

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

KATRINA THOMPSON,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2023-0477
)	
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On January 11, 2024, the Presiding Officer submitted her Recommended Order to the State Board of Administration (“SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Katrina Thompson, and upon counsel for the Respondent. Neither party filed exceptions to the Recommended Order which were due on January 21, 2024. 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 to rescind her initial statutorily required default into the Florida Retirement System (FRS) Pension Plan so that she could presently make a second election to the FRS Pension Plan from her FRS Investment Plan account which she had entered via a second election from her default election hereby is denied. Petitioner

claimed the default in 2003 occurred without any notice to her. However, she did receive at that time a Benefit Comparison Statement explaining her initial deadline to choose between the FRS Pension Plan or the FRS Investment Plan. When she failed to make a choice she defaulted, by law, into the FRS Pension Plan.

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 30th day of April 2024, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

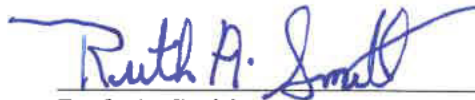
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Nell Bowers
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Katrina Thompson, *pro se*, both by email transmission to [REDACTED] and by U.P.S. to [REDACTED]; and by email transmission to Deborah Minnis, Esq., dminnis@ausley.com and Ian C. White, iwhite@ausley.com; jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 3rd day of April 2024.



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

KATRINA THOMPSON,

Petitioner,

v.

CASE NO. 2023-0477

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on November 9, 2023, at 9:00 a.m., 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: Katrina L. Thompson pro se



For Respondent: Deborah S. Minnis, Esq.
Ausley McMullen, P.A.
P.O. Box 391
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Respondent may grant Petitioner's request "for the SBA to honor my actual second election request to transfer to the FRS Pension Plan."

PRELIMINARY STATEMENT

Petitioner testified on her 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-7 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on November 20, 2023. The parties were invited to submit proposed recommended orders within 30 days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

FINDINGS OF FACT

1. The Petitioner was initially hired by Miami-Dade County in April 1994. At the time of her initial enrollment in the Florida Retirement System (FRS), the only plan available was the defined benefit Pension Plan. In 2002, the defined contribution Investment Plan was implemented and became a part of the FRS. Beginning in June of 2002, existing employees were given an initial election period during which they could choose to remain in the Pension Plan or enroll in the new Investment Plan.

2. At that time, a Benefit Comparison Statement was mailed to the Petitioner explaining her initial deadline of February 2, 2003 to choose between the Pension Plan or the Investment Plan. That period was subsequently extended to February 28, 2003. Petitioner did not submit an election by the February 28, 2003 deadline and, by default, remained in the Pension Plan effective March 1, 2003.

3. On July 23, 2007, Petitioner called the MyFRS Financial Guidance Line and spoke with an EY Financial Planner about her opening account balance should she decide to transfer from

the Pension Plan to the Investment Plan. The Financial Planner provided the Petitioner with her estimated opening account balance and talked to her about the second election process.

4. On April 5, 2011, the Petitioner again contacted the MyFRS Financial Guidance Line. She specifically asked about the meaning of “second election.” The Financial Planner explained that if she transferred from the Pension Plan to the Investment Plan, it would be considered her second election. In response to the Petitioner’s question, the Financial Planner confirmed that her first election was to the Pension Plan. Petitioner was advised that she had a one-time second election opportunity to transfer from the Pension Plan to the Investment Plan.

5. In 2015, Petitioner submitted a 2nd Election Retirement Plan Enrollment Form to change from the Pension Plan to the Investment Plan. In several areas on the form, the Petitioner was advised that she was utilizing her one-time second election and the consequences of her making that election. The form was received and processed by the Plan Choice Administrator on February 23, 2015, with an effective date in the Investment Plan of March 1, 2015.

6. A Florida Retirement System – Confirmation of 2nd Election-Investment Plan dated February 25, 2015, was sent to the Petitioner.

