

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

JONATHAN KELLY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2009-1544
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
_____	)	

**FINAL ORDER**

On July 28, 2011, the presiding officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that a copy was served upon the Petitioner, Jonathan Kelly, in care of his stepfather and mother, who had a power of attorney to appear and testify on Petitioner's behalf at the hearing. A copy of the Recommended Order also was served on counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner made no further filings. Neither party filed exceptions, which were due on August 12, 2011. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

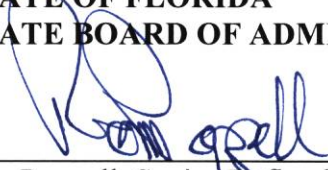
**ORDERED**

The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner's request that his FRS Investment Plan benefits not be forfeited due to the resulting hardship on his family hereby is denied. There is no statutory authority to grant Petitioner's request on the basis of hardship.

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 19<sup>th</sup> day of August, 2011, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



---

Ron Poppell, Senior Defined Contribution  
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.



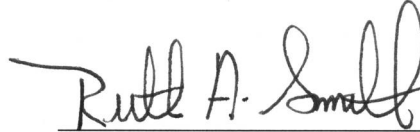
---

Agency Clerk

TINA JOANOS

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Jonathan Kelly, c/o Gary and Mary Ellen Kasey, [REDACTED], [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 19<sup>th</sup> day of August, 2011.



---

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

JONATHAN KELLY,

Petitioner,

vs.

Case No.

2009  
~~2011~~-1544

STATE BOARD OF ADMINISTRATION,

Respondent.

**RECOMMENDED ORDER**

This case was heard in an informal proceeding before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on May 9, 2011 in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner:

Gary Kasey  
Mary Ellen Kasey



For Respondent:

Brian A. Newman, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

RECEIVED  
STATE BOARD OF ADMIN  
11 JUL 29 PM 2:31  
GENERAL COUNSEL'S OFFICE

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner's Florida Retirement System (FRS) rights and benefits must be forfeited due to his plea of guilty to crimes involving activity he engaged in while employed by an FRS-covered agency.

**EXHIBIT A**

## **PRELIMINARY STATEMENT**

On January 21, 2011 Petitioner was notified that his rights and benefits under the Florida Retirement System would be forfeited due to his plea of guilty to criminal charges stemming from acts committed during the course and scope of his employment with Palm Beach County. A Petition for Hearing was filed on Petitioner's behalf on February 10, 2011 by Gary Kasey and Mary Ellen Kasey, Petitioner's stepfather and mother, requesting use of Petitioner's retirement funds to benefit Petitioner's wife and children. Mr. and Mrs. Kasey appeared on behalf of Petitioner pursuant to a Power of Attorney executed by Petitioner, and testified on his behalf. Daniel Beard, SBA Director of Policy, Risk Management & Compliance, testified on behalf of Respondent. Respondent's Exhibits 1 through 5 were received into evidence.

A transcript of the hearing was filed with the agency and provided to the parties, who were given thirty days to submit proposed recommended orders. Respondent submitted a proposed recommended order; Petitioner made no further submissions.

## **UNDISPUTED MATERIAL FACTS**

1. On August 13, 2009, in Case Numbers 2009CF6447, and 2009CF1471, Petitioner pled guilty to, and was adjudicated guilty of, the crimes identified in the Judgment entered in the Circuit Court in and for Palm Beach County.
2. Petitioner committed these crimes while he was employed as a school resource officer for Palm Beach County, an FRS-covered agency.
3. Petitioner used his position as a school resource officer to enable him to commit one or more of the felonies enumerated in the judgment.
4. Petitioner was notified by the SBA that his Investment Plan assets were forfeited because he pled guilty to these crimes on January 21, 2011.

## CONCLUSIONS OF LAW

5. The Florida Constitution requires that "[a]ny public officer or employee who is convicted of a felony involving breach of 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." FLA. CONST. ART. II, § 8(d).

6. Section 112.3173(3), Florida Statutes implements this provision and calls for forfeiture of all rights and benefits by one committing a specified offense, which includes,

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;

§ 112.3173(2)(e) 6., Fla. Stat.

7. Because Petitioner has been convicted of multiple felony charges involving a breach of the public trust, he has forfeited his right to a retirement benefit under the Florida Retirement System. §112.3173(3), Fla. Stat. There is no dispute that Petitioner used his position as a school resource officer to enable him to commit one or more of the crimes he pled guilty to.

8. Where the employee commits a crime in the course and scope of employment that "defraud[s] the public of the right to receive the faithful performance of his duties as a law enforcement officer" the inquiry into whether it qualifies as an offense for which forfeiture is triggered ends. Henderson v. Dep't of Management Services, Division of Retirement, 2007 WL 2636731 (Fla.Div.Admin.Hrgs. December 7, 2007).

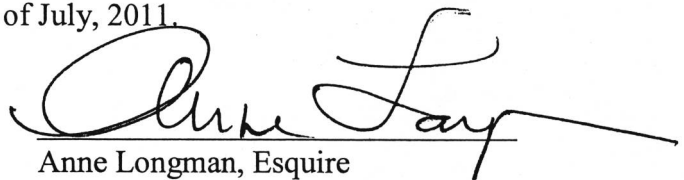
9. Petitioner does not dispute the above, but requests that his benefits not be forfeited due to the resulting hardship on his family.

10. The 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.). Despite any hardship imposed on his family, forfeiture of Petitioner's retirement benefits in this case is mandated by the Florida Constitution and applicable statutes, and Respondent SBA has no authority to take any other action.

### RECOMMENDATION

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

Respectfully submitted this 28<sup>th</sup> day of July, 2011.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
P.O. Box 16098  
Tallahassee, FL 32317

### NOTICE: 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, which 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 with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
(850) 488-4406

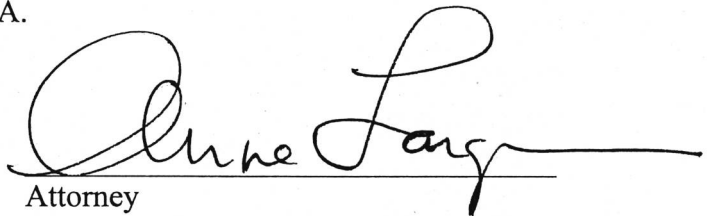
This 28<sup>th</sup> day of July, 2011.

Copies furnished to:

Jonathan Kelly  
c/o Gary and Mary Ellen Kasey



Brian A. Newman, Esquire  
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

  
Attorney