

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

SHARLEEN GREEN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2016-3803
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
_____	)	

**FINAL ORDER**

On February 21, 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, Sharleen Green, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Petitioner timely filed an exception to the Recommended Order on February 27, 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.

**RULING ON PETITIONER’S EXCEPTION TO THE RECOMMENDED ORDER**

Petitioner has filed what she deems as “another request for a turn over decision regarding this matter” in response to the Recommended Order. Since this document was filed within 15 days after the Recommended Order was issued, Petitioner’s “request” will be treated as an exception to the Recommended Order. Petitioner’s “request” is merely a

reiteration of the arguments she made during her hearing. Her “request” states that she was misled by an employee of her former employer’s human resources department. She further claims this employee told her she could take her Florida Retirement System (“FRS”) benefits with her by switching to the Investment Plan even if she failed to meet the Pension Plan vesting requirements (6 years in her situation) before she terminated employment. As is noted in the Recommended Order, Petitioner has not provided any proof that she was misled. Further, Section 121.021(10), Florida Statutes makes it clear that the SBA is not responsible for any erroneous information provided by representatives of FRS-participating employers. Petitioner additionally had requested a refund of the employee contributions made while she was a member of the Pension Plan. However, as the Recommended Order notes, there are several previous cases that have held that such contributions are not refundable. .Petitioner has not cited any contrary authority.

Section 120.57(1)(k), Florida Statutes, provides that “...an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

The Petitioner’s exception does not identify the disputed portions of the Recommended Order, does not identify any legal basis for the exception, and does not include appropriate and specific citations to the record. Petitioner had the opportunity to fully present the arguments set forth in her “request” during the hearing, and was given the opportunity by the presiding officer to provide, within 30 days after the hearing, any additional arguments or documents that Petitioner felt could further support her case, but she elected not to do so. [Hearing Transcript, page 23, lines 1-4]. Accordingly, Petitioner’s exception hereby is rejected.

**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request to rescind her second election by which she had transferred from the Florida Retirement System ("FRS") Pension Plan to the FRS Investment Plan, hereby is denied. Alternatively, Petitioner's request for a refund of the employee contributions she made while she was a member of the FRS Pension Plan 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.

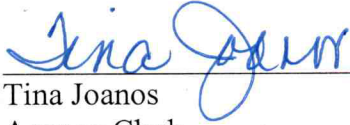
DONE AND ORDERED this 13<sup>th</sup> day of March, 2017, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

Joan B. Haseman

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

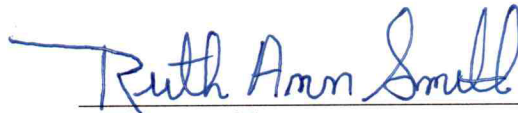
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by electronic mail to [REDACTED] and by US Mail to Sharleen Green, [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 13<sup>th</sup> day of March, 2017.



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

Petitioner's

Exceptions to Recommended Order

Joanos\_Tina

**From:** Watson\_Mini  
**Sent:** Monday, February 27, 2017 2:46 PM  
**To:** Joanos\_Tina  
**Cc:** Bowers\_Nell  
**Subject:** FW: FRS/Sharleen Green

Thanks!

**Mini G. Watson**

Director of Policy, Risk Management and Compliance  
Office of Defined Contribution Programs  
State Board of Administration of Florida  
1801 Hermitage Blvd., Ste. 100  
Tallahassee, FL 32308  
T: (850) 413-1496 | F: (850) 413-1489  
[Mini.Watson@sbafla.com](mailto:Mini.Watson@sbafla.com)

**From:** Sharleen Green [REDACTED]  
**Sent:** Monday, February 27, 2017 2:13 PM  
**To:** Shannon K. Lindsey  
**Cc:** Watson\_Mini  
**Subject:** FRS

Dear Shannon,

I am submitting another request for a turn over decision regarding this matter. I will say it again I have been with the Clerk of Courts in Broward County for 5 years. When I started with the FRS I wasn't aware that when I left or went to another job or anything that I would be where I'm at now. I went to ELAINE M. OLENCHAK who at that time was in human resources. Back in August, of 2016 I went to her thinking that she would help me. I didn't think that she would tell me something wrong. I asked her if I were to leave the courthouse what would happen to my frs. She said that I would need to change my pension plan to an investment plan option 2. I told her that for some reason that I couldn't do it on my computer, she said that she would pull it up for me and print it up. She said that I have to circle option 2 and then give it to her so that she can send it up. I did what she told me to do. She didn't tell me that I have 30 days in which to reverse it. The 30th day was 2 days after my birthday which was 09/28 2016. I moved every thing to Ga. on my birthday and I had two days in which to return the rental van back to Fl. I had to be to work that Mon.

