

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ISSA ITANI,)
)
 Petitioner,)
)
 vs.)
)
 STATE BOARD OF ADMINISTRATION,)
)
 Respondent.)
 _____)

SBA Case No. 2017-0226

FINAL ORDER

On November 17, 2017, 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, Issa Itani, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due on December 2, 2017. 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 his initial election to join the Investment Plan be cancelled, or, in the alternative, that he be entitled to switch to the FRS Pension Plan without being required to pay the statutorily-required “buy-in” amount, hereby is denied. While Petitioner testified he mistakenly chose the FRS Investment Plan because he confused it

with an available deferred compensation option, there is absolutely no record evidence to establish that any misconceptions the Petitioner had were in any manner caused by any information provided to him by the MyFRS Financial Guidance Line.

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.

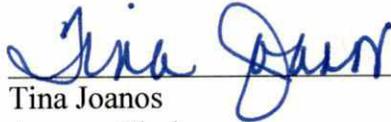
DONE AND ORDERED this 17th day of January, 2018, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

Joan B. Haseman

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

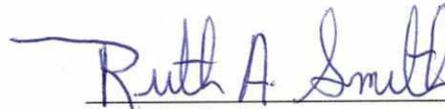
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Issa Itani, pro se, both by email transmission, [REDACTED] and by U.P.S. to [REDACTED] 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 17th day of January, 2018.



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

ISSA ITANI,

Petitioner,

vs.

CASE NO. 2017-0226

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on October 18, 2017, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Issa Itani, *pro se*


For Respondent:

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

STATEMENT OF THE ISSUE

The issue is whether Petitioner can cancel his initial election to join the Investment Plan or switch to the Pension Plan without losing his second election or having to pay the "buy-in" amount calculated by the Division of Retirement.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits 1 through 7 were admitted into evidence without objection. At the conclusion of the hearing, the Respondent was asked to provide a recording of the call Petitioner made to the Ernst & Young financial planner through the MyFRS Financial Guidance Line immediately before electing the Investment Plan as his initial plan election. A transcript of that call was submitted as exhibit R-8 on October 25, 2017.

A transcript of the hearing was made, filed with the agency, and provided to the parties. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. The Petitioner began employment with the Miami-Dade Police Department, an FRS-covered agency, in August of 2016.
2. Petitioner had a deadline of February 28, 2017 to elect membership in either the Investment Plan or the Pension Plan as his initial plan election.
3. Petitioner made his initial election by telephone on February 27, 2017 electing enrollment in the Investment Plan. On the recording of this telephone call, Petitioner can be heard clearly stating that he desires enrollment in the Investment Plan as his initial plan election. Petitioner confirmed that he had been counseled on the differences between the two plans offered by the FRS and that he understood the differences in the two plans.

4. Petitioner had an extensive discussion with an Ernst & Young financial planner made available through the MyFRS Financial Guidance Line immediately before making his initial election. During this call, the financial planner explained the key differences between the FRS Pension Plan and the Investment Plan, including the different vesting requirements (eight years for the Pension Plan and one year for the Investment Plan). Petitioner was told that members of the Pension Plan receive a fixed monthly benefit for lifetime at retirement as opposed to the Investment Plan, which produces a lump sum retirement benefit like a traditional IRA. Retirement projections were estimated for Petitioner assuming thirty years of service and six percent growth, factors selected by Petitioner. This exercise produced an estimated Pension Plan benefit of \$15,000 per month at retirement and an Investment Plan balance of \$1.7 million. Petitioner was told that an Investment Plan balance of \$1.7 million would produce a monthly benefit of \$15,000 per month until he reached age 70 before his account was exhausted (again assuming a 6 percent investment return). After receiving this information, Petitioner clearly stated that he chose the Investment Plan as his initial plan election and that he preferred the "average stock" plan which was later confirmed to be the 2050 Retirement Date Fund.

5. Although the lifetime benefit estimated for Petitioner as a Pension Plan member may seem the more logical choice for a long-term FRS-eligible employee, Petitioner stated that he was having difficulty with the academy part of his training which could make a plan with a shorter vesting period a more attractive option. All of Petitioner's questions were answered.

