

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ARIELLE HOLDER,)
)
 Petitioner,)
)
 vs.)
)
 STATE BOARD OF ADMINISTRATION,)
)
 Respondent.)
 _____)

SBA Case No. 2023-0007

FINAL ORDER

On May 26, 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, Arielle Holder, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by June 10, 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

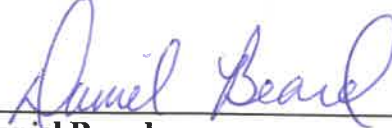
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that she be allowed to switch from the Florida Retirement System (“FRS”) Investment Plan to the FRS Pension Plan without having to utilize her second election and pay any required buy-in amount hereby is denied. Petitioner claimed that, due to incorrect information provided by her employer’s human resources representative, she was mistakenly under the impression that she did not have to take any further action

in order to be in the FRS Pension Plan. However, even if Petitioner had been provided erroneous information by her employer, Section 121.021(10), Florida Statutes, specifically provides that employers are not agents of the SBA and that, therefore, the SBA by law is not responsible for any erroneous information that may have been provided by Petitioner's employer. Petitioner was provided with numerous communications from the SBA reminding her of the necessity of making a plan election if she wanted to be in the FRS Pension Plan. Since Petitioner failed to make a plan election before her plan choice election period ended on February 28, 2022, she defaulted to the FRS Investment Plan as required by law. 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 22nd day of August, 2023, in Tallahassee, Florida.

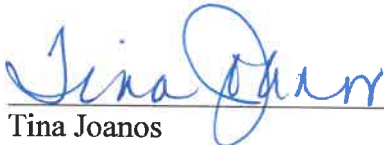
**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard

Chief of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

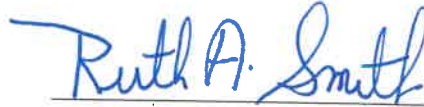
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Arielle Holder, *pro se*, both by email transmission to Arielletalmor@gmail.com and by U.P.S. to 1396 Main Street, Atlantic Beach, Florida 32233; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Margaret Wallace (mwallace@ausley.com) and jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 22nd day of August, 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**

ARIELLE HOLDER,

Petitioner,

vs.

Case No. 2023-0007

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on March 28, 2023, 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:	Arielle Holder, <u>pro se</u>
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 Petitioner may switch from the FRS Investment Plan to the FRS Pension Plan without using her second election.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner testified on her own behalf and presented no other witnesses. Respondent was represented by Allison Olson, SBA Director of Policy, Risk Management, and Compliance.

A transcript of the hearing was made, filed with the agency, and provided to the parties on April 12, 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 was originally employed in an FRS eligible position with the Justice Administration-States Attorney Division, an FRS-participating employer, on June 7, 2021.
2. In accordance with Section 121.4501(4)(b)1, Florida Statutes, Petitioner was temporarily reported under the defined benefit Pension Plan and was given an initial choice period deadline of 4:00 p.m. Eastern Time, February 28, 2022, to make an initial election between the defined benefit Pension Plan or the defined contribution Investment Plan.
3. The Plan Choice Administrator has no record of receiving an initial choice form from the Petitioner on or before the February 28, 2022 deadline.
4. Pursuant to Section 121.4501(4)(b), Florida Statutes, Petitioner defaulted into membership in the Investment Plan effective March 1, 2022. This was her initial election.
5. Prior to the expiration of the choice period, a Benefit Comparison Statement was sent to Petitioner at 1396 Main Street, Atlantic Beach, Florida 32233, on July 22, 2021. The same address appears on Petitioner's Request for Intervention and Petition for Hearing.

6. In the Benefit Comparison Statement, Petitioner was advised of her initial choice period deadline of February 28, 2022, and that if she failed to make an election by the choice period deadline, the Investment Plan would be considered her first election by default.

7. The Benefit Comparison Statement also provided Petitioner with information on the various ways she could contact FRS to obtain additional information and included her PIN. She had the following options:

- i. Using the 1st Election Choice Service on [MyFRS.com](https://www.myfrs.com); or
- ii. Calling the toll-free MyFRS Guidance Line at 1-866-446-9377, Option 4.

8. There were no calls from Petitioner to the MyFRS Financial Guidance Line prior to the expiration of the choice period deadline of February 28, 2022.

