

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

LEQUANDA LAMAR-POOLE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2016-3799
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
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**FINAL ORDER**

On May 3, 2017, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Lequanda Lamar-Poole, and upon counsel for the Respondent. This matter was decided on the written record without a hearing. Respondent timely filed a Proposed Recommended Order. Petitioner timely filed a written statement. Neither party filed exceptions to the Recommended Order which were due on May 18, 2017. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner has forfeited her Florida Retirement System Investment Plan account benefit under Section 112,3173, Florida Statutes by having pled guilty to, and being adjudicated guilty of, violating Sections 838.015 (Bribery) and 838.016 (Unlawful Compensation and

Reward), Florida Statutes. Both felonies were connected to Petitioner's public employment and both were committed prior to Petitioner's retirement. As such, Petitioner is required to return the distribution she received from her FRS Investment Plan account.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.


DONE AND ORDERED this 23<sup>rd</sup> day of May, 2017, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



**Joan B. Haseman**  
Chief of Defined Contribution Programs  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

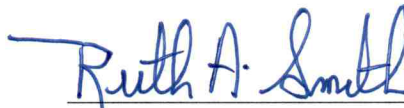
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Lequanda Lamar-Poole, pro se, both by email transmission, [REDACTED] and by U.P.S. to [REDACTED] and by email transmission to Brian Newman, Esq. ([brian@penningtonlaw.com](mailto:brian@penningtonlaw.com)) and Brandice Dickson, Esq., ([brandi@penningtonlaw.com](mailto:brandi@penningtonlaw.com)) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 23rd day of May, 2017.



Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

LEQUANDA LAMAR-POOLE,

Petitioner,

vs.

CASE NO. 2016-3799

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

On April 11, 2017, Petitioner requested that this section 120.57(2) informal proceeding before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) be resolved on the written record without a hearing. That motion was granted on April 13, 2017, and the parties were directed to file any written statements and documentary evidence on or before April 26, 2017. The appearances were as follows:

**APPEARANCES**

For Petitioner: Lequanda Lamar-Poole, pro se



For Respondent: Brian A. Newman, Esquire  
Pennington, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

**EXHIBIT A**

### **STATEMENT OF THE ISSUE**

The issue is whether Petitioner's Florida Retirement System (FRS) Investment Plan benefits should be forfeited for her commission of felonies for which she was convicted after she was no longer an FRS employee.

### **PRELIMINARY STATEMENT**

The parties were directed to file any and all documents, statements, or materials they wished to be considered by the undersigned on or before April 26, 2017, Respondent filed Exhibits R-1-7 and a Proposed Recommended Order; Petitioner filed a written statement. All these materials have been considered in this Recommended Order.

### **MATERIAL UNDISPUTED FACTS**

1. Petitioner is a member of the FRS Investment Plan by virtue of her former employment with the Marion County Department of Corrections.
2. Petitioner was arrested for receiving payment for providing cigarettes to an inmate at Lowell Correctional Institution between September 1, 2014 and March 31, 2016, while she was employed there as a correctional officer.
3. On September 28, 2016, Petitioner pled guilty to, and was adjudicated guilty of, sections 838.015 ("Bribery") and 838.016 ("Unlawful Compensation and Reward"), Florida Statutes in the Circuit Court, Fifth Judicial Circuit, for receiving payment for providing cigarettes to one or more inmates at Lowell Correctional Institution while she was employed there as a correctional officer.
4. Petitioner received a distribution from her FRS Investment Plan account in the amount of \$ [REDACTED] less federal withholding of \$ [REDACTED] on July 1, 2016, before she was convicted but after she committed the criminal activity that resulted in her conviction.



5. Petitioner was notified by Respondent on January 11, 2017 that her FRS Investment Plan benefits had been forfeited pursuant to Florida law, and that the distribution to her of \$ [REDACTED] had to be returned to the Investment Plan.

6. Petitioner filed a Petition for Hearing seeking to avoid the forfeiture of her FRS benefits because she “was not a public officer or employee” at the time of her conviction.

### CONCLUSIONS OF LAW

The Florida Constitution makes plain that “[a]ny public officer or employee who is convicted of a felony involving a breach of the public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.” ART. II, § 8(d), FLA. CONST. Section 112.3173, Florida Statutes, implements that part of the Florida Constitution and states, in pertinent part:

**112.3173. Felonies involving breach of public trust and other specified offenses by public officers and employees; forfeiture of retirement benefits**

(1) Intent. – It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.

