

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

SUSAN H. MEYERS)	
)	
Petitioner,)	
)	
vs.)	Case No. 2005-478
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On October 10, 2007, 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 Petitioner's attorney, Keith T. Grumer, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on October 25, 2007. 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 The Petitioner's request that her enrollment in the FRS Investment Plan be rescinded is denied.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.

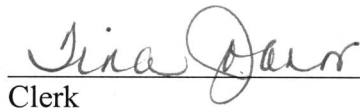
DONE AND ORDERED this 31st day of October, 2007, in Tallahassee, Florida.

**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

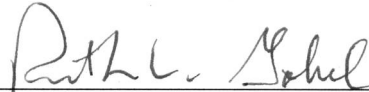
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Keith T. Grumer, Esq., Grumer & McCaluso, P.A., One East Broward Blvd., Suite 1501, Fort Lauderdale, Florida 33301, 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, and Anne Longman, Esq., Lewis, Longman & Walker, P.A., P.O. Box 16098, Tallahassee, FL 32317-6098, this 31st day of October, 2007.



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

SUSAN H. MEYERS,

CASE NO.: 2006-502

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

Respondent.

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GENERAL COUNSEL'S OFFICE

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned Presiding Officer for the State Board of Administration (SBA) on June 27, 2007, in Tallahassee, Florida. The Petitioner appeared by telephone and the Respondent in person as follows:

APPEARANCES

For Petitioner: Keith T. Grumer, Esquire
Grumer & McCaluso, P.A.
Suite 1501
One E. Broward Blvd.
Ft. Lauderdale, Florida 33301

For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 South Monroe St., 2nd Floor
Tallahassee, FL 32301

STATEMENT OF THE ISSUE

Whether the Petitioner's Second Election to transfer to the Florida Retirement System (FRS) Investment Plan can be rescinded.

PRELIMINARY STATEMENT

On November 26, 2005, Petitioner filed a Request for Intervention asking the SBA to allow her to rescind her Second Election, under which assets were transferred from the FRS Pension Plan to the FRS Investment Plan. This request was investigated by Respondent and denied. Petitioner timely filed a Petition for Hearing to contest the intended agency action, which was ultimately transmitted to the undersigned for informal hearing.

Respondent and its counsel appeared in person at the hearing; Petitioner and her counsel appeared by telephone. Petitioner did not file any exhibits; Respondent's exhibits R-1-5, consisting of official agency records and communications by and to the Petitioner were admitted into evidence without objection. A transcript of the proceedings was made, filed and made available to the parties. Respondent filed a Proposed Recommended Order and Petitioner filed Proposed Findings of Fact and Conclusions of Law. Petitioner did not dispute the facts set out in the SBA Pre-Hearing Statement or any of the SBA exhibits.

UNDISPUTED MATERIAL FACTS

The parties have agreed that the following facts are undisputed:

1. Petitioner, Susan H. Meyers, has over 20 years of service with FRS-covered employers. She is presently employed by the Broward County School District.
2. On July 19, 2002, Ms. Meyers made the first of two calls to Ernst & Young (E & Y), a SBA third party administrator. She called, along with her financial advisor, to correct the record as to her date of birth. E & Y told her to call the Florida Division of Retirement so that the correction could be made.

3. In January of 2005, Ms. Meyers refinanced her house with Primerica. There is no evidence that Primerica is in any way affiliated with Respondent. A Primerica employee, Hector Marin, advised her to switch from the FRS Pension Plan in which she was enrolled, to the FRS Investment Plan. Ms. Meyers asserts that she called FRS on February 21, 2005, to make her second election and, in that conversation, no one compared the plans or told her that she could enter the deferred retirement option program (DROP) only if she were in the FRS Pension Plan. Respondent has no record of that phone call.

4. On February 28, 2005, Ms. Meyers executed the paper form for a second election showing that she wished to be switched to the Investment Plan. On March 9, 2005, the form was received at CitiStreet, the FRS Investment Plan administrator. Petitioner's effective date in the FRS Investment Plan was April 1, 2005.

5. On May 25, 2005, Ms. Meyers made a second call to E & Y and stated that her birth date still was not correctly recorded.

