

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

KIMBERLY Y. JEFFERSON,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2005-364
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On June 15, 2006, the presiding officer submitted his 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, Kimberly Y. Jefferson, and upon counsel for the Respondent. Neither party filed a Proposed Recommended Order or Exceptions. 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

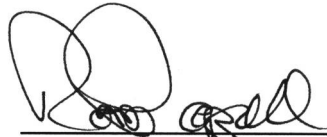
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request to invalidate her original and irrevocable second election to join the FRS Investment Plan Hybrid Option is hereby denied.

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 17th day of July, 2006, 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

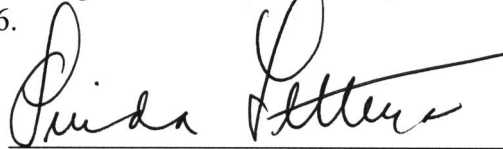
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Clerk 7/17/06

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Kimberly Y. Jefferson, pro se, [REDACTED] and by hand-delivery to Ruth L. Gokel, Assistant General Counsel, State Board of Administration of Florida, 1801 Hermitage Boulevard, Suite 100, Tallahassee, FL, 32308, this 17th day of July, 2006.



Linda Lettera
General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION
OFFICE OF INSPECTOR GENERAL

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GENERAL COUNSEL'S OFFICE

KIMBERLY Y. JEFFERSON,)
)
Petitioner,)
)
vs.)
)
STATE BOARD OF ADMINISTRATION,)
)
Respondent.)
_____)

Case No. 2005-364

RECOMMENDED ORDER

Upon due notice, the State Board of Administration, by its duly designated presiding officer, Bruce R. Meeks, convened a substantial interest hearing, pursuant to Section 120.57(2), Florida Statutes, in this matter on March 24, 2006, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Kimberly Y. Jefferson, pro se



For Respondent: Ruth L. Gokel, Esq.
Office of the General Counsel
State Board of Administration
1801 Hermitage Blvd.
Tallahassee, FL 32308

STATEMENT OF THE ISSUE

Whether Petitioner made a valid second election to join the FRS Investment Plan Hybrid Option.

PRELIMINARY STATEMENT

On June 3, 2005, Petitioner filed a Request for Intervention with the State Board of Administration (SBA). Upon investigation of the issues raised by the Petitioner, the SBA denied her request based on their interpretation of the facts and law. The adverse decision was communicated to the Petitioner by letter dated July 7, 2005, which further advised Petitioner of her right to a hearing on the matter. Petitioner filed a Petition for Hearing which was received on July 15, 2005.

Subsequently, in a Notice of Proceeding letter dated September 29, 2005, the SBA reasserted its basis for denying Petitioner's request and advised her of the right to challenge their decision with either written or oral evidence. Petitioner elected a hearing at which to present oral evidence.

Upon assignment of the instant case, the undersigned issued an Initial Order of Instructions on November 17, 2005. As requested in the initial order, the parties submitted a joint pre-hearing statement of facts, issues and positions, dated January 6, 2006. A Notice of Hearing

was issued on January 6, 2006, setting March 24, 2006, as the hearing date.

As noticed, the hearing was held on March 24, 2006, from approximately 2:00 PM until 4:00 PM at the SBA's headquarters in Tallahassee, Florida. Petitioner appeared in person (accompanied by a friend, Ms. Gaskins) and presented her own testimony. Respondent called one witness: Walter Kelleher (Director of Policy, Risk Management and Compliance for the Office of Defined Contribution Programs).

The parties offered the following exhibits which were accepted into evidence:

Parties' Joint Exhibit 1. Petitioner's Request for Intervention (with a 2nd Election Retirement Plan Enrollment Form attached), received June 7, 2005.

Parties' Joint Exhibit 2. Respondent's response to Request for Intervention (with Florida statutory references and a 2nd Election Retirement Plan Enrollment Form with two different 1st pages attached), dated July 7, 2005.

Parties' Joint Exhibit 3. Petitioner's Petition for Hearing, received July 15, 2005.