Please reconsider this request. if you have any questions please contact me 954-404-2893 or email at [REDACTED]

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

SHARLEEN GREEN,

Petitioner,

vs.

Case No. 2016-3803

STATE BOARD OF ADMINISTRATION,

Respondent.

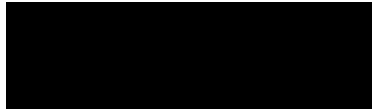
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**RECOMMENDED ORDER**

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 January 4, 2017, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Sharleen Green, pro se



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

**STATEMENT OF THE ISSUE**

The issue is whether the SBA should grant Petitioner's request to rescind her second election to transfer from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan. Alternatively, Petitioner requests a refund of the employee contributions made while she was a member of the Pension Plan.

## **PRELIMINARY STATEMENT**

Petitioner attended the hearing by telephone, testified on her own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits 1 through 8 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

## **MATERIAL UNDISPUTED FACTS**

1. Petitioner became a member of the FRS on October 10, 2011 by virtue of her employment with the Broward County Clerk of Courts, an FRS-participating employer.
2. Petitioner had until September 28, 2012 to make an initial election between the defined benefit Pension Plan and defined contribution Investment Plan and defaulted into the Pension Plan effective October 1, 2012.
3. On August 25, 2016, Petitioner submitted a 2<sup>nd</sup> Election Retirement Plan Enrollment Form to the Investment Plan's Plan Choice Administrator, indicating her desire to transfer from the Pension Plan to the Investment Plan.
4. The second election form Petitioner signed encouraged her to call the MyFRS Financial Guidance Line or to visit [MyFRS.com](http://MyFRS.com) if she had any questions about the impact of changing from one plan to another. By signing the second election form that effectuated her transfer to the Investment Plan, Petitioner acknowledged her understanding of the following information found on page two of the form:

**One-Time Opportunity** – You have only one opportunity during your FRS career to switch from the FRS plan you initially chose to the other plan.

**Irrevocable** – Your 2<sup>nd</sup> Election is irrevocable. You must remain in the plan you choose until your FRS-covered employment ends and you retire.

**Reversing an Election Made in Error** – If you make your choice in error or change your mind, you have until 4:00 p.m. ET on the last business day of the month following your election month to cancel your election. To do so, call the MyFRS Financial Guidance Line and selection Option 2.

**If you Elected Option 2** – You understand, acknowledge, and authorize that any accrued value you may have in the Pension Plan will be transferred to your Investment Plan account as your opening balance and is subject to the vesting requirements of the Pension Plan...

5. On August 29, 2016, an FRS Confirmation of 2nd Election notice was sent to

Petitioner. This notice advised Petitioner:

If you feel this retirement plan election was made in error, you may be able to cancel it. Please call the MyFRS Financial Guidance Line at 1-866-446-9377, Option 2. Failure to notify us no later than 4:00 PM EST on the last business day of the month following your election month will void your right to cancel this election.

Petitioner did not call and attempt to rescind her second election before this deadline expired.

6. Petitioner submitted a Request for Intervention on October 12, 2016 asking to transfer back to the Pension Plan. Petitioner stated that she was told, erroneously, by her employer's human resources staff, that she would be able to transfer her FRS Pension Plan retirement benefits if she switched to the Investment Plan, even though she did not meet the Pension Plan vesting requirement. She also requested a refund of the employee contributions made while she was a member of the Pension Plan. Her request was denied by the SBA. Petitioner terminated FRS-covered employment on October 20, 2016 with 4.59 years of



creditable service. Petitioner then filed a Petition for Hearing requesting the same relief, and this administrative proceeding followed.

### CONCLUSIONS OF LAW

7. Movement between the Pension Plan and Investment Plan is governed by Section 121.4501(4)(g), Florida Statutes. That section states, in pertinent part:

(g) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

§ 121.4501(4)(g), Fla. Stat. (2015) (emphasis added).