6. On November 15, 2005, after her assets had been transferred from the Pension Plan to the Investment Plan, Petitioner called CitiStreet to say that she had made a bad choice in selecting the FRS Investment Plan. CitiStreet told Petitioner how to file a complaint. Ms. Meyers' Request for Intervention was received by the Respondent on December 2, 2005.

7. Petitioner's birth date was ultimately recorded correctly, which resulted in her Investment Plan account increasing by \$ [REDACTED].

8. Petitioner asserts in this proceeding that her transfer to the Investment Plan was procured through fraud, overreaching or misrepresentation on the part of Primerica through its

representative, Hector Marin. Petitioner does not contend that the Respondent or any of its agents participated in this alleged wrongdoing and does not contend that the Respondent is responsible for Mr. Marin's conduct.

CONCLUSIONS OF LAW

9. It is undisputed that Petitioner signed and mailed the Second Election form to the FRS Investment Plan Administrator and that it was received by CitiStreet on March 9, 2005. Respondent has no record of any phone calls either to CitiStreet or to E & Y on the Financial Guidance Line prior to Petitioner's making the election, save the July, 2002 call to E & Y about her incorrect birth date. Petitioner does not assert in this proceeding that the Respondent is responsible for her decision to transfer to the Investment Plan. Rather, she places blame for that decision on bad advice from and ill motive of Primerica representative Hector Marin.

10. Unfortunately, Respondent lacks the statutory authority to provide Petitioner the relief she has requested in this proceeding. An election by an employee to cease participation in the pension plan and join the investment plan is irrevocable (all subsections of section 121.4501(4) on participation in the Investment Plan contain the same language, "the election is irrevocable"), except for the one-time "second election" afforded by section 121.4501(4)(e), Florida Statutes. Once an employee has executed and filed the second election form with the third party administrator, that second election becomes final and irrevocable. *Id.* ("the employee shall have one opportunity, at the employee's discretion, to choose to move from the defined benefit program [Pension Plan] to the Public Employee Optional Retirement Program [Investment Plan].")

11. There is no provision in the statutes governing the Florida Retirement System that gives Respondent the power to rescind Petitioner's second election once properly made and effectuated.

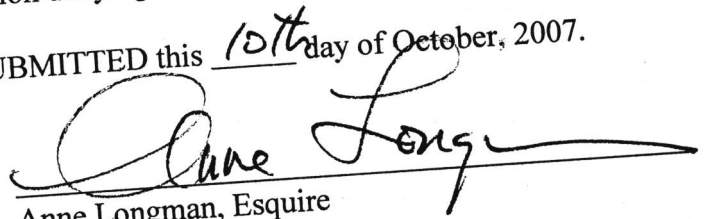
12. An employee is given a grace period in which to notify the Respondent that a second election was made in error and should be rescinded, Rule 19-11.007(6), Florida Administrative Code, but that rule states that notice of the error must be given to the Respondent *before* assets are transferred from the Pension Plan to the Investment Plan. Here, the Petitioner failed to timely invoke the grace period as her first notice to the Respondent was well after her assets were transferred.

13. Respondent lacks the statutory authority to grant Petitioner the relief she has requested. It does not appear that there are any disputed material facts as to the actions of the Respondent or any of its third party administrators, and in any event, the undersigned has no authority to decide disputed issues of fact in this informal proceeding. It appears, unfortunately, that Petitioner's complaint is directed to Hector Marin and Primerica, parties over whom this tribunal has no jurisdiction.

RECOMMENDATION

Having considered the undisputed material facts in this case, I recommend that a final order be entered by the State Board of Administration denying Petitioner the relief requested.

RESPECTFULLY SUBMITTED this 10th day of October, 2007.


Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
P.O. Box 16098
Tallahassee, FL 32317

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to the Recommended Order should be filed with the Agency Clerk of the State board of Administration.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Recommended Order has been served via U.S. Mail this

10th day of October, 2007 to:

Filed with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308

Copies Furnished:

Keith T. Grumer
Grumer & Macaluso, P.A.
One East Broward Boulevard
Ft. Lauderdale, Florida 33301
(for Petitioner)

Brian A. Newman, Esquire
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 South Monroe St., 2nd Floor
Tallahassee, FL 32301
(for Respondent)