

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

KARI CHIN,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2016-3788
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

**FINAL ORDER ON RESPONDENT’S MOTION FOR RECONSIDERATION
AND PETITIONER’S MOTION FOR SANCTIONS**

On November 2, 2017, the Presiding Officer submitted her Recommended Order on Respondent’s Motion for Reconsideration and Petitioner’s Motion for Sanctions (hereafter “Recommended Order on Motions”). The Recommended Order on Motions is attached hereto as Exhibit A. The Recommended Order on Motions denied both Respondent’s and Petitioner’s motions.

At the outset, it should be noted that it is unclear whether motions for reconsideration on recommended orders are authorized. Section 120.54(5)(a)1., Florida Statutes, provides that the uniform rules of procedure adopted by the Administration Commission “...shall be the rules of procedure for each agency subject to this chapter unless that Administration Commission grants and exception to the agency under this subsection.” *See, Department of Corrections v. Saulter*, 742 So.2d 368 (Fla. 1st DCA 1999). There is nothing in the Uniform Rules of Procedure that references motions for reconsideration, whether prohibiting them or authorizing them. *See*, Chapter 28-106,

Florida Administrative Code; *Crawford v. Department of Children and Families*, 785 So.2d 505, 507 (Fla. 3d DCA 2000). The omission of a reference does not create a rule authorizing such a motion. *See Saulter, supra*, at 370, citing *Systems Management Associates, Inc. v. State Department of Health and Rehabilitative Services*, 391 So.2d 688, 690 (Fla. 1st DCA 1980). The Respondent, State Board of Administration (“SBA”) has never requested an exception to the Uniform Rules of Procedure, as allowed pursuant to Chapter 28-108, Florida Administrative Code. Thus, there is authority to support a conclusion that the motion for reconsideration is unauthorized. While the Presiding Officer may have inherent and discretionary authority to entertain the motion for reconsideration, the order on an unauthorized motion for reconsideration does not serve to toll the time for filing an appeal of the Final Order in the underlying case. *See, State, Dept. of Management Services, Div. of Retirement v. Lewis*, 653 So.2d 467 (Fla. 1st DCA 1995). Further, the final order on a motion for reconsideration is not itself an appealable order. *See, Agere Sys., Inc. v. All American Crafting, Inc.*, 931 So.2d 244, 245 (Fla. 5th DCA 2006).

A Final Order was issued by the SBA in the underlying case on December 5, 2017. This Final Order rejected the Conclusions of Law in the Recommended Order, and found that Petitioner failed in her informal hearing to prove she was entitled to the relief requested. Part of the rationale for the denial was that the retroactive application of case law and IRS guidance was not appropriate and did not allow Petitioner to rescind her initial election of the Investment Plan. Thus, the Final Order implicitly found the case was not moot.

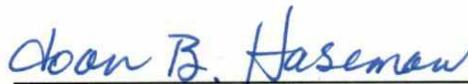
Petitioner admitted that the motion for sanctions was not noticed for hearing and that it would be premature to pursue the motion. [September 27, 2017 Hearing Transcript, pages 37, lines 20-25; page 38, lines 1-22]. Further, based on the Final Order in the underlying case, Petitioner is not the prevailing party.

ORDERED

Based on the foregoing, the SBA denies both Respondent's Motion for Reconsideration based on Undisclosed Information and Dismissal of Petition as Moot and Petitioner's Motion for Sanctions. While the denial of the two motions is consistent with the holding of the November 2, 2017 Recommended Order on Motions, the denial by the SBA is based on a completely different rationale. Therefore, the SBA rejects the rationale set forth by the Presiding Officer's Recommended Order on Motions to the extent such rationale is inconsistent with that set forth herein and with the conclusions set forth in the Final Order for the underlying case.

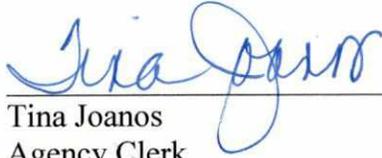
DONE AND ORDERED this 18th day of December, 2017, in Tallahassee, Florida.

**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 Melissa A. Giasi, Esq., Counsel for Petitioner, both by email transmission to: mgiasi@kasslaw.com and by U.P.S. to Kass Shuler, P.A., 1505 North Florida Avenue, Tampa, Florida 33601; 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 18th day of December, 2017.



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STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

KARI CHIN,

Petitioner,

vs.

Case No.: 2016-3788

STATE BOARD OF ADMINISTRATION,

Respondent.

**RECOMMENDED ORDER ON RESPONDENT'S MOTION FOR
RECONSIDERATION AND PETITIONER'S MOTION FOR SANCTIONS**

After the Recommend Order in this case issued on September 6, 2017, Respondent filed a motion which asserted that Petitioner had failed to disclose that she had already paid the calculated buy-in amount required for her to switch from the Florida Retirement System (FRS) Investment Plan to the FRS Pension Plan, and that her payment mooted the issue in this proceeding.

Petitioner's Petition for Hearing was filed in this case on November 3, 2016. Her payment of some \$11,000 was made on December 2, 2016, in accordance with the deadline she had been given to pay or have her second election into the Pension Plan reversed. Petitioner also on various occasions, in documents of record, characterized her request for relief as seeking a waiver/refund of the buy-in amount. It is true that there was no discussion at hearing that the payment had already been made, but I find nothing in the record to indicate any effort by Petitioner to mislead this tribunal or opposing counsel. Having made her payment well after seeking relief from Respondent, and having articulated a request for either waiver of the buy-in requirement or refund, her payment was made under timely protest.

EXHIBIT A

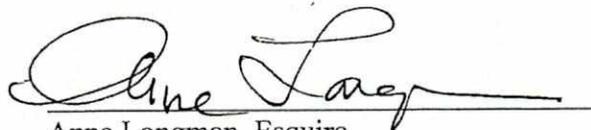
Respondent points out correctly that buy-in payments are made to the Division of Retirement (DOR), a part of the Department of Management Services, a separate agency which administers most parts of the Pension Plan, rather than to the SBA, which runs the Investment Plan, and that therefore the SBA cannot effectuate the requested relief. This may be true, so far as it goes, but only Respondent can enter an order which would call for DOR to recalculate the amount of required buy-in based on a revised date of second election.

It is routine for Respondent to coordinate with the Division of Retirement, and in fact this must occur for any FRS participant to switch from the Investment Plan to the Pension Plan, as the election is filed with the SBA's third party administrator, but any payment required is made to DOR. The legislature has declared that the Florida Retirement System is a single system consisting of two retirement plans, § 121.70(1), Fla. Stat. (2017), and it is incumbent on the Department of Management Services to adopt rules necessary to administer the Investment Plan in coordination with the Pension Plan § 121.4501(8) Fla. Stat. (2017). This is consistent with Florida's retirement system being a general retirement system including but not limited to the defined benefit Pension Plan and the defined contribution Investment Plan. § 121.021(3), Fla. Stat. (2017).

I do not understand Petitioner to be asking Respondent SBA to directly order the Division of Retirement to craft a remedy here, but for Respondent itself to correct the date of her second election to comport with the law as articulated by the United States Supreme Court; a necessary precondition to any recalculation of a required buy-in amount. It would then be up to the Department of Management Services, through the Division of Retirement, to respond appropriately to that action by the SBA.

In accordance with the foregoing, Respondent's Motion for Reconsideration Based on Undisclosed Information and Dismissal of Petition as Moot and Petitioner's Motion for Sanctions both are denied.

RESPECTFULLY SUBMITTED this 2^d day of November, 2017.



Anne Longman, Esquire
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Presiding Officer
For the State Board of Administration
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