

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

JESSE ROSS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE BOARD OF ADMINISTRATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

SBA Case No. 2017-0211

**FINAL ORDER**

On November 16, 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, Jesse Ross, and upon counsel for the Respondent. Both Petitioner and Respondent timely filed Proposed Recommended Orders. Neither party filed exceptions to the Recommended Order which were due on December 1, 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 he be permitted to transfer directly to the State University System Optional Retirement Program ("SUSORP") from the FRS Investment Plan, despite the fact that there are no statutory provisions that would allow such direct transfer, 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 17<sup>th</sup> day of January, 2018, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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

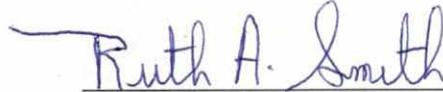
FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.



Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent to Jesse Ross, pro se Petitioner, by both email transmission to [REDACTED] and by U.S. Mail to [REDACTED]; and by email transmission to Brian Newman, Esq. ([brian@penningtonlaw.com](mailto:brian@penningtonlaw.com)) and Brandice Dickson, Esq., ([brandi@penningtonlaw.com](mailto:brandi@penningtonlaw.com)) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 17<sup>th</sup> 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

JESSE ROSS,

Petitioner,

vs.

Case No.: 2017-0211

STATE BOARD OF ADMINISTRATION,

Respondent.

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**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 August 29, 2017, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Jesse Ross, pro se  


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 should be allowed to transfer directly from the Florida Retirement System (FRS) Investment Plan to the State University System Optional Retirement Plan (SUSORP).

## **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 R-1 through R-7 were admitted into evidence without objection.

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. Both Respondent and Petitioner filed proposed recommended orders.

## **MATERIAL UNDISPUTED FACTS**

1. Petitioner was employed by the Florida State University (FSU) on August 19, 2013 and had until February 28, 2014 to make an initial election between the FRS Investment Plan and the FRS Pension Plan.

2. On January 30, 2014, Petitioner used his initial election to enroll in the Investment Plan. This election became final at 4:00 p.m. on January 30, 2014.

3. On March 10, 2017, Petitioner accepted a new position with FSU, and this position is eligible for the State University System Optional Retirement Plan (SUSORP). Generally speaking, faculty, professional and administrative positions at the university are SUSORP-eligible positions. SUSORP is a defined contribution plan, like the Investment Plan, in which participants direct their own investments.

4. On May 15, 2017, Petitioner attempted to enroll in the SUSORP. On May 24, 2017, he was notified by the Division of Retirement that there is no statutory provision allowing a direct transfer from the FRS Investment Plan to the SUSORP and that to join the SUSORP, he had to first use his second election to transfer to the Pension Plan and then elect to participate in the SUSORP.

5. Petitioner filed a request for intervention with Respondent asking that he be allowed to transfer directly from the Investment Plan to the SUSORP. That request was denied, and Petitioner then filed a petition for hearing requesting the same relief. This administrative proceeding followed.

#### CONCLUSIONS OF LAW

6. The issue raised by Petitioner has been examined and addressed exhaustively in two prior cases. See Benjamin Herman v. State Board of Administration, Case No. 2012-1951 (Recommended Order June 17, 2011; Final Order August 17, 2011); John D. Jackson v. State Board of Administration, Case No. 2014-2998 (Recommended Order July 14, 2014; Final Order October 13, 2014).

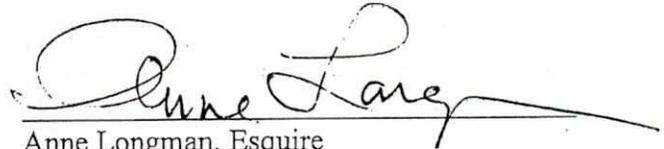
7. Under Respondent's interpretation as articulated in those cases, because there is no Florida statute which explicitly authorizes direct transfer from the Investment Plan to the SUSORP, such a transfer is not allowed. Petitioner points out, seemingly correctly and pertinently, that no Florida statute explicitly authorizes transfer from the Pension Plan to the SUSORP either, but that he is being required to first convert to the Pension Plan and then make just such a transfer. Because there has not yet been an appellate proceeding examining these issues, Respondent presumably will continue to apply the interpretations it has developed. Respondent's construction and application of Chapter 121 are entitled to great weight and will be

followed unless proven to be clearly erroneous or amounting to an abuse of discretion. See Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998). As with the Jackson case, cited above, Petitioner has made a persuasive and logical argument for the result he wishes. But he has not been able to establish that the Respondent's contrary interpretation of the relevant statutes is clearly erroneous or outside the range of interpretation permitted to it.

### 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 16<sup>th</sup> 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](mailto:Tina.joanos@sbafla.com)  
[nell.bowers@sbafla.com](mailto:nell.bowers@sbafla.com)  
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Jesse Ross



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire  
Brandice D. Dickson, Esquire  
Pennington, P.A.  
215 S. Monroe Street, Suite 200  
Tallahassee, Florida 32301  
[slindsey@penningtonlaw.com](mailto:slindsey@penningtonlaw.com)

Counsel for Respondent