27).

This campaign included an approximately eight-minute-long video created by Fichtenbaum, entitled "Cliffwatergate." (T. 1098). The video was a critique of the presentation by Cliffwater during the November 18, 2021, STRS Board meeting, which recommended against the QED proposal. Fichtenbaum testified that the idea for "Cliffwatergate" was his own, but he received a slide deck from Tremmel to assist in its preparation, which he then adapted into the video (T. 338-40). There was no evidence presented that Fichtenbaum disclosed Tremmel's involvement in the production. Fichtenbaum sent the video to at least one reporter with the intent to get it disseminated publicly. (T. 354-55, 357).

In response to the letters from Steen incorporating Siedle's ORTA audit, the Auditor of State conducted an audit of STRS and focused upon the concerns raised by ORTA and Steen. (State's Exhibit 80). The result of that audit was released in December 2022 and "found no evidence of fraud, illegal acts, or data manipulation related to the

$90 billion held in trust by STRS for its members." (Id. at bates 493). Completion of the audit resulted in a $127,142.50 cost to STRS. (State's Exhibit 55).[4]

Ultimately, in 2023, Cliffwater decided not to pursue a continued relationship with STRS because of the threats and harassment that Nesbitt was subjected to as a result of the Defendants' actions, and therefore did not renew its contract with STRS or even pursue the possibility of renewal. (T. 431-32).

In April 2024, Wideman sent a document titled "Summary of Concerns" to the Attorney General, treasurer of state, and the governor. (T. 715, Joint Exhibit 4). Wideman collaborated with Mark Maxwell, Deputy General Counsel and Ethics Officer for STRS, in drafting the document, which had undergone multiple iterations, the first of which began in December 2021. (T. 711-13). One version was sent to the Ohio Ethics Commission in December 2021. (T. 759). The document details the concerns of Wideman and Maxwell concerning Steen, Fichtenbaum, and Stein regarding QED's pursuit of directing a significant amount of STRS assets to QED as an outside investment manager. (Joint Exhibit 4).

III. LAW AND ANALYSIS

Generally, the plaintiff in a civil case has the burden to prove that it is entitled to judgment in its favor by a preponderance of the evidence. *Jones v. Johns Plumbing*, 7th Dist. No. 04 MA 65, 2005-Ohio-4684, ¶9, *citing Alazaus v. Haun*, 7th Dist. No. 740, 2001-Ohio-3230, *3-4. A preponderance of the evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is,

[4] In his proposed findings of fact, the Attorney General also cites its Exhibit 54. However, State's Exhibit 54 was not admitted into evidence at the close of evidence. There was testimony from Fichtenbaum, however, that indicated Exhibit 54 was an email referencing the same $127,142.50 cost to STRS as a result of the audit.

evidence which as a whole shows that the fact sought to be proved is more probable than not, or evidence which is more credible and convincing to the mind. *Alazaus* at 3.

Defendants assert that the burden of proof in this matter should not be a preponderance-of-the-evidence standard and should instead be by clear and convincing evidence.

"'Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.'" *State v. Eppinger*, 91 Ohio St.3d 158, 164, 2001-Ohio-247, quoting *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

Regardless of the standard of proof applied, the outcome is the same. For purposes of this Decision, the Court will assume that the Attorney General must meet a clear-and-convincing-evidence standard of proof.

"On the trial of a case, either civil or criminal, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St. 2d 230, 227 N.E.2d 212 (1967), at paragraph one of the syllabus. "The choice between credible witnesses and their conflicting testimony rests solely with the finder of fact[.]" *State v. Awan*, 22 Ohio St. 3d 120, 123, 489 N.E.2d 277, (1986). "Under Ohio law, however, 'a fact-finder is free to believe all, some or none of a witness's testimony.'" *Katsande v. Ohio Dep't of Medicaid*, 10th Dist. No. 19AP-375, 2020-Ohio-5488, ¶60, quoting *Mahajan v. State Med. Bd. of Ohio*, 10th Dist. No. 11AP-

421, 2011-Ohio-6728, ¶ 45, citing *D'Souza v. State Med. Bd. of Ohio*, 10th Dist. No. 09AP-97, 2009-Ohio-6901, ¶17.

"In determining the issue of witness credibility, the court considers the appearance of each witness upon the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear, and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony." *Ford v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. No. 05AP-357, 2006-Ohio-2531, ¶20 (cleaned up).

