

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

BERNARD BELIARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2013-2703
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On April 8, 2014, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. This matter was decided on the written record, after both parties were given the opportunity to present written statements and any documentary evidence they wished to produce. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Bernard Beliard, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due April 23, 2014, were filed by either party. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending, for final agency action, before the appropriate designee who has been appointed to carry out the duties and responsibilities delegated to the Senior Defined Contribution Programs Officer.

**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner has forfeited his right to a retirement benefit under the Florida Retirement System (FRS) pursuant to Section 112.3173, Florida Statutes.

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.

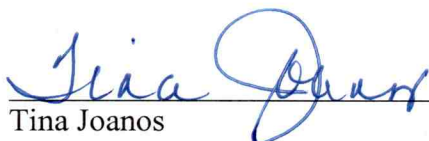
DONE AND ORDERED this 17<sup>th</sup> day of June, 2014, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



**Walter Kelleher**  
Director of Educational Services  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

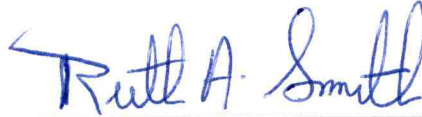
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos  
Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by U.S. mail to Bernard Beliard, 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 17<sup>th</sup> day of June, 2014.



---

Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

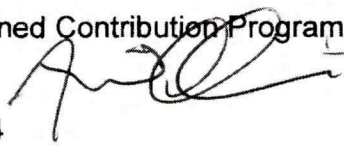


STATE BOARD OF ADMINISTRATION  
OF FLORIDA

Post Office Box 13300  
32317-3300  
1801 Hermitage Boulevard-Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

RICK SCOTT  
GOVERNOR  
AS CHAIRMAN  
JEFF ATWATER  
CHIEF FINANCIAL OFFICER  
AS TREASURER  
PAM BONDI  
ATTORNEY GENERAL  
AS SECRETARY  
ASH WILLIAMS  
EXECUTIVE DIRECTOR & CIO

**MEMORANDUM**

To: Office of Defined Contribution Programs  
From: Ash Williams   
Date: May 29, 2014  
Re: Delegation of Responsibility

---

Daniel Beard is hereby appointed as the designee to carry out the duties and responsibilities delegated to the Senior Defined Contribution Programs Officer for the week of **June 2, 2014 through June 6, 2014.**

Stephen Tabb is hereby appointed as the designee to carry out the duties and responsibilities delegated to the Senior Defined Contribution Programs Officer for the week of **June 9, 2014 through June 13, 2014.**

Walter Kelleher is hereby appointed as the designee to carry out the duties and responsibilities delegated to the Senior Defined Contribution Programs Officer for the week of **June 16, 2014 through June 20, 2014.**

Joan Haseman is hereby appointed as the designee to carry out the duties and responsibilities delegated to the Senior Defined Contribution Programs Officer for the week of **June 23, 2014 through June 27, 2014.**

Appropriate consultation and coordination with the Executive Director, Deputy Executive Director, Chief Operating Officer, Senior Investment Officers, Senior Operating Officers, and any other appropriate employees of the State Board of Administration will be achieved as directed prior to carrying out these duties and responsibilities.

/cm

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

BERNARD BELIARD,

Petitioner,

vs.

Case No. 2013-2703

STATE BOARD OF ADMINISTRATION,

Respondent.

---

**RECOMMENDED ORDER**

Pursuant to my Order of March 13, 2014, the instant cause is before me as the presiding officer for the State of Florida, State Board of Administration (SBA) for consideration on the written record. The appearances in the record are as follows:

For Petitioner: Bernard Beliard [REDACTED]  
[REDACTED]  
Petitioner

For Respondent: Brandice D. Dickson, Esquire  
Pennington, P.A.  
215 S. Monroe Street, Suite 200  
Tallahassee, Florida 32301

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner's rights and benefits under the Florida Retirement System (FRS), his Investment Plan account, were rightly forfeited by Respondent SBA.