6. A Confirmation of Enrollment into the Investment Plan was mailed to Petitioner on March 1, 2017. This notice advised Petitioner that he had until 4:00 p.m. on the last business day of the month following his election month to cancel his election if he believed he made it in error. Petitioner did not attempt to cancel his initial election before this deadline expired.

7. Petitioner testified that he mistakenly chose the Investment Plan, confusing it as one of his deferred compensation options, but no information in this regard was received from anyone authorized to speak on behalf of the SBA.

8. Petitioner used his second election to enroll in the Pension Plan on July 3, 2017 with an effective date of August 1, 2017. According to the Division of Retirement, Petitioner is required to pay an estimated Pension Plan buy-in of \$112.36 (in addition to the value of his Investment Plan account) to complete his transfer to the Pension Plan.

CONCLUSIONS OF LAW

9. The recording of Petitioner's initial election call to the MyFRS Financial Guidance Line demonstrates that the key features and differences between the Pension Plan and Investment Plan were adequately and accurately explained to him before he made his initial election. Under these circumstances, there is no record support for the idea that Petitioner was misled into selecting the Investment Plan. See Dixon v. State Board of Administration, DOAH Case No. 16-600, Order Granting Motion and Closing File (Dec. 15, 2016) stating:

Mr. Dixon does not dispute the accuracy of the transcript of the recorded telephone call. It reflects clearly that the Ernst & Young financial advisor did not advise or encourage Mr. Dixon to choose one option over the other. Rather, he explained the difference between the two, and their respective advantages and disadvantages. At the end of the call, Mr. Dixon voluntarily chose the Investment Plan. He has not identified any misstatement of fact by the advisor that led him to choose the Investment Plan as his initial plan election.

In view of this, no genuine issue as to any material fact exists. Therefore, the Motion is granted, jurisdiction in the case is relinquished to the agency for final disposition of the matter, and the file of the Division of Administrative Hearings is hereby closed. Because an evidentiary hearing to resolve disputed facts is no longer necessary, the final hearing on January 10, 2017, is canceled.

Petitioner's assertion that he received misleading or confusing information relative to deferred compensation benefits vs. FRS benefits from his employer is not relevant to this proceeding. FRS employers are not agents of the SBA and the SBA is not responsible for erroneous information provided by them. § 121.021(10), Fla. Stat. (2016).

10. Petitioner was given an opportunity to cancel his initial election but did not do so before the rescission deadline expired.

11. Petitioner has a second election available to him and, in fact, filed one indicating his desire to transfer to the Pension Plan. Petitioner cannot, however, move to the Pension Plan without paying the statutorily-mandated buy-in calculated by the Division of Retirement. Movement from the Investment Plan to the Pension Plan must be in accordance with section 121.4501(4)(g)2., Florida Statutes, which provides in pertinent part:

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement...

Rule 19-11.007(3)(d), Florida Administrative Code, provides:

For members transferring to the Pension Plan, if the member's Investment Plan account balance was less than the calculated amount required to buy back into the Pension Plan, the election will require a personal payment. The member will receive notification and proper instructions from the Division of Retirement (Division) detailing where and in what form to send any personal payments. Such payment, if necessary, must be received by the date determined by the Division. If the required amount is not received by the Division by the date due, the election will be voided.

The Respondent has no authority to waive this buy-in requirement.

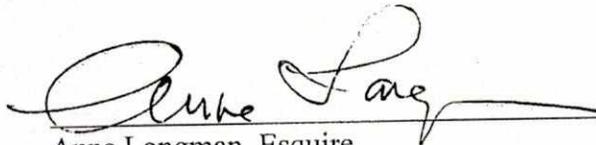
12. As the party asserting the affirmative in this proceeding, Petitioner has the burden of proof. See, e.g., Balino v. Dep't of HRS, 348 So. 2d 349(Fla. 1st DCA 1977); see also Wilson

v. Dep't of Admin., Div. of Ret., 538 So. 2d 139, 142 (Fla. 4th 6 DCA 1989)(burden is on beneficiary to establish entitlement to retirement benefits). Petitioner has not shown that he is entitled to the relief he has requested under the applicable law.

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 17th day of November, 2017.



Anne Longman, Esquire
Anne Longman
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
nell.bowers@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Issa Itani



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
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215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301
slindsey@penningtonlaw.com

Counsel for Respondent