(2) Definitions. – As used in this section, unless the context otherwise requires, the term:

(a) “Conviction” and “convicted” mean an adjudication of guilty by a court of competent jurisdiction; **a plea of guilty or of nolo contendere**; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

(b) “Court” means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.

...

(e) “Specified offense” means:

1. The committing, aiding, or abetting of an embezzlement of public funds;
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
3. Bribery in connection with the employment of a public officer or employee;
4. **Any felony specified in chapter 838, except for ss. 838.15 and 838.16;**
5. The committing of an impeachable offense;
6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or

...

(3) Forfeiture.--Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

...

(5) Forfeiture determination.—

(a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to subsection (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board shall give notice and hold a hearing in accordance with chapter 120 for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board shall order such rights and privileges forfeited.

(b) Any order of forfeiture of retirement system rights and privileges is appealable to the district court of appeal.

§ 112.3173, Fla.Stat. (emphasis added).

The above makes it clear that an employee who is convicted of a “specified offense” committed prior to retirement from the FRS shall forfeit all rights and benefits. Childers v. Department of Management Services, 989 So.2d 716 (Fla. 4th DCA 2008). If this standard is met, Respondent has no discretion as to whether to proceed with forfeiture of a participant’s Investment Plan account; rather, the Constitution and statute speak in terms of a mandatory forfeiture. This is so because forfeiture simply enforces the terms of the retirement “contract” entered into between the State and the employee. As stated in Childers,

Here, the State entered into a contract with the employee, promising to pay him benefits upon his retirement. That contract included a condition precedent: the employee must refrain from committing specified offenses prior to retirement. The non-occurrence of that condition foreclosed the employee’s right to performance. It is as direct and to the point as that.

...

While forfeiture, in general, has historically been understood as punishment, courts of this state have recognized that statutes providing for forfeiture of government benefits merely enforce the terms of a contract rather than impose punishment. This statute does not require a finding of scienter.

989 So.2d 716 (internal citations omitted)(emphasis added).

Here, there is no dispute that the crimes Petitioner was convicted of are enumerated felonies that constitute specified offenses and that Petitioner’s conviction resulted from activity she committed before she retired from the FRS. Petitioner’s assertion that forfeiture here is improper because she was no longer a public employee when convicted of the relevant offenses (presumably because she had been dismissed or terminated by the time of her conviction) is without merit.

Florida Statutes creating and governing the Florida Retirement System, and Petitioner’s rights and responsibilities under them, are clear and the SBA cannot deviate from them.

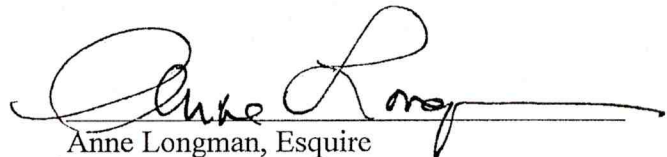


Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476  
(Fla.Div.Admin.Hrgs.). In this instance, forfeiture is not only appropriate, it is constitutionally mandated.

**RECOMMENDATION**

Having considered the law and the undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 3d day of May, 2017.



Anne Longman, Esquire  
Anne Longman  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, FL 32301-1872

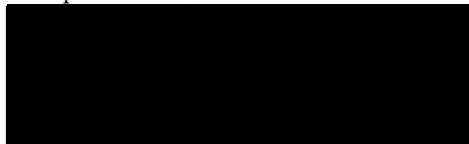
**NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER**

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, FL 32308  
[Tina.joanos@sbafla.com](mailto:Tina.joanos@sbafla.com)  
[Mini.watson@sbafla.com](mailto:Mini.watson@sbafla.com)  
[Nell.Bowers@sbafla.com](mailto:Nell.Bowers@sbafla.com)  
(850)488-4406

COPIES FURNISHED via mail and email to:

Lequanda Lamar-Poole



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire  
Brandice D. Dickson, Esquire  
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215 S. Monroe Street, Suite 200  
Tallahassee, Florida 32301  
[slindsey@penningtonlaw.com](mailto:slindsey@penningtonlaw.com)  
[Brian@penningtonlaw.com](mailto:Brian@penningtonlaw.com)  
[Brandi@penningtonlaw.com](mailto:Brandi@penningtonlaw.com)

Counsel for Respondent