

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

MOHAMED HASSAN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2013-2904
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On June 9, 2014, 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, Mohamed Hassan, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order after an extension of time to file was granted. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due June 24, 2014, were filed by either party. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending, for final agency action, before the Senior Defined Contribution Programs Officer.

**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request to be allowed to make an initial election into the Florida Retirement System ("FRS") Investment Plan and additionally be allowed to have the opportunity to

make a future second election, despite the fact that Petitioner had defaulted into the FRS Pension Plan after his initial election deadline had expired, hereby is denied.

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 27<sup>th</sup> day of August, 2014, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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

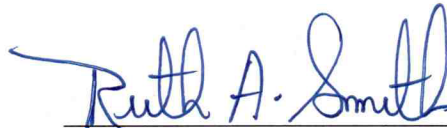
FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.



Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Mohamed Hassan, pro se, [REDACTED] and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 27<sup>th</sup> day of August, 2014.



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

MOHAMED HASSAN,

Petitioner,

vs.

Case No.: 2013-2904

STATE BOARD OF ADMINISTRATION,

Respondent.

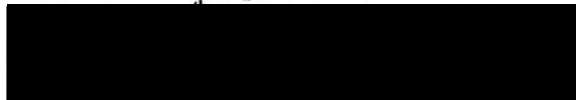
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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on March 14, 2013, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Mohamed Hassan, pro se



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

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner should be allowed to make an initial election into the Florida Retirement System (FRS) Investment Plan, and retain a second election, despite having

Exhibit A

defaulted into the Pension Plan after his initial election deadline expired.

### **PRELIMINARY STATEMENT**

On November 5, 2013, Petitioner filed a Request for Intervention asserting that he did not timely receive an FRS initial choice information packet and so should still be allowed to make an initial election and still have a second election opportunity should he wish to change plans. That request was denied because Petitioner's initial election deadline had expired. Petitioner then filed a Petition for Hearing requesting the same relief.

Petitioner attended the hearing by telephone and testified on his own behalf. Respondent presented the testimony of Dan Beard, SBA Director of Policy Risk Management and Compliance. Respondent's Exhibits R-1 through R-10 were admitted into evidence without objection, as was Petitioner's Exhibit P-1. After the hearing, Supplemental Respondent's Exhibits R-11 through R-13 also were received in evidence.

A transcript of the informal hearing was made, filed with the agency, and provided to the parties, who were invited to submit proposed recommended orders within 30 days. Respondent filed a proposed recommended order; Petitioner made no further filings. Respondent requested an extension to submit its proposed recommended order, which was granted.

### **UNDISPUTED FACTS**

1. Petitioner began his employment with Miami Dade College, a FRS participating employer, on September 10, 2012. Petitioner is employed as an IT Senior Systems Analyst.
2. Petitioner's deadline to make an initial election was February 28, 2013.
3. A Retirement Choice Kit was mailed to Petitioner in October, 2012 which advised

him of the differences between the Investment Plan and the Pension Plan and also advised him of his deadline to make his initial selection to join either the Pension Plan or the Investment Plan.

4. The Retirement Choice Kit was mailed to Petitioner at [REDACTED] [REDACTED], which was Petitioner's address of record at that time as reported by his employer.

5. As of September 14, 2012, Petitioner's Florida address has been [REDACTED] [REDACTED]. Petitioner did not have mail forwarded from Minnesota to his new address in Florida. Petitioner testified that he notified his employer of his change of address within a week of September 14, 2012. However, according to payroll reports kept by Petitioner's employer, his new Florida address was not updated by his employer until December 1, 2012. The SBA utilizes the member's address as reported on the employer's payroll reports to mail notices to FRS members.

6. Two reminder notices were mailed to Petitioner, on January 31, 2013, and again on February 8, 2013, urging him to make an affirmative election to join either the Pension Plan or the Investment Plan. The reminder notices were mailed to Petitioner at [REDACTED] [REDACTED] as per an address change reported by Petitioner's employer. These notices were sent by regular mail. Petitioner has stated that he did not receive any affirmative notice of his initial election deadline, including the two reminder notices.