Respondent's Exhibit 1. The 2nd Election Retirement Plan Enrollment Form signed by Petitioner on October 29, 2004 and received by CitiStreet (the Respondent's third party administrator) on November 8, 2004.

Respondent's Exhibit 2. The 2nd Election Retirement Plan Enrollment Form (ELE-2 Rev 07-04), initially posted and available on www.MyFRS.com on August 2, 2004, and related emails between Respondent and CitiStreet.

Respondent's Exhibit 3. The updated 2nd Election Retirement Plan Enrollment Form (ELE-2 Rev 01-05), initially posted and available on www.MyFRS.com on January 6, 2005, and related emails between Respondent and CitiStreet.

Respondent's Exhibit 4. An analysis of the differences between Page 1 of the election form originally submitted to CitiStreet by Petitioner in October 2004 and a different Page 1 submitted to Respondent by Petitioner in her Request for Intervention in June 2005.

Upon Respondent's request, the presiding officer took official recognition (i.e., judicial notice) of the Florida Statutes (2004), specifically Chapter 121.

After hearing testimony, the presiding officer offered an opportunity for the parties to file proposed recommended orders and stated that such would be accepted no later than May 11, 2006. Petitioner and Respondent stated that they both would submit proposed recommended orders.

The procedures for filing exceptions prior to entry of the agency's final order were explained as were procedures for appealing to the district court of appeal.

On April 11, 2006, Ruth L. Gokel, Counsel of Record for Respondent, began an extended emergency medical leave. Respondent informed the undersigned that a proposed recommended order would not be forthcoming.

The hearing transcript was received by the SBA on or about April 24, 2006. On April 26, 2006, the undersigned

sent a cover letter (with copy to Respondent) and hard copy of the transcript to Petitioner via certified mail with return receipt requested. In the letter, Petitioner was notified, that under the circumstances, Respondent had opted not to submit a proposed recommended order.

Petitioner was advised that she was still free to submit or not submit a proposed recommended order, and the original due date would remain in effect. Neither party submitted a proposed recommended order.

FINDINGS OF FACT

Based upon the oral and documentary evidence adduced at the hearing and the entire record compiled herein, the following relevant findings of fact are made:

1. Petitioner is employed by the Department of Corrections in Lake City, Florida. Petitioner began her tenure with the State of Florida in June 1988.

2. As a result of action by the 2000 Florida Legislature, for the first time, beginning in September 2002, state employees could participate in one of three retirement plans: a) the original FRS Pension Plan (a defined benefit plan); b) the new FRS Investment Plan (a defined contribution plan); or the new FRS Investment Plan Hybrid Option (a combination plan whereby at the point of election the present value of the employee's accumulated

benefit obligation would remain in the Pension Plan and all future retirement contributions by the employer would go into the Investment Plan - the rules of each plan would apply accordingly).

3. Respondent is the state entity charged by the Legislature, pursuant to Section 121.4501(1), Florida Statutes, to establish and administer the FRS Investment Plan (officially known as the Public Employee Optional Retirement Program).

4. Petitioner was an existing employee at the beginning of the retirement choice election period for state employees that began on June 1, 2002, pursuant to Section 121.4501(4)(a)1., Florida Statutes.

5. Petitioner did not make an affirmative retirement plan election during the original choice period between June 1, 2002 and August 31, 2002, and, therefore, was continued in the FRS Pension Plan by default as provided by Section 121.4501(4)(a)1.b., Florida Statutes.

6. Section 121.4501(4)(e), Florida Statutes, provides for a one-time second opportunity for state employees to elect to irrevocably change retirement plans.

7. On October 29, 2004, Petitioner signed a 2nd Election Retirement Plan Enrollment Form which indicated her choice to join the FRS Investment Plan Hybrid Option

(Hybrid Option). The form was received by CitiStreet on November 8, 2004. Petitioner's membership in the new plan was effective December 1, 2004.

