

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JEAN RIDORE,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2015-3477
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On May 27, 2022, the Presiding Officer submitted her Recommended Order to the State Board of Administration (hereafter "SBA") in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Jean Ridore. Neither party filed exceptions to the Recommended Order, which were due June 11, 2022. 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) hereby is adopted in its entirety. Petitioner was a public employee convicted of several "specified offenses" prior to his retirement and, as such, Petitioner has forfeited all the rights and benefits he possessed by virtue of his Florida Retirement System Investment Plan account, except for the amount of his accumulated employee contributions as of the date of his termination of employment. Petitioner's request for relief hereby 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 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 19 day of August, 2022, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief of Defined Contribution Programs
Office 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 by U.S. mail to the *pro se* Petitioner, Jean C. Ridore at: DC#U80125, Sago Palm Re-Entry Center, 500 Bay Bottom Road, Pahokee, Florida 33476; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ruth Vafek (rvafek@ausley.com; jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 19 day of August, 2022.



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 RIDORE,

Petitioner,

vs.

CASE NO. 2015-3477

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 22, 2022, 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: Jean Ridore, pro se
For Respondent: Ruth Vafek
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Respondent properly seeks forfeiture of Petitioner's Florida Retirement System (FRS) Investment Plan account following Petitioner's conviction for unlawful compensation, official misconduct, and theft, acts committed while he was employed by the Miami-Dade County School Board (School Board).

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner testified on his own behalf and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-10 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on April 21, 2022. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based on my consideration of the complete record in this case and all materials submitted by the parties.

UNDISPUTED MATERIAL FACTS

1. The Petitioner was employed in an FRS-qualified position with the Miami-Dade County School Board, an FRS-participating employer.
2. Respondent SBA received information indicating that, on or about September 28, 2018, in Case No. F15-20650 in the Eleventh Judicial Circuit of Florida, Miami-Dade County, Petitioner was convicted by a jury of multiple felony crimes relating to his employment with the School Board, including unlawful compensation, official misconduct, and theft.
3. Pursuant to that information, Respondent notified Petitioner by letter dated January 9, 2019, that his FRS Investment Plan account would be forfeited.
4. In that letter, Respondent explained that Petitioner had the option of requesting a hearing if he believed the forfeiture was wrongfully determined, and enclosed a form Petition for Hearing.
5. On or about January 23, 2019, Petitioner filed his Petition for Hearing requesting reconsideration of the forfeiture declaration and stating that he was appealing the criminal case.

6. I entered a Notice of Proceeding and Initial Order of Instructions on January 28, 2019.

7. On February 8, 2019, Respondent filed a Motion to Stay Proceedings Pending Appeal, which was granted by my Order of February 11, 2019.

8. Respondent received information indicating that the Third District Court of Appeal had affirmed, *per curiam*, Petitioner's convictions, by its opinion filed October 28, 2020. That opinion became final and the mandate was issued on November 17, 2020.

9. An Order Confirming Expiration of Stay was entered in this action on October 4, 2021, and after several continuances, this proceeding was held on March 22, 2022.

10. Petitioner asserted at the hearing that he has "two cases in motion right now" and argued that "any final decision would be premature."

CONCLUSIONS OF LAW

11. Article II, section 8 of the Florida Constitution, titled "Ethics in Government," states in pertinent part:

A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

....

(d) Any public officer or employee who is convicted of a felony involving a breach of 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.

12. Section 112.3173, Florida Statutes, which implements this constitutional provision, is part of the statutory code of ethics for public officers and employees and sets out a number of "specified crimes" that result in the forfeiture of the member's retirement benefits. That statute states, in pertinent part:

(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 guilt 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.

....

(c) “Public officer or employee” means an officer or employee of any public body, political subdivision, or public instrumentality within the state.

(d) “Public retirement system” means any retirement system or plan to which the provisions of part VII of this chapter apply.

(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.

(Emphasis added).

13. Rule 19-11.008(2)(b)-(d), F.A.C., establishes the procedural requirements in cases of forfeiture due to criminal activity. The relevant portions provide as follows:

(2) Forfeitures of Investment Plan accounts Due to Criminal Activity.—

(b) When the State Board of Administration (SBA), becomes aware of any accusation of criminal wrong doing against any member of the Investment Plan, the SBA will place a hold on the member's account to preclude the member from removing any money from the account, until a determination is made on whether charges have been filed and whether the charges are for a forfeitable offense.

...

(d) **If the member is indicted and convicted** or pleads guilty, or pleads nolo contendere, the SBA will acquire a certified copy of the judgment and will contact the member to advise the member that the Investment Plan benefit is forfeited and that the member has the right to a hearing to contest the forfeiture. The hold on the member's account will remain in place until:

1. The time to request a hearing has passed and no request for a hearing is made, or
2. The conclusion of the hearing and any appeal of the final order issued after the conclusion of the hearing.

