

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ELTON J. MATHIS,)	
)	
Petitioner,)	
)	
vs.)	
)	SBA Case No. 2017-0172
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On September 27, 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, Elton J. Mathis, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due October 12, 2017. 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

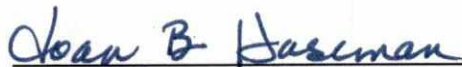
The Recommended Order (Exhibit A) hereby is adopted in its entirety. Petitioner's request to rescind his second election that he had made on March 14, 2017 to switch from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan, effective April 1, 2017, hereby is denied. While Petitioner claimed he was told he had until thirty days from the end of April 2017 to cancel his second election, there was nothing in the

record to show that he was led to that belief by anything the SBA did or provided to him. All information Petitioner received from the SBA regarding second elections was accurate and complete.

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.

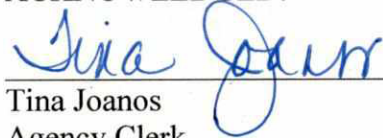
DONE AND ORDERED this 7th day of November, 2017, in Tallahassee, Florida.

**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 Elton J. Mathis, pro se, both by email transmission, [REDACTED] and by [REDACTED]; 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 7th day of November, 2017.



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

ELTON J. MATHIS

Petitioner,

vs.

CASE NO. 2017-0172

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding in Tallahassee, Florida on July 13, 2017 pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

APPEARANCES

For Petitioner: Elton J. Mathis, pro se



For Respondent: Brandice D. Dickson
Pennington, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether Petitioner's second election transfer to the Florida Retirement System (FRS) Investment Plan can be rescinded so that he may return to the FRS Pension Plan.

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 1 through 12 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. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner became a member of the FRS in April 2000 when he began work with Miami-Dade County, an FRS-participating employer.

2. Petitioner had until February 28, 2003 to make an initial election between the defined benefit Pension Plan and defined contribution Investment Plan. Petitioner defaulted into the FRS Pension Plan.

3. On March 7, 2017, Petitioner called the MyFRS Financial Guidance Line. He was given general information about both plans, about the website, and about the irrevocable second election process, because he was considering changing from the Pension Plan to the Investment Plan. He also was told that he had to be actively working when he changed plans, and that he would not be allowed to move back to the Pension Plan if he exercised his second election to move to the Investment Plan.

4. On March 14, 2017, Petitioner called the MyFRS Financial Guidance Line and was again given information about the different features of the two plans; he also was given an

estimated opening balance if he moved to the Investment Plan. He was given instructions on how to make a second election, and the 2nd Election Retirement Plan Enrollment form was emailed to him.

5. Petitioner spoke with the Guidance Line a second time on March 14, 2017 and was provided information on how to complete the allocation portion of the second election form.

6. Petitioner completed, signed, and submitted his second election form on March 14, 2017 indicating his desire to change to the Investment Plan. That form states in pertinent part:

- **One-Time Opportunity** – You have only one opportunity during your FRS career to switch from the FRS plan you initially chose to the other plan.
- **Irrevocable** – A 2nd Election is irrevocable. You must remain in the plan you choose until your FRS-covered employment ends and you retire.
- **Effective Date** – Your 2nd Election will become final at 4:00 p.m. ET on the day it is received by the FRS Plan Choice Administrator.
- **Reversing an Election Made in Error** – If you make your choice in error or change your mind, you have until 4:00 p.m. ET on the last business day of the month following your election month to cancel your election. To do so, call the MyFRS Financial Guidance Line and select Option 2.

7. On March 16, 2017, an FRS Confirmation of 2nd Election – Investment Plan notice was sent to Petitioner. This notice advised Petitioner:

If you feel this retirement plan election was made in error, you may be able to cancel it. Please call the MyFRS Financial Guidance Line at 1-866-446-9377, Option 2. **Failure to notify us no later than 4:00 PM EST on the last business day of the month following your election month will void your right to cancel this election.**

(emphasis added). Petitioner did not call or otherwise attempt to rescind his second election before this deadline expired.

