

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

SHERRY ANN JARAMILLO,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2008-1209
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On January 22, 2009, 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, Sherry Ann Jaramillo, and upon counsel for the Respondent. Respondent submitted a proposed recommended order. Neither party filed Exceptions, which were due on February 6, 2009. 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) is hereby adopted in its entirety. The Petitioner's request to rescind her second election into the Investment Plan 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 200, 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.

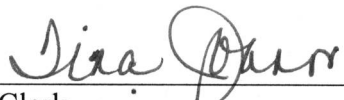
DONE AND ORDERED this 16th day of February, 2009, in Tallahassee, Florida.

**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.



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 Sherry Ann Jaramillo, pro se, [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 16th day of February, 2009.

Ruth L. Gokel

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

STATE OF FLORIDA,
STATE BOARD OF ADMINISTRATION

SHERRY ANN JARAMILLO,

CASE NO.: 2008-1209

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

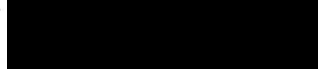
Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned Presiding Officer on August 15, 2008, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Sherry Ann Jaramillo


Petitioner

For Respondent: Brandice D. Dickson, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

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GENERAL COUNSEL'S OFFICE

STATEMENT OF THE ISSUE

The issue is whether Respondent, State Board of Administration (SBA) should grant the Petitioner's request to rescind her second election into the Investment Plan.

PRELIMINARY STATEMENT

In April, 2008, Petitioner emailed Governor Crist asking for his assistance with regard to her Florida Retirement System (FRS) account. On May 8, 2008, Petitioner executed a Petition for Hearing asking that the SBA grant her request to be moved back into the Pension Plan (also known as the defined benefit plan) from the Investment Plan (formally known as the Public Employee Optional Retirement Program).

Petitioner attended the informal hearing by telephone and testified on her own behalf. Respondent presented the testimony of Walter Kelleher, Director of Educational Services, State Board of Administration, and offered Respondent's Exhibits R-1 through R-3, which were admitted into evidence without objection.

A transcript of the informal hearing was filed with the agency and made available to the parties, who were invited to submit proposed recommended orders. Respondent submitted a proposed recommended order; Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. Petitioner defaulted into the Pension Plan on November 30, 2002. She executed a 2nd Election Retirement Plan Enrollment Form on October 21, 2005, asking to change from the FRS Pension Plan to the FRS Investment Plan.

2. The form contained the following statement:

I understand that this enrollment will constitute my one-time second election as provided under the FRS; I will have to remain in this retirement plan until my retirement from the FRS.

(emphasis in original).

3. Petitioner's second election was effective on November 1, 2005.

4. Petitioner utilized her second election based on the advice of a Primerica financial planning representative. Primerica is not affiliated in any way with the SBA or the FRS.

5. Petitioner first gave notice to Respondent of her wish to rescind her second election on April 12, 2007, well after the assets from her Pension Plan account had been transferred to her Investment Plan account.

CONCLUSIONS OF LAW

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

(e) After the period during which an eligible employee had the choice to elect the defined benefit program or the Public Employee Optional Retirement Program, 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 defined benefit program to the Public Employee Optional Retirement Program or from the Public Employee Optional Retirement Program to the defined benefit program. Eligible employees may elect to move between Florida Retirement System programs only if they are earning service credit in an employer-employee relationship consistent with the requirements under s. 121.021(17)(b), excluding leaves of absence without pay.

§ 121.4501(4)(e), Fla.Stat.

7. As provided in the above statute, members of the FRS are allowed only one opportunity to switch plans after their initial election period runs.

8. Petitioner cannot rescind her second election because she failed to do so within the narrow window provided by Rule 19-11.007, Florida Administrative Code. This rule provides a grace period for rescission of second elections as follows:

(6) Grace Period.

(a) If a member files an election with the TPA and the employee realizes that the election was made in error, the SBA will consider, on a case-by-case basis, whether the election will be voided, subject to the following requirements:

1. Member Elects the FRS Investment Plan. The SBA must be notified, by a telephone call to the toll free number: 1(866)446-9377, or by e-mail, or by written correspondence directly to the SBA, to the TPA, or to the Division of Retirement, before assets are transferred from the FRS Pension Plan to the member's FRS Investment Plan account. This transfer occurs no later than the last business day of the month following the election month.

2. Member Elects the FRS Pension Plan. The SBA must be notified no later than the last business day of the month following the election month.

Rule 19-11.007, F.A.C.

9. In this case, Petitioner's assets were transferred from her Pension Plan account to her Investment Plan account, pursuant to her second election, well over one year prior to her request for rescission.

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.). The SBA'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).

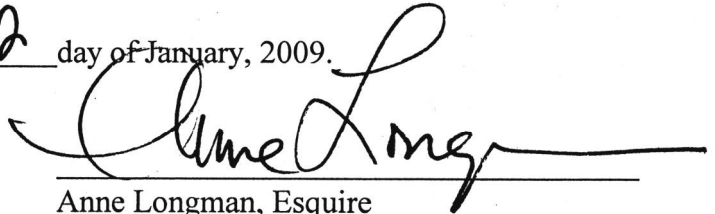
11. Respondent SBA lacks the statutory authority to allow Petitioner to rescind her

second election into the Investment Plan.

RECOMMENDATION

It appears that Petitioner may have been victimized by an unscrupulous financial planner and given bad advice regarding the best choices for her retirement assets. But the SBA has no jurisdiction over Primerica or any other entity not within its statutory authority, and any remedies against those entities would lie elsewhere. I note that Petitioner still has her retirement assets, albeit not in the type of account she might want. 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 22 day of January, 2009.



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 should be filed with the Agency Clerk of the State Board of Administration. 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 20th day of January, 2009.

Copies furnished to:

Sherry Ann Jaramillo


Brian A. Newman, Esquire
Brandice D. Dickson
Pennington, Moore, Wilkinson Bell & Dunbar
Post Office Box 10095
Tallahassee, FL 32302-2095
Attorneys for Respondent


Attorney