

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

PATRICIA DANIEL JOHN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2016-3634
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On October 27, 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, Patricia Daniel John, 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 November 11, 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 to rescind her second election by which she transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan effective April 1, 2004 hereby is denied. While Petitioner claims she was not adequately informed

regarding the differences between the two plans, the record evidence clearly shows otherwise.

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.

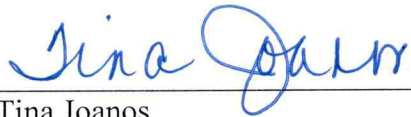
DONE AND ORDERED this 13<sup>th</sup> day of December, 2016, in Tallahassee, Florida.

**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.



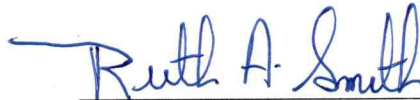
Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent to Patricia Daniel John, pro se, both by email transmission,

[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~~th~~ day of December, 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

PATRICIA DANIEL JOHN,

Petitioner,

vs.

Case No.: 2016-3634

STATE BOARD OF ADMINISTRATION,

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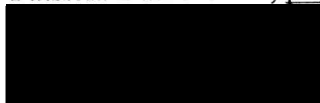
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**RECOMMENDED ORDER**

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 June 21, 2016, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Patricia Daniel John, 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 by which she transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan.

**EXHIBIT A**

## **PRELIMINARY STATEMENT**

Petitioner attended the hearing by telephone and testified on her own behalf. Respondent's Exhibits 1 through 5 were admitted into evidence without objection. Exhibit R-5 is the transcript of the recording of Petitioner's telephone call to the MyFRS Financial Guidance Line on February 20, 2004. The transcript was not available at the hearing but was served on all parties on June 22, 2016.

A transcript of the hearing was made, filed with the agency, and provided to the parties, who were invited to submit proposed recommended orders within thirty days after the hearing transcript was filed. This deadline was extended at the request of Respondent, and then again at the Request of Petitioner, setting the deadline to file proposed recommended orders as October 15, 2016. Respondent filed a proposed recommended order; Petitioner made no further filings.

## **MATERIAL UNDISPUTED FACTS**

1. Petitioner became a member of the FRS by virtue of her public employment, and currently works for Orange County Public Schools. Petitioner had until February 27, 2004 to make an initial election between the defined benefit Pension Plan and the defined contribution Investment Plan.
2. Petitioner did not make an affirmative election to join either plan before her initial election deadline expired, and so defaulted into the Pension Plan effective March 1, 2004.
3. On February 20, 2004, before her initial election deadline expired, Petitioner called the MyFRS Financial Guidance Line to get an overview and comparison of the features of the Pension Plan and the Investment Plan.
4. During that call, the MyFRS Financial Guidance Line representative provided an in-depth explanation of the differences between the Pension Plan and the Investment Plan,



including the different vesting requirements. The representative also ran future benefit projections under both plans using a modeling tool that applied Petitioner's desired retirement age of 62.

5. After hearing the different features of the two plans, Petitioner stated: "I feel like I'm probably going to wind up going with the Investment Plan." In fact, Petitioner stated she was "leaning towards the Investment Plan" because she was not sure how long she was going to stay in her current field and liked the fact that the Investment Plan's vesting period was one year. The MyFRS Financial Guidance Line representative also told Petitioner that she would have a one-time second election to change plans if she changed her mind after making an initial election. Petitioner has not alleged that any of the information she received during this call was incorrect or misleading in any way.

6. On March 24, 2004, the Plan Choice Administrator received Petitioner's completed and signed second election form indicating her desire to transfer from the Pension Plan to the Investment Plan, which established an April 1, 2004 Investment Plan effective date for her account.

7. The second election form Petitioner completed and signed states "I understand that this election will constitute my one-time second election as provided under the FRS and that I must remain in this retirement plan until my retirement." Petitioner also acknowledged the educational resources available to her before she made a second election choice:

I understand that I can find a description of my rights and responsibilities under the FRS Pension Plan and the FRS Investment Plan in the respective Summary Plan Descriptions, Florida Statutes, and Administrative Rules available through the MyFRS Financial Guidance Line at 1-866-44-MyFRS (1-866-446-9377; or TTY: 1-888-429-2160) or at MyFRS.com.

8. Petitioner submitted a Request for Intervention asking to return to the Pension Plan stating she was not adequately informed about the differences in the plans before she submitted

her second election. After her request was denied, she then filed a Petition for Hearing requesting the same relief, and this administrative proceeding followed.

### CONCLUSIONS OF LAW

9. As the party seeking affirmative relief in this administrative proceeding, Petitioner has the burden to demonstrate entitlement to the relief requested by a preponderance of evidence. Young v. Department of Community Affairs, 625 So. 2d 837 (Fla. 1993); Florida Department of Transportation v. J.W.C., Inc., 396 So. 2d 778, 788 (Fla. 1<sup>st</sup> DCA 1981).

10. 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).

11. As provided in the above statute, members of the FRS are allowed only one opportunity to switch plans after their initial election period expires. Petitioner's initial election period expired in 2004 and she was defaulted into the Pension Plan. Because Petitioner then used her one-time second election in 2004, she has exhausted her only opportunity to move between plans. There is no "third" election.

12. Petitioner cannot rescind her second election because she failed to do so before the deadline established by the applicable rule. The "grace period" for rescinding a second election is established by Rule 19-11.007(4), Florida Administrative Code:

(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.

Petitioner had until the time the present value of her Pension Plan benefit was transferred to her Investment Plan account to rescind her second election. In this case that transfer occurred long ago, in 2004.

13. Petitioner has stated that she was not properly informed about the features of the two plans before she made her second election decision to move to the Investment Plan. My review of the transcript of the call of February 20, 2004 finds nothing to support this assertion. The briefing she received during that call was extensive, detailed, and accurate. Petitioner has

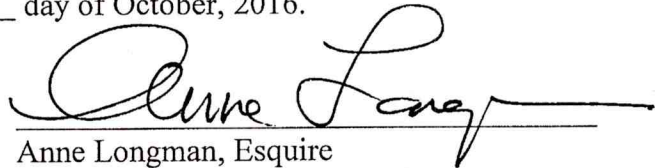


used her one-time second election and may not now switch back to the Pension Plan, as this is not permitted by the applicable Florida statutes.

### 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 27<sup>th</sup> day of October, 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

### 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)  
[mini.watson@sbafla.com](mailto:mini.watson@sbafla.com)  
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Patricia Daniel John



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)  
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[brian@penningtonlaw.com](mailto:brian@penningtonlaw.com)

Counsel for Respondent