

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

BREND A TIPPENS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2008-1358
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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**FINAL ORDER**

On March 30, 2009, the presiding officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Brenda Tippens, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on April 14, 2009. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

**ORDERED**

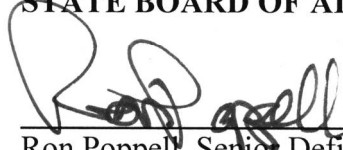
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request that the State Board of Administration reimburse Petitioner for losses suffered in her Investment Plan account is denied.

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 200, 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 16<sup>th</sup> day of April, 2009, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



\_\_\_\_\_  
Ron Poppell, Senior Defined Contribution  
Programs Officer  
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.

  
\_\_\_\_\_  
Clerk TINA JOANOS

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Brenda Tippens, pro se, [REDACTED], and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 16<sup>th</sup> day of April, 2009.

*Ruth L. Gokel*

\_\_\_\_\_  
Ruth L. Gokel  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

BRENDA TIPPENS,

CASE NO. 2008-1358

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding before the undersigned Presiding Officer on December 15, 2008, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner:

Brenda Tippens, pro se


  
Petitioner

Exhibit A

RECEIVED  
STATE BOARD OF ADMIN  
09 MAR 31 PM 1:24  
GENERAL COUNSEL'S OFFICE

For Respondent: Brian A. Newman, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

### **STATEMENT OF THE ISSUE**

The issue is whether the State Board of Administration (SBA) should refund losses in the amount of \$ [REDACTED] that Petitioner incurred while invested in the FRS Select Moderate Balanced Fund of the Investment Plan.

### **PRELIMINARY STATEMENT**

Petitioner filed a Petition for Hearing on November 3, 2008 requesting an administrative hearing on the denial of her request to reimburse her \$ [REDACTED] representing the losses she suffered while a member of the FRS Investment Plan.

Petitioner attended the informal hearing by telephone and testified on her behalf. Respondent's exhibits 1 – 9 were admitted without objection. Respondent also presented the testimony of Daniel Beard, Director of Policy, Risk Management and Compliance for the State Board of Administration.

A transcript of the informal hearing was filed with the agency and made available to the parties, who were invited to file post-hearing hearing submissions. Respondent submitted a proposed recommended order; Petitioner submitted a post-hearing letter questioning whether there were recordings of telephone conversations other than the ones made available at hearing.

## MATERIAL UNDISPUTED FACTS

1. Petitioner defaulted into membership in the FRS Pension Plan on December 1, 2002.
2. Petitioner executed and filed a 2nd Election EZ Retirement Plan Enrollment Form on May 8, 2008 requesting a transfer from the FRS Pension Plan to the FRS Investment Plan. Petitioner checked box number "2" on the form, which states in pertinent part that "I understand... that my assets will be deposited in the FRS Select Moderate Balanced Fund." Section 3 of the form states in pertinent part that the FRS Select Moderate Balanced Fund ("Moderate Balanced Fund") "is a low cost, moderate risk investment option that invests in a balanced mix of stock, bond, TIPS, and money market funds. The fund's mix of investments will change over time." The EZ form also advised Petitioner that she should "review the Fund Profiles and the Investment Fund Summary at MyFRS.com before selecting any investment funds or submitting this form."
3. The Fund Profile on the MyFRS.com website states that the "Moderate Balanced Fund is designed to have approximately as much risk as the average U.S. investor." The website and FRS Summary Plan Description provide estimates of returns in the Moderate Balanced Fund and other investments available to FRS Investment Plan Members. For the Moderate Balanced Fund, the downside result in 10 years for a \$10,000 investment was estimated to be \$9,100. The website and FRS Summary Plan Description state that there is a 5% chance that a \$10,000 investment would decline to this amount or less in 10 years.
4. When Petitioner transferred from the FRS Pension Plan to the FRS Investment Plan, assets totaling \$ [REDACTED] were deposited to the Investment Plan and invested in the

Moderate Balanced Fund. While invested in the Moderate Balanced Fund, the Petitioner suffered losses totaling \$ [REDACTED]. Petitioner withdrew all funds from the Investment Plan on October 1, 2008.

5. There is no risk-free investment option available to Investment Plan members. The lowest risk investment option is the FRS Select Yield Plus Money Market Active Fund (“Money Market Fund”). The FRS Summary Plan Description describes the Money Market Fund as follows:

[t]hese funds invest in short-term securities (financial instruments or obligations) that are high quality and can be sold quickly with little loss of value. Because of these investments, the funds have limited risk of declining value. However, over the long term, money market investment returns have been modest, basically keeping pace with inflation. Money market funds are not FDIC insured or guaranteed.

6. Petitioner could have requested that her Investment Plan assets be invested in the Money Market Fund by filing the 2nd Election Retirement Plan Enrollment Form ELE-2. The EZ form Petitioner filed advises her of this option and also states that “[y]ou can review all the funds and their fees by reading the Investment Plan Summary and Fund Profiles. These documents are available on MyFRS.com or by calling the MyFRS Financial Guidance Line.”

7. Petitioner testified that she called the My FRS Financial Guidance Line before she filed her 2nd election form and was told by a representative named “Dave” that she was guaranteed to lose no money in the Investment Plan. Respondent made a thorough search of its records and could not locate any recording of such a call. Calls which were located between Petitioner and the My FRS Financial Guidance Line, and the transcripts of those calls, do not reveal any representations of this sort having been made to Petitioner.

## CONCLUSIONS OF LAW

The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System and Petitioner's rights and responsibilities under them. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.) Further, the SBA's construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. 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).

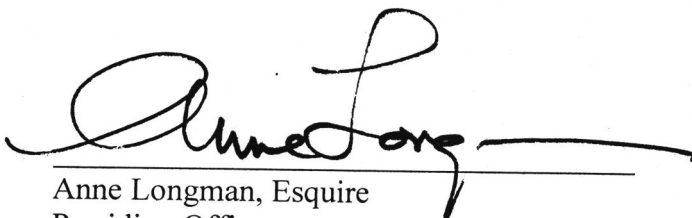
The EZ form Petitioner filed clearly directs that her Investment Plan assets be invested in the Moderate Balanced Fund and advises her to review information that makes clear that the Moderate Balanced Fund is not a risk-free investment. Respondent SBA was required to follow Petitioner's instructions about her retirement account, which were given by Petitioner through filing of this form.

## RECOMMENDATION

While it is clear that Petitioner is sincere in her belief that she had an informed understanding that she would lose no value in her Investment Plan moneys from the time she moved to that plan until the time she withdrew her money, based on the foregoing material undisputed facts and conclusions of law, I must recommend that the State Board of Administration issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 30th day of March, 2009.





Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
P.O. Box 16098  
Tallahassee, FL 32317

NOTICE: 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, which 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 with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
(850) 488-4406

This 30th day of March, 2009.

Copies furnished to:

Brenda Tippens

  
Petitioner

Brian A. Newman, Esquire  
Pennington, Moore, Wilkinson Bell & Dunbar  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
Attorneys for Respondent