7. In addition to these direct mailings, Petitioner had access to educational resources that inform FRS-participating employees of their plan choice options, including toll-free access to the MyFRS Financial Guidance Line, on line information at MyFRS.com, employee

workshops that are held throughout the year, and his employer's human resource office, which is provided with educational materials about FRS plan choice selection.

8. Petitioner did not call the MyFRS Financial Guidance Line or access the MyFRS.com website to review information relating to the differences between the Investment Plan and the Pension Plan or the deadline to make an initial election before his initial election deadline expired. Petitioner stated he did not attempt to do so because he did not have a PIN number, but a PIN number is not required to access information related to plan choice or the initial deadline on MyFRS.com.

9. Petitioner did not request or receive any educational materials from his employer relating to his retirement benefits as a member of the FRS before his initial election deadline expired. Petitioner attended an FRS workshop after his initial election deadline expired, during which the differences between the Pension Plan and Investment Plan were explained.

10. Petitioner did not make an initial election to join the Pension Plan or the Investment Plan before his February 28, 2013 initial election deadline expired.

11. On March 5, 2013, a Confirmation of Plan Choice Default was mailed to Petitioner at his Florida address, confirming his FRS Pension Plan election, by default, effective May 1, 2013. Petitioner still has a second election which he can use, as long as he is actively employed with an FRS employer, to change plans.

#### **CONCLUSIONS OF LAW**

12. Section 121.4501(4)(a)2., Florida Statutes governs initial elections and provides a period of up to the last business day of the fifth month following the month of hire to make an

election. If no election is timely made, the employee is placed by default into Pension Plan membership. Petitioner was properly defaulted to Pension Plan membership because he did not timely make an initial election as required by law.

13. Respondent notified Petitioner of his initial election deadline with three separate direct mailings that were delivered to the address provided by his employer. He had access to online educational information, a toll-free financial guidance line, and FRS workshops, all of which provide information about differences between the Investment Plan and the Pension Plan and Petitioner's initial election deadline. Respondent has met its obligation under the law, by making numerous attempts to communicate with Petitioner as to his choice, options and applicable deadline. See Cohen v. State Board of Administration, SBA Case No. 2012-2609 (Recommended Order September 13, 2013)(Final Order November 8, 2013)(FRS member was not entitled to an additional initial election period due to her alleged failure to receive multiple direct mailings advising of her of her initial plan choice deadline).

14. In addition to educational materials offered directly by the SBA, Petitioner had access to educational materials from his employer about his retirement benefits. Rule 19-13.003(2), Florida Administrative Code, provides that employers are solely responsible for the educational materials they provide, and are not agents of the SBA or the FRS.

15. Section 121.4501(8)(a), Florida Statutes obligates the SBA to administer the Investment Plan, and it is not authorized to depart from the requirements of this statute when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). The SBA's construction and application



of Chapter 121, Florida Statutes, the statute it is charged to implement, are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So. 2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So. 2d 775 (Fla. 1st DCA 1998). It is unfortunate that Petitioner appears to have had problems with mail delivery to his home, but the SBA has carried out its obligations in accordance with all applicable statutes and has no authority to place Petitioner into the Investment Plan without a timely initial election having been made with the third party administrator.

#### 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 9<sup>th</sup> day of June, 2014.



\_\_\_\_\_  
Anne Longman, Esquire  
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

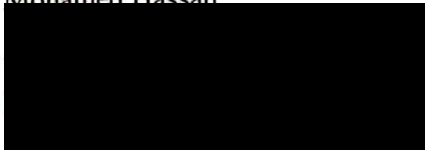
All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which 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 Blvd., Suite 100  
Tallahassee, FL 32308  
Tina.joanos@sbafla.com  
Daniel.B Beard@sbafla.com  
(850) 488-4406

This 9<sup>th</sup> day of June, 2014.

Copies furnished to:

Via U.S. Mail  
Mohamed Hassan



Via electronic delivery:  
Brian A. Newman, Esquire  
Brandice D. Dickson  
Pennington, P.A.  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
[slindsey@penningtonlaw.com](mailto:slindsey@penningtonlaw.com)  
Attorneys for Respondent

  
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Attorney