

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

SHARONDA BENNETT,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2016-3538
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On June 7, 2016, 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, Sharonda Bennett, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due on June 22, 2016. 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

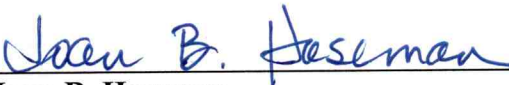
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request for removal of the hold that had been placed on her Florida Retirement System (“FRS”) Investment Plan account, pending resolution of the criminal charges that have been filed against her, hereby is denied. The criminal charges are for

offenses that would allow forfeiture pursuant to Section 112.3173(2)(e)6., Florida Statutes, if Petitioner eventually is convicted of such offenses. Therefore, the hold is appropriate.

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.

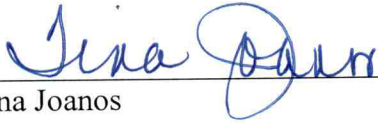
DONE AND ORDERED this 27th day of July 2016, in Tallahassee, Florida.

**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 Sharonda Bennett, 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) and Brandice Dickson, Esq., (brandi@penningtonlaw.com) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 27th day of July, 2016.



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

SHARONDA BENNETT,

Petitioner,

vs.

Case No.: 2016-3538

STATE BOARD OF ADMINISTRATION,

Respondent.

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 April 5, 2016, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Sharonda Bennett, pro se



For Respondent: Brandice D. Dickson, Esquire
Pennington, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether a hold can be placed on Petitioner's Investment Plan account pending the resolution of criminal charges filed against her.

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 4 were admitted into evidence without objection.

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 thirty days. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner is a member of the FRS Investment Plan by virtue of her former employment with the Florida Department of Corrections. Petitioner was a probation officer.
2. Petitioner has been charged with 17 counts of Scheme to Defraud, Grand Theft, Extortion by Officer of the State, and Petit Theft; some of those counts are felony counts. Petitioner is alleged to have used her position as a probation officer to deprive payments fraudulently from parolees for her own personal gain. Petitioner did not dispute these facts at the hearing.
3. Petitioner's Investment Plan account has been placed on hold pending the resolution of the charges against her.

CONCLUSIONS OF LAW

4. 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

this provision of the Florida Constitution and provides for the forfeiture of retirement benefits upon conviction of a qualifying crime that constitutes a breach of the public trust.

5. The authority to place and maintain a hold pending the resolution of criminal charges is found in Rule 19-11.008(2)(b), Florida Administrative Code:

(b) When the SBA, becomes aware of any accusation of criminal wrong doing against any member of the FRS Investment Plan, the SBA will put a hold on the member's account to preclude the member from removing any money from the account, until a determination is made on whether charges have been filed and whether the charges are for a forfeitable offense.

(c) If the charges against the member are not pursued and are dropped by law enforcement officials, the hold on the member's account will be released upon receipt of notification from the proper law enforcement agency.

(d) If the member is indicted and convicted or pleads guilty, or pleads nolo contendere, the SBA will acquire a certified copy of the judgment and will contact the member to advise the member that the Investment Plan benefit is forfeited and that the member has the right to a hearing to contest the forfeiture. The hold on the member's account will remain in place until:

1. The time to request a hearing has passed and no request for a hearing is made, or
2. The conclusion of the hearing and any appeal of the final order issued after the conclusion of the hearing.

Rule 19-11.008(2), F.A.C.

6. Respondent has demonstrated that the hold is appropriate as it has made an initial showing that Petitioner has been charged with forfeitable felony offenses (e.g. Scheme to Defraud <\$20,000 (817.034(4)a.3., Fla.Stat.) and Grand Theft (812.014(2)(c)1., Fla.Stat.)) that constitute a breach of the public trust. *See* §112.3173(2)(e)6., Fla.Stat.

7. The SBA has the authority under Rule 19-11.008(2)(b), Florida Administrative Code to place a hold on Petitioner's Investment Plan account (minus her contributions) because

criminal charges have been filed and a showing similar to probable cause justifying the agency action has been made that the alleged crimes are forfeitable offenses if Petitioner is convicted.

8. In similar types of administrative proceedings, such as licensee disciplinary proceedings, courts have held that to pursue an administrative complaint against the license-holder, the agency must first only find that probable cause exists that a violation occurred based upon the evidence before it at the time the finding was made. *Fish v. Dep't of Health*, 825 So. 2d 421 (Fla. 4th DCA 2002)(interpreting the language of §57.111 “unless the actions of the agency were substantially justified” in initiating disciplinary proceedings to mean whether there was probable cause to do so and further explaining the standard to find probable cause); *Dep't of Bus. & Prof'l Reg. v. Toledo Realty*, 549 So. 2d 715 (Fla. 1st DCA 1989)(interpreting the language of §57.111 “unless the actions of the agency were substantially justified” in initiating disciplinary proceedings to mean whether there was probable cause to do so and further explaining the standard to find probable cause); *Kibler v. Dep't of Prof'l Reg.*, 418 So. 2d 1081 (Fla. 4th DCA 1982)(interpreting §455.255 language “the determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department or the Agency for Health Care Administration”.)

9. In *Kibler*, the Court explained, “[t]o sustain a probable cause determination there must be some evidence considered by the panel that would reasonably indicate that the violation had indeed occurred. 418 So.2d at 1084. “The evidence, however, need not be as compelling as that which must be presented at the formal administrative hearing on the charges to support a finding of guilt and the imposition of sanctions.” *Fish*, 825 So.2d at 423 citing *Dep't of Prof'l Regulation, Div. of Real Estate v. Toledo Realty, Inc.*, 549 So.2d 715 (Fla. 1st DCA 1989).

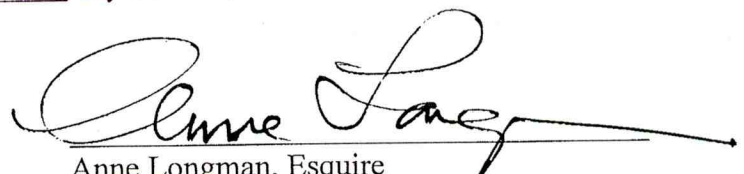
10. Applying the same type of preliminary determination analysis to the case at hand, to withhold benefits pending resolution of criminal charges, the SBA is required to produce evidence that reasonably indicates that Petitioner has been charged with criminal violations that could constitute forfeitable offenses should she be convicted. The evidence relied upon need not meet the same level of scrutiny as that applied at a formal hearing, and the SBA has met this burden.

11. What remains to be determined is whether Petitioner will be “convicted” of the charged felonies. *Jenne v. Dep’t of Management Services, Div. of Retirement*, 36 So.3d 738 (Fla. 1st DCA 2010) *rev. denied* (Sept. 28, 2010). If Petitioner is convicted of a qualifying offense within the meaning of the applicable statutes, she will have the opportunity to contest the forfeiture of her retirement benefits at that time. If the charges are dropped, the hold will be released. See, Rule 19-1.008(2)(c) and (d), Florida Administrative Code. Additional authority for the SBA’s hold on Petitioner’s account is found in section 121.091(5)(k), Florida Statutes, made applicable to the Investment Plan by section 121.012, Florida Statutes.

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 7th day of June, 2016.



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
alongman@llw-law.com

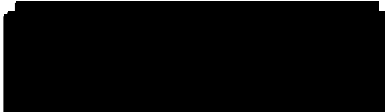
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Sharonda Bennett



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

Counsel for Respondent