8. Petitioner testified at hearing that she merely signed the second election form sent to CitiStreet, but did not actually complete it. She stated that the form was completed by a financial advisor with CitiGroup, Jeremy Lanzant,¹ who mailed the completed form to her whereby she signed it and mailed it back to Mr. Lanzant who in turn mailed it to CitiStreet. Petitioner testified that while she read the form prior to returning it to Mr. Lanzant, she did not understand what she was signing and trusted that "he knew what he was doing. . . ." Tr. 19-20.

9. Petitioner stated that at all times her intent was to join the Investment Plan as she was not aware that the Hybrid Option existed.

10. In 2004, between the time she executed her second election, Petitioner placed two telephone calls to the toll-free MyFRS Financial Guidance Line and spoke with Ernst & Young financial planners (EY). The first call was made on October 22, 2004 and the second call on November 16, 2004.²

11. On October 22, according to the notes made by an EY financial planner, Petitioner called for information on

the FRS Investment Plan. In addition, she was given present value retirement benefit estimates and plan comparison information. Petitioner's personal financial advisor was also on the line during the October 22 call.

12. On November 16, according to the notes made by an EY financial planner, Petitioner called to inquire whether her second election form had been received. She was told that the form had been received and that her election would be effective December 1, 2004. The Petitioner mentioned receiving an election confirmation letter in the mail and investment options were discussed. (The call notes did not reference any discussion of the Hybrid Option versus the Investment Plan.)

13. On May 18, 2005, Petitioner executed and submitted to CitiStreet a new second election form - this time choosing the Investment Plan.

14. After receiving the "second" second election form, CitiStreet called Petitioner and informed her that she had previously used her one-time second election on October 29, 2004, and that she was irrevocably placed in the Hybrid Option as requested.

15. Petitioner testified at hearing that Jeremy Lanzant (the CitiGroup financial planner) informed her, at some point after her original second election, that a

requirement for joining the Investment Plan was termination of employment within a relatively short period of time (i.e., within 30 days) after making the election. Since she did not want to stop working, Petitioner stated that she called CitiStreet to cancel the second election.

16. Petitioner testified that her call to CitiStreet occurred on or about November 6, 2004, but prior to their receipt of the form on November 8, 2004. The purpose of the call was to confirm that her continued employment would cancel her election and to inquire whether she needed to sign anything to ensure cancellation of the second election. Petitioner stated that she spoke with a female representative of CitiStreet, but could not recall her name, who assured her that she need not do anything further to cancel the election. Neither CitiStreet nor EY have any record whatsoever of such conversation taking place.

17. During the hearing the Respondent confronted Petitioner with contrary evidence from a recorded call between her and CitiStreet on May 31, 2005. During the call, the CitiStreet representative asked Petitioner who told her that continuing to work would automatically cancel her second election, to which she replied, "I just assumed that."

18. At hearing, Petitioner denied making the statement that she just assumed continuing to work would cancel her election.

19. Petitioner testified that her basis for submitting the second election form in May 2005 was her belief that the November 2004 election was canceled due to her continued employment and the alleged assurance provided by a CitiStreet representative during the purported telephone conversation on or about November 6, 2004.

20. On June 3, 2005, when Petitioner learned that her May 2005 election was rejected and her November 2004 election was determined to be valid, she filed a Request for Intervention with the SBA seeking relief.

21. In her request, Petitioner stated that her being placed in the Hybrid Option was a mistake and her desired outcome was to be correctly placed in the Investment Plan. In support of her request, Petitioner attached a copy of what was represented as pages 1-3 of the original 2nd Election Retirement Plan Enrollment Form that she signed on October 29, 2004.

22. Page one of the 2nd Election Retirement Plan Enrollment Form submitted by Petitioner in support of her Request for Intervention on June 3, 2005 was not a copy of page one of the 2nd Election Retirement Plan Enrollment Form

signed by Petitioner on October 29, 2004 and received by CitiStreet on November 8, 2004. Pages 2-3 appear to be actual copies of the form Petitioner signed on October 29, 2004. (Page three of the form contains the signature required by the submitter.)

23. Page one of the election form submitted by Petitioner with her Request for Intervention has the box for choosing the Investment Plan checked; page one of the election form originally submitted by Petitioner in 2004 has the box for choosing the Hybrid Option checked.