### **PRELIMINARY STATEMENT**

On July 12, 2013, Petitioner filed a Request for Intervention after having received notice from the SBA that his retirement account would be forfeited. Counsel for the SBA made several attempts to contact Petitioner for the purpose of scheduling a mutually-convenient date for a hearing to be held in this case. Petitioner failed to respond to those attempts, prompting Respondent to file and serve a Motion to Have Case Heard on Written Record. By Order of March 13, 2014, I directed submission of proposed recommended orders on or before March 28, 2014. Respondent timely filed a proposed recommended order; Petitioner made no further filing.

### **MATERIAL UNDISPUTED FACTS**

1. On March 6, 2013, the Federal Bureau of Investigation (FBI) executed a criminal complaint with an affidavit that averred Petitioner used his position as a State of Florida Department of Corrections correctional officer to fraudulently secure others' Social Security numbers and transfer them for pecuniary gain, in order that they could be used to file fraudulent tax returns.

2. On May 7, 2013, in the U.S. District Court, Southern District of Florida, Case Number 13-20206, Petitioner pleaded guilty to a felony violation of 18 USC 1029(a)(3) and 18 USC 1028A(a)(1) stemming from the conduct identified in the criminal complaint and FBI affidavit. Petitioner used his position as a correctional officer to enable him to commit the felonies enumerated. Specifically, he stole the names, dates of birth and Social Security numbers of inmates at the facility where he worked. In his plea agreement, Petitioner accepted that the federal government was entitled to an enhancement, for sentencing purposes, because the offenses were an "abuse of a position of trust..."

3. On July 16, 2013, a Judgment of the United States District Court for the Southern District of Florida adjudicated Petitioner guilty of the two felonies identified in the complaint and plea agreement.

4. Because Petitioner committed these crimes while he was employed as a correctional officer in the Florida Department of Corrections, his FRS account was placed on hold and subsequently deemed forfeited.

### CONCLUSIONS OF LAW

5. The Florida Constitution makes plain that "[a]ny public officer or employee who is convicted of a felony involving a breach of the public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law." ART. II, § 8(d), FLA. CONST.

6. Section 112.3173, Florida Statutes, implements that part of the Florida Constitution and states, in pertinent part:

**112.3173. Felonies involving breach of public trust and other specified offenses by public officers and employees; forfeiture of retirement benefits**

(1) Intent. – It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.

(2) Definitions. – As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilty by a court of competent jurisdiction; a plea of guilty or of nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

...

(e) "Specified offense" means:

1. The committing, aiding, or abetting of an embezzlement of public funds;

2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;

...

4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;

...

6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.

(3) Forfeiture.--Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

...

(5) Forfeiture determination.—

(a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to subsection (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board shall give notice and hold a hearing in accordance with chapter 120 for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board shall order such rights and privileges forfeited.

(b) Any order of forfeiture of retirement system rights and privileges is appealable to the district court of appeal.

...

§ 112.3173, Fla.Stat. (2010)(emphasis added).



7. An employee who is convicted of a “specified offense” committed prior to retirement from the FRS must forfeit all rights and benefits. *Childers v. Department of Management Services*, 989 So.2d 716 (Fla. 4th DCA 2008). If this standard is met, Respondent has no discretion as to whether to proceed with forfeiture of a participant’s Investment Plan account; under the Constitution and statute, forfeiture is mandatory. As stated in *Childers*,

Here, the State entered into a contract with the employee, promising to pay him benefits upon his retirement. That contract included a condition precedent: the employee must refrain from committing specified offenses prior to retirement. The non-occurrence of that condition foreclosed the employee’s right to performance. It is as direct and to the point as that.

...  
While forfeiture, in general, has historically been understood as punishment, courts of this state have recognized that statutes providing for forfeiture of government benefits merely enforce the terms of a contract rather than impose punishment. This statute does not require a finding of scienter.

