

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JEAN LACROIX,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2012-2525
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On October 8, 2014, 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, Jean LaCroix, and upon counsel for the Respondent. This matter was decided on the written record, after both parties were given the opportunity to present written statements and any documentary evidence they wished to produce on or before September 19, 2014. Respondent timely filed exhibits and a Proposed Recommended Order. Petitioner did not make any filings. No exceptions to the Recommended Order, which were due October 23, 2014, were filed by either party. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending, for final agency action, before the Senior Defined Contribution Programs Officer.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner has forfeited his right to a retirement benefit under the Florida Retirement

System (FRS) pursuant to Section 112.3173, Florida Statutes, because he was adjudicated guilty of felony Child Abuse after being charged with having a sexual relationship with a minor child under his supervision while employed by the Department of Children and Families.

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.

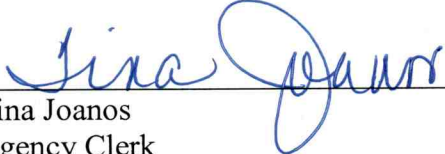
DONE AND ORDERED this 5th day of January, 2015, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Joan B. Haseman
Senior Defined Contribution Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

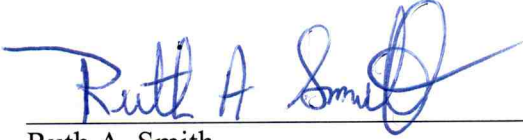
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Jean LaCroix, pro se, both by email transmission, (JeanocTamar@yahoo.com) and by U.P.S. to 19800 SW 180 Avenue, #334, Miami, Florida 33187; 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 5th day of January, 2015.



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

JEAN LACROIX,

Petitioner,

vs.

CASE NO. 2012-2525

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

On August 19, 2014, Respondent requested that this section 120.57(2) proceeding before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) be resolved on the written record without a hearing, after numerous unsuccessful attempts to contact Petitioner to set a hearing date. That motion was granted on September 9, 2014 after no response from the Petitioner was filed. The parties were directed to file any written statements and documentary evidence in this case on or before September 19, 2014.

APPEARANCES

For Petitioner: Jean LaCroix, pro se


Petitioner

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

STATEMENT OF THE ISSUE

The issue is whether Petitioner's Florida Retirement System (FRS) benefits must be forfeited.

PRELIMINARY STATEMENT

After the parties were directed to file any and all documents, statements, or materials they wished to be considered by the undersigned on or before September 19, 2014, Respondent filed exhibits and a Proposed Recommended Order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner was employed as an investigator with the Florida Department of Children and Families from October 26, 2001 until July 12, 2012. The Department of Children and Families is an FRS-participating employer.

2. Petitioner is a member of the defined contribution Investment Plan.

3. On July 19, 2013, Petitioner was adjudicated guilty of the crime of felony Child Abuse under section 827.03(1), Florida Statutes, in Miami-Dade County Circuit Court, because he was charged with having a sexual relationship with a minor under his supervision while he was employed by the Department of Children and Families.

4. Petitioner was sentenced to serve 366 days of incarceration followed by four years of probation.

5. Following his arrest, Respondent advised Petitioner that his FRS Investment Plan account was on hold pending the outcome of his criminal case.

6. After his plea of guilty to the felony described above, and after adjudication was

entered, Respondent notified Petitioner that his FRS Investment Plan had been forfeited.

7. Petitioner filed a Petition for Hearing and asserted that the victim lied, but admitted that he entered the plea which resulted in his adjudication of guilt for the felony at issue in this proceeding.

CONCLUSIONS OF LAW

8. 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 part of the Florida Constitution and states, in pertinent part:

112.3173. Felonies involving breach of public trust and other specified offenses by public officers and employees; forfeiture of retirement benefits

(1) Intent. – It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.

(2) Definitions. – As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilty by a court of competent jurisdiction; a plea of guilty or of nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

...

(e) "Specified offense" means:

...

6. 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.

...

(3) Forfeiture.--Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

...

(5) Forfeiture determination.—

- (a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to subsection (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board shall give notice and hold a hearing in accordance with chapter 120 for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board shall order such rights and privileges forfeited.
- (b) Any order of forfeiture of retirement system rights and privileges is appealable to the district court of appeal.

...

§ 112.3173, Fla.Stat. (2010)(emphasis added).