8. On March 21, 2017, Petitioner called the Guidance Line to confirm his second election had been received and to ask about participation in the Deferred Retirement Option Program (DROP) program. The planner explained the DROP requirements and informed Petitioner that Investment Plan members were not eligible to participate in DROP. He was transferred to the Plan Choice Administrator to confirm receipt of his second election form. Once connected to the Investment Plan Administrator, Petitioner was informed that his Investment Plan effective month was April of 2017, and that his Pension Plan balance would be transferred to his new Investment Plan account on April 28, 2017.

9. On April 12, 2017, Petitioner called the MyFRS Financial Guidance Line to inquire if he could take a distribution from his Investment Plan account. He was informed that because he was actively employed he was not eligible to receive a distribution at that time.

10. On May 10, 2017, Petitioner called to request that his Investment Plan election be cancelled. He was advised by the EY Financial Planner that the deadline to make that request had expired. This was Petitioner's first inquiry about rescinding his second election.

11. Petitioner submitted a Request for Intervention on May 11, 2017 requesting to transfer back to the Pension Plan because "... I was told that I had thirty (30) days from the end of April 2017 to change my position if I wanted to." This request was denied by the SBA. Petitioner filed a Petition for Hearing requesting the same relief and this administrative proceeding followed.

12. Petitioner stated during hearing that he was “under the impression” that he “would have until the last day of May to... cancel the switch” to the Investment Plan. Petitioner never asked, however, what the second election cancellation procedure was and was never told that he had until May to cancel his second election.

CONCLUSIONS OF LAW

13. Movement between the Pension Plan and Investment Plan is governed by Section 121.4501(4)(g), Florida Statutes, which 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. ...

§ 121.4501(4)(f), Fla. Stat. (2017)(emphasis added).

14. As provided in the above statute, members of the FRS are allowed only one opportunity to switch plans after their initial election period expires. Because Petitioner has used his one-time second election, he has exhausted his only opportunity to move between plans. Nor can Petitioner rescind his second election, because he failed to do so before the deadline established by the applicable rule. The grace period provided under Rule 19-11.007, Florida Administrative Code, is as follows:

(4) Grace Period.⁵

(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 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 a telephone call to the toll free MyFRS Financial Guidance Line at: 1(866) 446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, to the 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.

(b) If the request to reverse the election is made timely and the SBA finds the election was made in error, the member will be required to sign a release and return it to the SBA no later than 4:00 p.m., Eastern Time, on the last business day of the election effective month prior to the election's being officially reversed. Upon receipt of the release, the Division and the Plan Choice Administrator will be directed to take the necessary steps to reverse the election and to correct the member's records to reflect the election reversal.

(c) A confirmation that the election was reversed will be sent to the member by the FRS Plan Choice Administrator.

(d) The member retains the right to file a subsequent second election consistent with subsections (2) and (3), above.

(e) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(8)(g), F.S. and discussed in Rule 19-11.005, F.A.C.

Rule 19-11.007(4), Fla. Admin. Code

15. Under the rule, Petitioner had until the last business day of his effective month (April 28, 2017) to rescind his second election, and his request to rescind his second election on May 10, 2017 was therefor untimely.

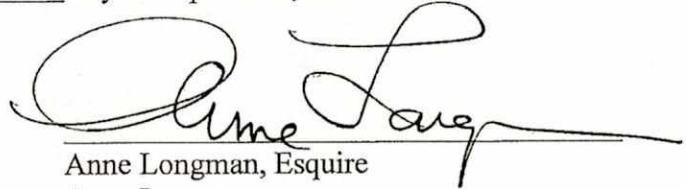
16. Petitioner states that he believed he had until the last day of May 2017 to cancel his second election, but nothing in the record before me shows that he was led to that belief by any action or materials of Respondent. The information he received was accurate and fully adequate.

17. Petitioner has the burden to demonstrate entitlement to the relief he has requested. See Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139, 141-42 (Fla. 4th DCA 1989). It is unfortunate that Petitioner cannot switch back to the plan he would now prefer, but the applicable statutes and rules do not allow this.

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 27th day of September, 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
nell.bowers@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Elton J. Mathis



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
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Counsel for Respondent