9. In addition to the Benefit Comparison Statement, the following documents reminding Petitioner of the February deadline were sent to Petitioner:

- i. Two reminder letters were sent on November 10, 2021 and February 10, 2022.
- ii. Five reminder emails were sent to Petitioner on September 20, 2021, October 15, 2021, December 6, 2021, January 3, 2022, and February 25, 2022.

10. Educational materials also were available to Petitioner, including:

- i. Toll-free access to the MyFRS Financial Guidance Line;
- ii. Access to public information on [MyFRS.com](https://www.myfrs.com) (including detailed information on the choice process, copies of all publications provided in the Choice Kit and FAQ's);
- iii. Employee workshops;
- iv. Employer Human Resources offices, which were afforded workshop training on the choice, supplied with printed materials, and received email updates on the choice; and

v. July 1, 2020, FRS Investment Plan Summary Plan Description, pages 18-20, on the MyFRS.com website.

11. There is no record of the Plan Choice Administrator receiving an election form for Petitioner by the applicable deadline date.

12. Petitioner asserts that when she was initially employed in June she advised her employer's human relations department that she wished to enroll in the Pension Plan. She further asserts that she was advised by that department that it would be taken care of, and that she completed applicable paperwork.

13. Petitioner also asserts that she did not receive a PIN, which would enable her to set up her account, until recently. The record shows that the PIN was included in the July 22, 2021 Benefit Comparison Statement sent to same address as shown on Petitioner's Request for Intervention and Petition for Hearing. A document Petitioner submitted as an exhibit, Confirmation of PIN, is dated June 22, 2022, but does not contradict any evidence of applicable deadlines.

14. Despite the notices and reminders sent to her, the Petitioner failed to submit an initial choice form within the required deadline.

15. At this time, the only way for Petitioner to transfer from the FRS Investment Plan is for Petitioner to submit a second election form and "buy-in" to the Pension Plan.

16. At the time of this hearing, the Petitioner was employed in an FRS eligible position and was an active FRS member.

17. Petitioner still has a second election remaining and can switch to the Pension Plan if she pays the required amount per Section 121.4501(4)(f), Florida Statutes.

CONCLUSIONS OF LAW

1. Because Petitioner failed to submit an initial election form to the Plan Choice Administrator prior to the expiration of her choice period, pursuant to Section 121.4501 (4)(b)3a, Florida Statutes, she was deemed to have elected the FRS Investment Plan by default, with an effective date of March 1, 2022.
2. The record demonstrates that Petitioner knew or had adequate notice of her choice period deadline and did not take timely action to use her an initial election.
3. Petitioner was sent a Benefit Comparison Statement and two reminder letters via U.S. Mail to what appears to be her correct address. Letters properly addressed, stamped, and mailed are deemed to have been received. *Brake v. State of Florida Unemployment Appeals Commission*, 473 So.2d 774 (Fla. 3rd DCA 1985).
4. Nothing in the record here shows that either Respondent or its agents made any material misstatements to Petitioner that would equitably estop Respondent from denying Petitioner's requested relief.
5. If any erroneous information was provided to Petitioner by her employer's human resources representative, this is not binding on Respondent. Section 121.021(10), Florida Statutes, expressly states that "[e]mployers are not agents of the [Department of Management Services], the [State Board of Administration], or the Division of Retirement, and the department, the state board, and the division are not responsible for erroneous information provided by representatives of the employers.
6. Pursuant to Section 121.4501(4)(f), Florida Statutes, members of the FRS have one opportunity to switch plans after their initial election period expires. Petitioner remains an active FRS member and still has her one-time second election available to her.

7. 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. 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").

8. Respondent has no authority to grant Petitioner's request to transfer from the FRS Investment Plan to the FRS Pension Plan without utilizing her second election and paying the mandated buy-in.

RECOMMENDATION

In accordance with 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 26th day of May 2023.

s/Anne Longman
Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
106 East College Avenue, Suite 1500
Tallahassee, FL 32301

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
(850) 488-4406

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

Arielle Holder
1396 Main Street
Atlantic Beach, FL 32233
Arielletalmor.at@gmail.com
Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire
Margaret Wallace, Esquire
123 South Calhoun Street
P.O. Box 391
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dminnis@ausley.com
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