14. Rule 19-11.008 further provides, at subsections (2)(e) and (g), as follows:

(e) At the conclusion of either subparagraph (d)1., above, or subparagraph (d)2., above, if the member's hearing and/or appeal are unsuccessful, the SBA will direct the Investment Plan Administrator to transfer the member's account balance to the Investment Plan Forfeiture Account. If such member is subsequently reemployed, the member shall be eligible for benefits based on creditable service earned subsequent to the reemployment. The member is not eligible to claim any period of employment which was forfeited.

....

(g) If a member receives a pardon for any crime applicable to any FRS employment, the member shall have all benefits previously forfeited returned to his or her

Investment Plan account reflecting any earnings or losses while invested in the FRS Intermediate Bond Fund.

15. Although Petitioner argued that he is still appealing his conviction, there is nothing in the record that would support a conclusion that he has not been “convicted of a specified offense committed prior to retirement” as provided by subsection 112.3173(3), Florida Statutes, and that his conviction meets the statutory definition in subsection 112.3173(2)(a), Florida Statutes.

16. Petitioner’s crimes, for which a jury returned a guilty verdict, were “specified offenses” as defined by section 112.3171(2)(e)6., Florida Statutes. See Bollone v. Dep’t of Mgmt. Servs., 100 So. 3d 1276, 1280 (Fla. 1st DCA 2012). To constitute a specified offense under section 112.3171(2)(e)6., the criminal act must be: a felony; committed by a public officer or employee; done willfully and with intent to defraud the public or the officer’s or employee’s public employer of the right to receive the faithful performance of the officer’s or employee’s duty as a public officer or employee; done to realize or obtain, or attempt to realize or obtain, a profit, gain, or advantage for the officer or employee or some other person; and done through the use of or attempted use of the power, rights, privileges, duties, or position of the officer’s or employee’s public employment. Id. at 1280-81.

17. To determine whether section 112.3171(2)(e)6. applies to a particular offense, these statutory conditions must be examined and applied in light of the employee’s conduct. Id. at 1280. Whether a particular crime meets the definition of a “specified offense” under this provision depends on the way in which the crime was committed. Jenne v. Dep’t of Mgmt. Servs., 36 So. 2d 738, 742 (Fla. 1st DCA 2010).

18. The circumstances in this case are comparable to those in Maradev v. State Board of Administration, Case No. 13-4172 (Fla. DOAH Jan. 16, 2014; Fla. SBA Apr. 4, 2014). In

Maradey, a former Miami-Dade Transit bus driver was involved in an insurance fraud scheme whereby she would receive kickbacks from a medical center for her participation in receiving treatments and referring other “patients” there. She was recruited into this scheme by a co-worker, and attempted to refer other co-workers as “patients.” As a result of these actions, she pled guilty to felony counts of patient brokering, insurance fraud, and grand theft. Respondent determined that Maradey had forfeited her rights and benefits under the FRS pursuant to Section 112.3173(2)(e)6., and she challenged that determination. In her Recommended Order, the ALJ found that Maradey’s offenses qualified as a “specified offense” pursuant to Section 112.3173(2)(e)6.

19. Specifically, the ALJ held that:

...the public had a right to expect that one of its employees would not use the relationships, knowledge, and physical access to public premises and other public employees that she gained through her public employment to commit crimes. The public was defrauded when [Maradey] used the relationships, knowledge, and access that she gained through her public employment position to commit crimes.

Id. at Ex. A, p. 8

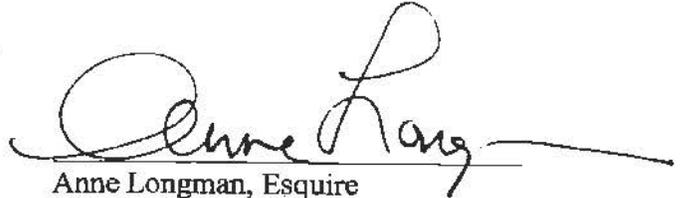
20. Similarly, in Newmans v. Division of Retirement, 701 So. 2d 573 (Fla. 1st DCA 1997), the court affirmed that a sheriff’s use of the knowledge and information he obtained through his employment to engage in drug trafficking satisfied the requirement in Section 112.3173(2)(e)6. that his crime be related to his public employment position.

21. The record shows that Petitioner has been convicted of felony offenses based on embezzlement and abuse of his position as an employee of the Miami-Dade County School Board, and forfeiture of his FRS Investment Plan account balance, other than his employee contributions, is therefore mandated under the Florida Constitution and relevant statutes.

RECOMMENDATION

Having considered 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 27th day of May 2022.



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
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Tallahassee, FL 32308
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