The Attorney General has alleged that Steen and Fichtenbaum breached their fiduciary duty as members of the STRS Board. "If a member of a state retirement board breaches the member's fiduciary duty to the retirement system, the attorney general may maintain a civil action against the board member for harm resulting from that breach." R.C. 109.98. R.C. 109.98 further provides that, as part of the civil action against a board member, the Attorney General "may recover damages or be granted injunctive relief, which shall include the enjoinment of specified activities and the removal of the member from the board."

"The elements for a breach of fiduciary duty include: '(1) the existence of a duty arising from a fiduciary relationship; (2) a failure to observe the duty; and (3) an injury resulting proximately therefrom.'" *Nazareth Deli LLC v. John W. Dawson Ins. Inc.*, 10th Dist. No. 21AP-394, 2022-Ohio-3994, ¶41 quoting *Patel v. Univ. of Toledo*, 10th Dist. No. 16AP-378, 2017-Ohio-7132, ¶47 quoting *Wells Fargo Bank, N.A. v. Sessley*, 10th Dist. No. 09AP-178, 2010-Ohio-2902, ¶36. "A claim of breach of a fiduciary duty is basically a

claim of negligence, albeit involving a higher standard of care." *Strock v. Pressnell*, 38 Ohio St. 3d 207, 216, 527 N.E.2d 1235 (1988).

"A fiduciary relationship is one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust." *In re Termination of Emp. of Pratt*, 40 Ohio St.2d 107, 115 (1974). *See also In re Est. of Nugent*, 10th Dist. No. 22AP-296, 2023-Ohio-700, ¶29 (quoting *Pratt*). "A fiduciary duty is generally defined as a duty of utmost good faith, trust, confidence, and candor owed by a fiduciary to the beneficiary; a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person." *Kademian v. Marger*, 2nd Dist. No. 25917, 2014-Ohio-4408, ¶25 (cleaned up, citation omitted).

A. Duty

There is no dispute that Steen and Fichtenbaum both owed fiduciary duties as members of the STRS Board. Steen and Fichtenbaum were statutorily required to:

> discharge their duties with respect to the funds solely in the interest of the participants and beneficiaries; for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the system; with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and by diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

R.C. 3307.15(A).

"Under Ohio case law a fiduciary duty is generally defined as a duty of utmost good faith, trust, confidence, and candor owed by a fiduciary to the beneficiary; a duty to act

with the highest degree of honesty and loyalty toward another person and in the best interests of the other person." *Free State of Bavaria v. Ohio State Univ.*, 2024-Ohio-3217 (Ct. of Cl.), ¶38 (cleaned up). "It is hornbook law that '[a] fiduciary owes the utmost loyalty and honesty to his principal.'" *Nugent*, ¶31 quoting *Burchfield v. McMillian-Ferguson*, 10th Dist. No. 10AP-623, 2011-Ohio-2486, ¶13. "The law is zealous in guarding against abuse in a fiduciary-principal relationship." *Burchfield*, ¶14 citing *Pratt*, 40 Ohio St.2d at 115.

"A fiduciary must act in accordance with the highest standard of integrity, with utmost good faith, and with *scrupulous openness, fairness, and honesty*, and a court of equity can and will require such behavior." *Myer v. Preferred Credit, Inc.*, 117 Ohio Misc.2d 8 (C.P. 2001), ¶26 (emphasis added), citing 49 Ohio Jurisprudence 3d Fiduciaries § 13.

Defendants have submitted testimony and arguments explaining why they took the actions they did. However, as noted by the Attorney General, the "why" is simply not relevant. The overall motivation of Defendants in wanting to reestablish COLA for STRS beneficiaries is not in question and is, in fact, admirable. The struggle experienced by STRS is not in dispute. There can be no reasonable disagreement that reestablishing annual COLA was and is a worthy goal. A worthy and desirable goal, however, does not allow a fiduciary to violate their duties in attempting to achieve it. In other words, a fiduciary may not employ a by-any-means-necessary approach.

The problem with Defendants' argument is that the issue presented is not "why" Steen and Fichtenbaum took the actions that they did. The issue is "how" Steen and Fichtenbaum went about attempting to accomplish their plan.

The questions presented by this case are: 1) did Steen and/or Fichtenbaum fail to observe their fiduciary duties, and, if so, 2) did an injury result from the failure to observe those duties? The evidence presented revealed that Steen and Fichtenbaum engaged in a course of conduct that demonstrates, at best, a split loyalty between STRS participants and beneficiaries and QED.