7. The Florida Retirement System – Confirmation of 2nd Election-Investment Plan contained the following information:

- a. This statement confirms your recent Florida Retirement System (FRS) Plan Choice utilizing your one-time second election.
- b. You have elected to change to the FRS Investment Plan and transfer the Present Value of your FRS Pension Plan benefit. The effective date of this election will be March 1, 2015.
- c. This is your final Plan Choice Election under the Florida Retirement System. You must remain in the FRS Investment Plan until your retirement from the FRS-covered employment.

8. Rule 19-11.007, Florida Administrative Code, provides a grace period during which Petitioner could have rescinded her second election. Pursuant to this provision, Petitioner could have requested cancellation of her request to transfer from the Pension Plan to the Investment Plan by notifying the Plan Choice Administrator of this decision no later than 4:00 p.m. (Eastern Time) on the last business day of the election effective month. Therefore, Petitioner had until 4:00 p.m. March 31, 2015 to cancel her transfer request.

9. Petitioner did not submit a request for cancellation within the required time period and the present value of the Petitioner's Pension Plan benefit was transferred to her Investment Plan account on March 31, 2015.

CONCLUSIONS OF LAW

10. Pursuant to section 121.4501(4)(a)1, Florida Statutes, Petitioner made her initial election to remain in the Pension Plan in February 2003 when she did not submit an election to the new FRS Investment Plan. She later utilized her second election and transferred into the Investment Plan in February 2015.

11. The Plan Choice Administrator sent notice to the Petitioner that she had utilized her Second Election on February 23, 2015. The notice was mailed to the address on record and is presumed to have been received. *Brake v. State of Florida*, 473 So.2d 774 (Fla. 3rd DCA 1985).

12. Movement between the two FRS plans is governed by Section 121.4501(4)(f), Florida Statutes. This section states, in pertinent part:

(f) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.

Section 121.4501(4)(f), Fla. Stat. (emphasis added).

13. Rule 19-11.007, Florida Administrative Code, provides a grace period during which the Petitioner could have rescinded her election. This section states, in pertinent part:

(4) Grace Period

(a) If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, or if the member has reconsidered his or her plan choice, the State Board of Administration (SBA) will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by calling, to the Plan Choice Administrator, to the MyFRS Financial Guidance Line, or to the Division, no later than 4:00 p.m. (Eastern Time), on the last business day of the election effective month.

14. The Plan Choice Administrator did not receive a request from the Petitioner to cancel her election prior to the expiration of the grace period.

15. Petitioner demanded documentary proof that she made an initial election in February 2003. But pursuant to §121.4501(4)(a)1, Florida Statutes, Petitioner made this initial election to remain in the Pension Plan by operation of law. This was explained to Petitioner during her calls to the MyFRS Financial Guidance line.

16. Pursuant to §121.4501(8)(g), Florida Statutes, SBA actions taken five or more years before a complaint is submitted are presumed to have been taken at the request of the member and with the member's full knowledge and consent. This time period is long elapsed.

17. Respondent is not authorized to depart from the requirements of these statutes when exercising its jurisdiction and has no power to enlarge, modify, or contravene the authority granted to it by the legislature. *State, Dept. of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco v. Salvation Ltd., Inc.*, 452 So. 2d 65, 66 (Fla. 1st DCA 1984); *Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement*, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

18. Accordingly, Respondent does not have the authority to allow Petitioner to switch from the Investment Plan back to the Pension Plan, and therefore cannot grant the relief requested.

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 11th day of January 2024.



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
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
Nell.Bowers@sbafla.com
mini.watson@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
Ruth.smith@sbafla.com
(850) 488-4406

COPIES FURNISHED via email and U.S. mail to:

Katrina L. Thompson



Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire
Ian C. White, Esquire
123 South Calhoun Street
P.O. Box 391
Tallahassee, Florida 32301
dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com