

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

REBECCA THOMAS,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2022-0541
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On March 7, 2023, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the *pro se* Petitioner, Rebecca Thomas, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by March 22, 2023, were filed by either party. 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

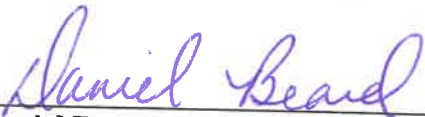
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that she be allowed to reenroll in the Florida Retirement System Investment Plan (Investment Plan”) or to otherwise reopen an Investment Plan account hereby is denied. Petitioner is not entitled to the relief requested.

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.

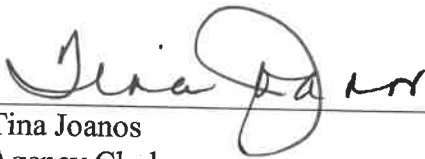
DONE AND ORDERED this 26th day of May 2023, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
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 Rebecca Thomas, *pro se*, both by email transmission to beckythomasfsu@yahoo.com and by U.S. mail to 1916 Talpeco Road, Tallahassee, Florida 32303; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com), (jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 26th day of May 2023.



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

REBECCA THOMAS,

Petitioner,

vs.

CASE NO. 2022-0541

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on January 23, 2023, at 10:00 a.m., with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

APPEARANCES

For Petitioner: Rebecca Thomas, pro se

For Respondent: Deborah Minnis
Ausley McMullen, P.A.
123 South Calhoun Street (32301)
PO Box 391
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Respondent is authorized to allow the return of the de minimis account distribution to Petitioner's Florida Retirement System Investment Plan account with interest being retroactively applied.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her own behalf and presented no other witnesses. Respondent was represented telephonically by Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-6 and documents provided by Petitioner were admitted into evidence without objection..

A transcript of the hearing was made, filed with the agency, and provided to the parties on January 30, 2023. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

UNDISPUTED MATERIAL FACTS

1. Petitioner had a Florida Retirement System Investment Plan account established pursuant to a Qualified Domestic Relations Order (QDRO).
2. On April 1, 2020, the balance in Petitioner's Investment Plan account had dropped below \$1,000. Petitioner was not an active member of FRS at that time.
3. This event triggered a de minimis account distribution authorization under Rule 19-11/003(7). Florida Administrative Code.
4. Petitioner was notified of the mandatory distribution on or about May 18, 2020. An FRS Investment Plan Mandatory Distribution Reminder Notice was sent to Petitioner at 1916 Talpeco Road, Tallahassee, Florida, which is the same address currently on file for Petitioner.
5. Petitioner was advised that she could leave the money in her Investment Plan account and prevent the mandatory distribution by rolling over eligible funds from another source, but that action would need to be taken by June 1, 2020.

6. Petitioner did not take action by the June 1, 2020 deadline date, and a distribution was sent to her at the address on file on June 2, 2020.

7. Due to market fluctuations, at the time the distribution was made, the gross amount was \$1,120.63.

8. A customer service representative with the Investment Plan Administrator attempted to contact Petitioner on June 9, 2020, and June 12, 2020 to confirm receipt of the check.

9. On September 28, 2022, Petitioner contacted the Investment Plan Administrator and spoke with a customer service representative. She was advised that her account was closed out and a payment made to her in 2020.

10. Petitioner indicated that she did not receive the payment in 2020. The customer service representative confirmed that there was an outstanding stale dated check reflected in Petitioner's account.

11. Petitioner asked if the funds could be placed back in her account. Petitioner was told that to have prevented the distribution, she would have had to roll over funds from another eligible account, but because the distribution had been made there was no option to return the funds to the account.

12. A stop payment was placed on the initial check and a new check issued on October 6, 2022.

13. The reissued check was received by Petitioner and was deposited on October 14, 2022.

CONCLUSIONS OF LAW

14. Pursuant to §121.591, Florida Statutes, Respondent has the authority to cash out the de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of six calendar months. This provision defines a de minimis account as an account where the contributions and accumulated earnings are not more than \$5,000.