B. Breach

"A fiduciary owes the duty of undivided loyalty. He cannot serve two masters." *Myer*, 117 Ohio Misc. at 24. *See also St. Paul Fire & Marine Ins. Co. v. Swaney*, 8th Dist. 42006, 1980 Ohio App. LEXIS 13064 (Dec. 4, 1980), at *17 ("An agent cannot fully serve in a dual capacity two incompatible principals such as an insurer and an insured without the knowledge and consent of both."). This is a long-standing rule of Ohio jurisprudence. S*ee Bell v. McConnell*, 37 Ohio St. 396 (1881) (holding that dual agency involves "inconsistent duties" and can only be proper when "*full knowledge and consent of all parties interested* are clearly shown[.]") (emphasis added).

The Attorney General argues that Defendants' secretive communications with Metcalf and Tremmel breached Defendants' duties to act solely in the interest of STRS participants and beneficiaries, to avoid the appearance of impropriety, and to foster public confidence in the system. The Court agrees.

Here, it is undisputed that Steen and Fichtenbaum had a fiduciary duty to the participants of the STRS fund, as it is imposed by law. Those duties were required to be discharged solely in the interest of the participants and beneficiaries of the fund and with care, skill, prudence, and diligence that a prudent person acting in a like capacity would use. R.C. 3307.15(A). Both Steen and Fichtenbaum testified that STRS Board policy also required that each conduct themselves in a manner that avoided favoritism, bias, and the

appearance of impropriety. (T. 107, 283). In engaging in secretive communications with, and being directed by, Metcalf and Tremmel, Steen and Fichtenbaum violated each of those obligations. Defendants' actions demonstrated favoritism and bias in favor of QED and, in the case of the use of the secretive communications including text messages, email, and Signal messages, the appearance of impropriety. Further, by advocating for QED at the direction of QED, Defendants did not discharge their duties solely in the interest of the STRS participants and beneficiaries.

Defendants both argue that there was nothing improper about seeking advice from other sources on what questions or statements to make during Board meetings and in emails to fellow Board members. What has been chronically overlooked by Defendants in making this argument, however, is the fact that QED, Metcalf, and Tremmel were interested parties hoping to do business with STRS and were not fiduciaries for STRS beneficiaries. At best, Steen and Fichtenbaum followed the directions of Metcalf and Tremmel and, at worst, were mere puppets of Metcalf and Tremmel. None of this was disclosed to anyone else; fellow Board members, STRS staff, or the plan participants and beneficiaries. And therein lies the problem. While true that Steen and Fichtenbaum owed no fiduciary duty to fellow Board members in their official capacities or STRS staff, there is no dispute that each had a fiduciary duty to plan participants and beneficiaries, which at the time included other STRS Board members in their individual capacities.[5]

It is a generally accepted premise in public affairs that sunlight is the best disinfectant. Secrecy rarely leads to a desirable result for the general public and is the polar opposite of transparency. So too here. The evidence presented showed that Steen

[5] After the initiation of this case, the General Assembly amended the makeup of the STRS Board and how those Board members are selected to serve in that role.

and Fichtenbaum engaged in secret communications with representatives of QED in an attempt to undermine Cliffwater with the ultimate goal of steering a significant amount of STRS funds to QED's control. Additionally, Steen and Fichtenbaum did not disclose any of their communications with individuals associated with QED to other Board members or the beneficiaries of the STRS. The STRS beneficiaries had every right to know that the source of information driving the conversation regarding QED was QED.

C. Causation and Damages

Generally, a breach of fiduciary duty is understood to cause damage to whom that duty is owed. *Morgan v. Ramby*, 12th Dist. No. CA2007-12-147, 2008-Ohio-6194, ¶23. "[I]f a plaintiff establishes that a defendant breached his fiduciary duty, the plaintiff must then establish that the breach proximately caused his damages." *Kademian*, ¶48. "The term proximate cause is often difficult of exact definition as applied to the facts of a particular case. However, it is generally true that, where an original act is wrongful or negligent and in a natural and continuous sequence produces a result which would not have taken place without the act, proximate cause is established[.]" *Strother v. Hutchinson*, 67 Ohio St. 2d 282, 287 (1981) (cleaned up) citing *Foss-Schneider Brewing Co. v. Ulland*, 97 Ohio St. 210 (1918).

The damage element is easily met here, as STRS incurred the $127,142.50 cost of the special audit, required as a response to the Siedle audit and Steen's very public use of that audit as evidence of wrongdoing on the part of STRS staff. Furthermore, the public confidence in the STRS Board and investment staff suffered greatly as a result of the actions of Steen, and particularly the actions of Fichtenbaum in his "driv[ing] a wedge" between the Board and the investment staff. The diminution of public confidence in STRS

is a particularly odious effect of the conduct of Steen and Fichtenbaum and will take an untold amount of time to erase.