8. As provided in the above statute, members of the FRS are allowed only one opportunity to switch plans after their initial election period expires. Because Petitioner used her one-time second election in 2016, she has exhausted her only opportunity to move between plans. There is no “third” election. Petitioner also cannot rescind her second election because she failed to do so before the deadline established by the applicable rule. The grace period provided under Rule 19-11.007, Florida Administrative Code, is as follows:

(4) Grace Period.

(a) If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, or if the member has reconsidered his or her plan choice, the SBA will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by a telephone call to the toll free MyFRS Financial Guidance Line at: 1(866) 446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, to the Financial Guidance Line, or to the Division, no later than 4:00 p.m. Eastern Time on the last business day of the election effective month.

(b) If the request to reverse the election is made timely and the SBA finds the election was made in error, the member will be required to sign a

release and return it to the SBA no later than 4:00 p.m., Eastern Time, on the last business day of the election effective month prior to the election's being officially reversed. Upon receipt of the release, the Division and the Plan Choice Administrator will be directed to take the necessary steps to reverse the election and to correct the member's records to reflect the election reversal.

(c) A confirmation that the election was reversed will be sent to the member by the FRS Plan Choice Administrator.

(d) The member retains the right to file a subsequent second election consistent with subsections (2) and (3), above.

(e) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(8)(g), F.S. and discussed in Rule 19-11.005, F.A.C.

Rule 19-11.007(4), F.A.C.

9. Under the rule, Petitioner had until September 30, 2016, the last business day of the month following her election month, to rescind her second election. She did not attempt to have her second election reversed within this time.

10. Petitioner was advised on the second election form she signed and submitted to the SBA, that Pension Plan funds transferred to the Investment Plan at her request remain subject to the applicable Pension Plan vesting requirement, in this case 6 years. § 121.4501(6)(c)1., Fla. Stat. (2015). Because Petitioner has terminated FRS-covered employment, these funds will remain in a suspense account and will be forfeited if she does not return to FRS-covered employment within five years of her termination date of October 20, 2016. § 121.4501(6)(d), Fla. Stat. (2015).

11. Petitioner contends she was misled by her employer's human resource department by being told she could take her FRS benefits with her by transferring to the Investment Plan even if she terminated before meeting the Pension Plan vesting requirement. Section 121.021(10), Florida Statutes states in pertinent part that "[e]mployers are not agents of the ... state board... and the... state board... [is] not responsible for erroneous information provided by representatives of

employers.” There is no evidence of record that Petitioner was misled by her employer, but even if she were able to prove that this had occurred, the above statute shields Respondent from liability for any such acts by an employer representative.

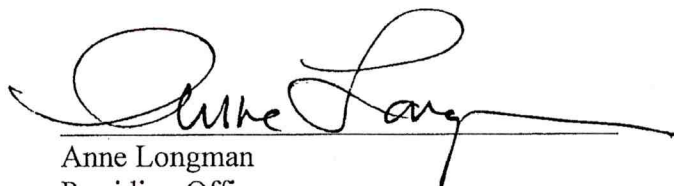
12. The second question, whether Petitioner is entitled to the employee contributions made while she was a member of the Pension Plan, after the present value of her Pension Plan account was transferred to the Investment Plan, has now been answered negatively in several previous cases. See Hamlette v. State Board of Administration, SBA Case No. 2014-2996 (Recommended Order Aug. 1, 2014; Final Order Aug. 29, 2014); Conley v. State Board of Administration, SBA Case No. 2016-3596 (Recommended Order Sept. 9, 2016; Final Order December 8, 2016); Hanafi v. State Board of Administration, SBA Case No. 2016-3543 (Recommended Order Sept. 9, 2016; Final Order December 8, 2016); Horn v. State Board of Administration, SBA Case No. 2016-3601; Recommended Order Sept. 9, 2016; Final Order December 8, 2016). Unless this precedent is reversed by an appellate court, it remains and is applicable here.

13. The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and Respondent'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).

**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 21<sup>st</sup> day of February, 2017.



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 Blvd., Suite 100  
Tallahassee, FL 32308  
[Tina.joanos@sbafla.com](mailto:Tina.joanos@sbafla.com)  
[nell.bowers@sbafla.com](mailto:nell.bowers@sbafla.com)  
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Sharleen Green



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire  
Brandice D. Dickson, Esquire  
Pennington, P.A.  
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