989 So.2d 716 (internal citations omitted)(emphasis added).

8. Section 112.3173(2)(e)6., Florida Statutes, has been referred to as the “catch-all” provision in the forfeiture statute. *Holsberry v. Department of Management Services*, 2009 WL 2237798 (Fla. Div. Admin. Hrgs. July 24, 2009). That “catch-all” section of the statute has been construed to require forfeiture for acts that were otherwise not included in the list of “specified offenses” in Section 112.3173(2)(e) 1. – 5. and 7. when a sufficient nexus is shown between the position held by the public employee and the commission of the crime such that a breach of the public trust is proven without more. *Jenne v. Dep’t of Management Services, Div. of Retirement*, 36 So.3d 738 (Fla. 1st DCA 2010)(catch-all provision required forfeiture for conviction of felony for conspiracy to commit mail fraud where sheriff used his position and ability to award contracts to gain benefit for himself where illegal payments to him were made via the mail); *Holsberry*, 2009 WL 2237798 at \*3 (catch-all provision required forfeiture for conviction of

felony child abuse by a teacher where teacher testified he would not have met the child but for his position as a teacher at her school); *Marsland v. Department of Management Services*, 2008 WL 5451423 (Fla. Div.Admin.Hrgs. December 15, 2008)(catch-all provision required forfeiture for conviction of felony involving sexual battery by teacher on a student where sex occurred at the school and teacher testified but for his position he would not have had an opportunity to have had sex with the student); *Jacobo v. Board of Trustees of the Miami Police*, 788 So.2d 362 (Fla. 3d DCA 2001)(catch-all provision required forfeiture for conviction of "Official Misconduct" where officer falsified an arrest affidavit); *DeSoto v. Hialeah Police Pension Fund Bd. of Trustees*, 870 So.2d 844 (Fla. 3d DCA 2003)(catch-all provision required forfeiture for conviction of felonies including conspiracy to possess and distribute cocaine, commit robbery, and carry a firearm during robbery by a police officer while on suspension.)

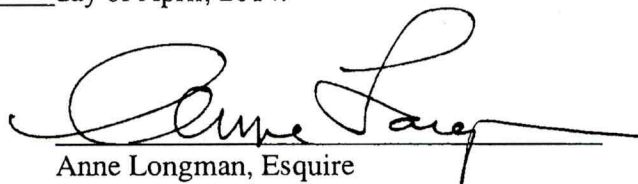
9. Here, Petitioner has been convicted of multiple felony charges where he sought a personal monetary gain through the use of his position as a corrections officer to steal Social Security numbers, which resulted in a manifest breach of the public trust. The Judgment entered against him requires forfeiture of his retirement benefits under section 112.3173(2)(e)6., Florida Statutes.

10. The Florida Statutes creating and governing the Florida Retirement System and Petitioner's rights and responsibilities under them are clear, and the SBA cannot deviate from them. *Balezentis v. Department of Management Services, Division of Retirement*, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Forfeiture in this case is appropriate, and is mandated by the Florida Constitution and applicable statutes.

**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 8<sup>th</sup> day of April, 2014.



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  
[Tina.joanos@sbafla.com](mailto:Tina.joanos@sbafla.com)  
[Daniel.beard@sbalfa.com](mailto:Daniel.beard@sbalfa.com)  
(850) 488-4406

This 8<sup>th</sup> day of April, 2014.

Copies furnished to:

Via U.S. Mail

Bernard Beliard [REDACTED]

[REDACTED]

And

Bernard Beliard

[REDACTED]

Via electronic delivery:

Brian A. Newman, Esquire

Brandice D. Dickson

Pennington, P.A.

Post Office Box 10095

Tallahassee, FL 32302-2095

[slindsey@penningtonlaw.com](mailto:slindsey@penningtonlaw.com)

Attorneys for Respondent

  
Attorney