24. Page one of the election form submitted by Petitioner with her Request for Intervention was a revised version (ELE-2 Rev 01-05) that was not made available to employees on the MyFRS.com website until January 6, 2005 - more than two months after Petitioner signed her form on October 29, 2004. The revised page one sheet contained distinct wording and format changes that differed from the prior page one version of the election form (ELE-2 Rev 07-04).

25. In her position statement in the Parties' Pre-Hearing Statement of Facts and Issues, Petitioner proffered the following explanation for the discrepancy between page one of the forms:

The reason why the second election form was different is because the person who prepared it for me [i.e., Jeremy Lanzant] faxed that copy after CitiStreet received another 2nd election form I submitted to them on May 18, 2005. After they contacted me and told me I had already used my one time 2nd election. I contacted the other party and asked him why was CitiStreet telling me I had chosen the Investment Hybrid Option. We then called the Plan Administrator with the three of us on conference call. The other party then faxed me these forms. I then faxed them in being unaware that the second election form was not the original. I thought I had the real copy until it was pointed out to me after my intervention request was denied.

26. Petitioner's testimony at hearing was consistent with her written position statement. Petitioner testified that Mr. Lanzant had retained copies of her election forms for his files. Once she was alerted by CitiStreet that her "second" second election was rejected, she asked Mr. Lanzant to fax her copies of her forms so that she could in turn send them to CitiStreet. She specifically stated, "[Mr. Lanzant] faxed me 13 sheets of paper that came to my fax machine that day. When I got this sheet, the sheet I sent to you [i.e., the fraudulent page one], I faxed it in because I was trying to prove that the second box [i.e., Investment Plan choice] was checked off, and I found out later that that wasn't the case." Tr. 21-22. Petitioner testified that it was Mr. Lanzant, not her, who switched page one of the form. Tr. 49-51.

27. Mr. Lanzant was not a witness at the hearing. Petitioner testified that she did not know that she could have had Mr. Lanzant subpoenaed to appear at the hearing, otherwise she would have done so.

CONCLUSIONS OF LAW

28. The State Board of Administration has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569, 120.57, and 121.4501, Florida Statutes.

29. The parties were duly noticed pursuant to Chapter 120, Florida Statutes.

30. The Petitioner has the burden of proof, by a preponderance of the evidence, in these proceedings to prove that her original second election joining the Hybrid Option was invalid or, in the alternative, should be invalidated. Florida Dep't of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). See also Subsection 120.57(1)(j), Florida Statutes.

31. In creating retirement plan options for FRS members, the Florida Legislature placed an emphasis on ensuring that sufficient education and information was available to assist employees with such important decisions. "The education component must provide system members with impartial and balanced information about plan

choices. . . ." Further, one of the criteria established for educational services was the use of "different media, including but not limited to, the Internet, personal contact, seminars, brochures, and newsletters." Section 121.4501(8)(c)2.d., Florida Statutes.

32. As required by statute, the Respondent provides retirement plan choice education and information in a variety of media formats:

- a) Retirement Choice Kits;
- b) The MyFRS.com website;
- c) The toll-free MyFRS Financial Guidance Line;
and
- d) Retirement Plan Choice Workshops.

All of these sources of education and information stress the importance of very carefully weighing retirement plan choice decisions.

33. Arguably, the most important advisories and warnings were contained in the very same 2nd Election Retirement Plan Enrollment Form that Petitioner signed on October 29, 2004. The following relevant excerpts are taken from the form:

Before you change retirement plans, take advantage of the **FREE** resources offered through the MyFRS Financial Guidance Program to help you understand the impact of changing from one plan to another and how much it may cost to do so.

These resources include the:

- Toll-free MyFRS Financial Guidance Line at 1-866-44-MyFRS (1-866-446-9377; or TTY: 1-888-429-2160); **and**

- **2nd Election CHOICE SERVICE**, a comparison of your projected benefits under both plans, available at MyFRS.com or through the Financial Guidance Line.

* * *

Be sure to use the free resources discussed above to help you understand your investment fund choices.