What is more, the evidence showed that the damage caused by Defendants' conduct was not isolated to STRS. Indeed, Nesbitt testified that he was subjected to threats and harassment to such an extent that he feared for his safety based upon communications he received after Fichtenbaum's "Cliffwatergate" presentation.

The very public ridiculing of Cliffwater, in Worley's opinion, led to very few outside investment management companies being interested in submitting bids to work with STRS. It is a very predictable result of such a campaign. One cannot blame other investment services companies for not signing up for potentially the same treatment.

All of this is not to say that STRS did not contribute at all to the damage to its public image. Indeed, the undisputed evidence presented showed that STRS lags significantly behind other public pension systems in terms of investment performance and the ability to maintain COLA for its beneficiaries. These undisputed struggles occurred all while investment staff continued to receive performance incentive pay. To be sure, the STRS Board could have voted to change the bonus structure for STRS employees. The STRS Board could have voted to change the investment policy the employees of STRS are bound to follow. The Board did not, which allowed the issue to fester and created the environment in which Steen and Fichtenbaum found themselves. However, there is no doubt that Steen and Fichtenbaum's breaches of their fiduciary duties caused even greater damage to STRS's public image.

In the end, the evidence presented in this case showed that Steen and Fichtenbaum were essentially acting as agents for their undisclosed principals: QED, Metcalf, and Tremmel. Indeed, multiple exhibits demonstrate that Steen and Fichtenbaum acted on

behalf of QED, Metcalf, and Tremmel in their dealings with the Board, during Board meetings, and in attempting to undermine public confidence in the STRS investment staff. Thus, the Court concludes that the Attorney General has proven by clear and convincing evidence that Defendants repeatedly breached their fiduciary duties.

D. Remedy

The final question becomes the remedy sought by the Attorney General. Indeed, the Attorney General seeks a permanent injunction barring Steen and Fichtenbaum from serving as members of the STRS Board. "The attorney general may recover damages or be granted injunctive relief, which shall include the enjoinment of specified activities and the removal of the member from the board." R.C. 109.98.

The Attorney General asserts that the issuance of the permanent injunction is automatic once it is established that Defendants breached their fiduciary duty, citing *State ex rel. Jones v. Hamilton Cty. Bd. of Commrs.*, 124 Ohio App.3d 184, 189 (1st Dist.1997) (citing *Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51 (1978)). Defendants counter that issuance of a permanent injunction is not mandatory and that a trial court must evaluate the equities before issuing such an order, citing *State ex rel. Yost v. Hastings Dairy, LLC*, 11th Dist. No. 2024-G-0052, 2025-Ohio-1900.

Hastings is readily distinguishable from the instant matter. In *Hasting*, two statutes provided for injunctive relief, but neither specified "a certain type of injunctive relief that should be granted." *Id.*, ¶23. Here, R.C. 109.98 specifies that the injunction to be issued "shall include the enjoinment of specified activities and the removal of the member from the board." Thus, R.C. 109.98 is very specific on what injunction shall issue in the event that a board member breaches their fiduciary duty.

IV. CONCLUSION

It is therefore **ORDERED, ADJUDGED, and DECREED** that Wade Steen and Rudy Fichtenbaum violated their fiduciary duty and a permanent injunction is hereby issued pursuant to R.C. 109.98, enjoining and prohibiting Wade Steen and Rudy Fichtenbaum from serving on the State Teachers' Retirement System Board. As it relates to Rudy Fichtenbaum, he is hereby ordered removed from his position as a Board member of the State Teachers' Retirement System, as required by R.C. 109.98.

Pursuant to Civil Rule 58(B), the Clerk of Courts is directed to serve upon all parties notice and the date of this judgment. **This is a final appealable order; there is no just reason for delay.**

IT IS SO ORDERED.

Electronically signed by:
JUDGE KAREN HELD PHIPPS

Electronic copies to all counsel

Franklin County Court of Common Pleas

Date: 02-18-2026

Case Title: STATE OF OHIO EX REL OHIO ATTORNEY GENER -VS- WADE STEEN ET AL

Case Number: 24CV003862

Type: JUDGMENT ENTRY

It Is So Ordered.

/s/ Judge Karen Held Phipps

Court Disposition

Case Number: 24CV003862

Case Style: STATE OF OHIO EX REL OHIO ATTORNEY GENER - VS- WADE STEEN ET AL

Case Terminated: 06 - Court Trial

Final Appealable Order: Yes