9. The above provides that an employee who is convicted of a “specified offense” committed prior to retirement from the FRS shall forfeit all rights and benefits. *Childers v. Department of Management Services*, 989 So.2d 716 (Fla. 4th DCA 2008). If this standard is

met, Respondent has no discretion as to whether to proceed with forfeiture of a participant's Investment Plan account; forfeiture is mandatory. The forfeiture enforces the terms of the retirement "contract" entered into between the State and the employee. As stated in *Childers*,

Here, the State entered into a contract with the employee, promising to pay him benefits upon his retirement. That contract included a condition precedent: the employee must refrain from committing specified offenses prior to retirement. The non-occurrence of that condition foreclosed the employee's right to performance. It is as direct and to the point as that.

...
While forfeiture, in general, has historically been understood as punishment, courts of this state have recognized that statutes providing for forfeiture of government benefits merely enforce the terms of a contract rather than impose punishment. This statute does not require a finding of scienter.

989 So.2d 716 (internal citations omitted)(emphasis added).

10. Section 112.3173(2)(e)6., Florida Statutes, is referred to as the "catch-all" provision in the forfeiture statute. *Holsberry v. Department of Management Services*, 2009 WL 2237798 (Fla.Div.Admin.Hrgs. July 24, 2009). It follows a list of enumerated offenses, and is the statutory section Respondent cites here as its basis for forfeiture. It requires forfeiture for acts not otherwise included in the list of "specified offenses" in Section 112.3173(2)(e) 1. – 5. and 7. when a sufficient nexus is shown between the position held by the public employee and the commission of the crime such that a breach of the public trust is proven. *Jenne v. Dep't of Management Services, Div. of Retirement*, 36 So.3d 738 (Fla. 1st DCA 2010)(catch-all provision required forfeiture for conviction of felony for conspiracy to commit mail fraud where sheriff used his position and ability to award contracts to gain benefit for himself where illegal payments to him were made via the mail); *Holsberry*, 2009 WL 2237798 at *3 (catch-all

provision required forfeiture for conviction of felony child abuse by a teacher where teacher testified he would not have met the child but for his position as a teacher at her school); *Marsland v. Department of Management Services*, 2008 WL 5451423 (Fla. Div. Admin. Hrgs. December 15, 2008)(catch-all provision required forfeiture for conviction of felony involving sexual battery by teacher on a student where sex occurred at the school and teacher testified but for his position he would not have had an opportunity to have sex with the student); *Jacobo v. Board of Trustees of the Miami Police*, 788 So.2d 362 (Fla. 3d DCA 2001)(catch-all provision required forfeiture for conviction of "Official Misconduct" where officer falsified an arrest affidavit); *DeSoto v. Hialeah Police Pension Fund Bd. of Trustees*, 870 So.2d 844 (Fla. 3d DCA 2003)(catch-all provision required forfeiture for conviction of felonies including conspiracy to possess and distribute cocaine, commit robbery, and carry a firearm during robbery by a police officer while on suspension).

Here, Petitioner has been convicted of child abuse stemming from charges based on his having a sexual relationship with a minor under his care or supervision while he was employed as an investigator by the Department of Children and Families. There is no question as to the nexus here between Petitioner's official duties and his crime, and therefore the "catch-all" portion of the statute, cited above, requires forfeiture. Petitioner's argument that he is innocent is immaterial because he has been adjudicated guilty and that argument is not cognizable in this venue in any event.

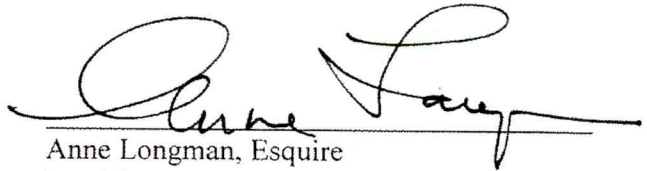
The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System, *Balezentis v. Department of Management Services, Division of Retirement*,

2005 WL 517476 (Fla.Div.Admin.Hrgs.), and forfeiture here is constitutionally mandated.

PROPOSED 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 October, 2014.



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.

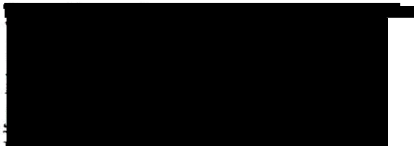
Filed via electronic delivery with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration

1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
Tina.joanos@sbafla.com
Daniel.Bead@sbafla.com
(850) 488-4406

This 8th day of October, 2014.

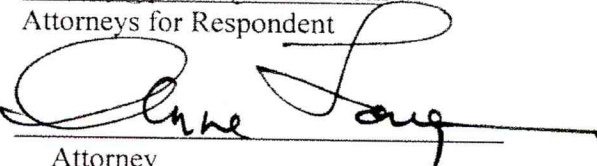
Copies furnished to:

Via U.S. Mail



Petitioner

Via electronic delivery:
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Tallahassee, FL 32302-2095
slindsey@penningtonlaw.com
Attorneys for Respondent



Attorney