* * *

Section 4: Authorization

(All participants must complete this Section)

1. IMPORTANT INFORMATION

Before signing this enrollment form, be sure to read the following information.

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. 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; and I must work at least one day in the month following the month I file this enrollment form for the plan change to be effective (e.g., if I file in January, I must work one day in February).

* * *

If you selected Option 3 in Section 1:

I understand that I have elected to change retirement plans to the FRS Investment Plan and that my FRS Pension Plan benefit already accrued will remain with the FRS Pension Plan and that a FRS Investment Plan account will be established to receive all future employer contributions. 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. I understand that my one-time second election is irrevocable.

* * *

If you selected Option 2 or 3 in Section 1:

. . . I understand that Sections 121.4501(8)(b)4, and 121.4501(15)(b) of Florida law incorporate the federal law concept of participant control, established by regulations of the U.S. Department of Labor under section 404(c) of the Employee Retirement Income Security Act of 1974.

If I exercise control over the assets in my FRS Investment Plan account, pursuant to section 404(c) regulations and all applicable laws governing the operation of the FRS Investment Plan, no program fiduciary shall be liable for any loss to my account which results from my exercise of control.

* * *

5. A confirmation statement will be mailed to your address of record once your completed form is received and processed. Please allow 2 to 3 weeks to receive it. (Your address of record is submitted by your employer to the FRS. Make sure your employer is notified of any address changes.)

* * *

Carefully review your form and be sure you've signed and dated it. Please keep a copy for your records. If you submit a form that is incomplete, it will not be processed. The incomplete form will be returned to you to add any missing information.

(bold, italicized and underlined text in original).

34. Given the resources available to Petitioner and the important advisories and warnings contained on the form

she signed on October 29, 2004, the Respondent and its agents appropriately processed her second election to join the Hybrid Option.

35. Petitioner's testimony that she placed an uncorroborated call to CitiStreet on or about November 6, 2004 (but prior to their receipt of the form on November 8, 2004) to confirm that her continued employment would cancel her election; to inquire whether she needed to sign any form to ensure cancellation of the second election; and whereby she was purportedly assured by an unnamed female representative of CitiStreet that she need not do anything further to cancel the election is unpersuasive.

36. Petitioner's reliance on allegedly bad advice, misinformation, and fraudulent actions by Mr. Lanzant is most unfortunate.

37. Petitioner has failed to prove that her case merits granting the relief she is requesting.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law it is:

RECOMMENDED that the State Board of Administration enter a Final Order denying Petitioner's request to invalidate her original and irrevocable second election to join the FRS Investment Plan Hybrid Option.

DONE and ENTERED this 15th day of June 2006, in
Tallahassee, Leon County, Florida.



Bruce R. Meeks, Esq.
Presiding Officer
State Board of Administration
1801 Hermitage Blvd.
Tallahassee, Florida 32308
(850) 488-4406

Filed with the Agency Clerk of the
State Board of Administration this 15th
day of June 2006.

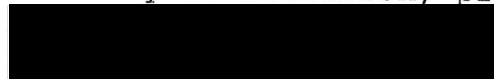
ENDNOTES

1/ Jeremy Lanzant is said to be a financial planner with "CitiGroup". As such, he is not affiliated in any way with "CitiStreet", Respondent's third party administrator for the FRS Investment Plan.

2/ Normal procedure is for all calls to CitiStreet and Ernst & Young to be recorded. However, Ernst & Young reported that their call recording device was not functioning properly in October and November 2004. Upon attempting to retrieve the calls in question, they discovered the files were corrupt. Nonetheless, handwritten notes made by the Ernst & Young representatives, that summarized the calls, were available.

Copies furnished:

Kimberly Y. Jefferson, pro se



Tina Joanos, Agency Clerk
State Board of Administration
1801 Hermitage Blvd.
Tallahassee, Florida 32308

Linda Lettera, Esq.
General Counsel
State Board of Administration
1801 Hermitage Blvd.
Tallahassee, Florida 32308

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 this Recommended Order should be filed with the entity (i.e., State Board of Administration) that will issue the Final Order in this case.