15. To implement this provision, Rule 19-11.003(7), Florida Administrative Code implements the above provision, which reads as follows:

(7) De Minimis Distributions.

(a) If an inactive member's account balance is \$1,000.00 or less, such amount may be subject to an automatic distribution. However, a distribution will not occur until the member has been terminated from all employment with FRS-participating employers for a minimum of six (6) calendar months.

(b) If the member meets the termination requirements and upon receiving notification of the automatic distribution, the distribution either will be made as a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or if so instructed by the member, a lump-sum direct rollover distribution on the member's behalf paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code. If a member rolls money into the Investment Plan from another qualified plan, which brings the account balance greater than \$1,000.00, no automatic distribution will occur unless the balance should become \$1,000.00 or less in the future.

(c) If such member returns to work for an FRS-participating employer after receiving this automatic distribution, the member is not considered a reemployed retiree and will not be subject to any limitation applicable to such employees.

19-11.003(7), Florida Administrative Code. (Emphasis added).

16. Petitioner's account dropped below the \$1,000 threshold, which triggered an automatic distribution. Respondent sent the required notice to Petitioner on May 18, 2020. Petitioner was advised that in order to maintain the balance in the account she would need to

complete a rollover of eligible funds into her account to bring the balance above \$1,000 by June 1, 2020.

17. The notice was mailed to the address of record and is presumed to have been received. *Brake v. State of Florida*, 473 So.2d 774 (Fla. 3rd DCA 1985).

18. Rule 19-11.003(7), Florida Administrative Code, sets out the only method by which a member can avoid a de minimis distribution, i.e., by rolling over a sum sufficient to raise the balance above \$1,000 from an eligible account.

19. At the time the de minimis distribution rule was triggered, the balance in Petitioner's account was \$982.24. Due to market fluctuations, at the time of payout, the gross amount paid to Petitioner was \$1,120.63. Increases due to market fluctuations are not recognized as a means to stop a de minimis distribution once the provision has been triggered.

20. Nor does the de minimis distribution rule authorize accepting repayment of the funds distributed as a means to avoid the distribution.

21. Respondent, as an administrative entity of the State of Florida, has only those powers conferred upon it by the legislature. See, e.g., *Pesta v. Dep't of Corrections*, 63 So.3d 788 (Fla. 1st DCA 2011). The Florida Administrative Procedure Act expressly provides that statutory language describing the powers and functions of such an entity are to be construed to extend "no further than...the specific powers and duties conferred by the enabling statute." §§ 120.52(8) and 120.536(1), Fla. Stat.

22. Respondent is not authorized to depart from the requirements of these statutes when exercising its jurisdiction and has no power to enlarge, modify, or contravene the authority granted to it by the legislature. *State, Dept. of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco v. Salvation Ltd., Inc.*, 452 So. 2d 65, 66 (Fla. 1st DCA 1984); *Balezentis v. Dep't of Mgmt. Servs.*,

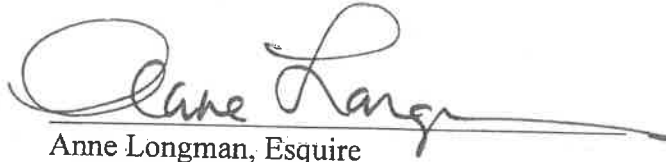
Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency “is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction”).

23. Accordingly, Respondent does not have the authority to allow Petitioner to reenroll or otherwise reopen an Investment Plan account, and therefore cannot grant the relief requested.

RECOMMENDATION

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

DATED this 7th day of March 2023.



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
mini.watson@sbafla.com
Nell.Bowers@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
Ruth.smith@sbafla.com
(850) 488-4406

COPIES FURNISHED via email and U.S. mail to:

Rebecca Thomas
1916 Talpeco Road
Tallahassee, Florida 32303
beckythomasfsu@yahoo.com
Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire
123 South Calhoun Street
P.O. Box 391
Tallahassee, Florida 32301
dminnis@ausley.com
jmcyaney@ausley.com