

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

OLGA AVILA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2008-1301
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On February 9, 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, Olga Avila, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on February 24, 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**

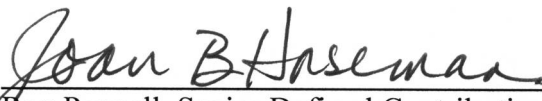
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request that no forfeiture action be taken by the FRS Investment Plan because of economic hardship, is denied.

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

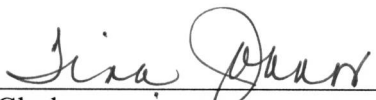
pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 200, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied 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 26<sup>th</sup> day of February, 2009, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

  
for Joan B. Huseman  
Ron Poppell, Senior Defined Contribution  
Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

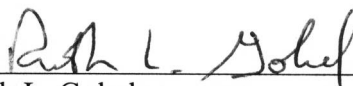
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

  
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 Olga Avila, 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 26th day of February, 2009.

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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

OLGA AVILA,

Petitioner,

v.

CASE NO.: 2008-1301

STATE BOARD OF ADMINISTRATION,

Respondent.

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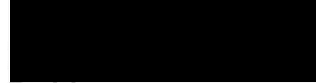
**RECOMMENDED ORDER**

This case was heard in an informal proceeding before the undersigned Presiding Officer on October 6, 2008, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner:

Olga Avila, pro se



Petitioner

For Respondent:

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

Exh. A

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GENERAL COUNSEL'S OFFICE

## **STATEMENT OF THE ISSUE**

The issue to be resolved is whether the State Board of Administration should grant Petitioner's request to not seek forfeiture of funds withdrawn from her Florida Retirement System (FRS) Investment Plan account.

## **PRELIMINARY STATEMENT**

On or about August 4, 2008, Petitioner was notified of the SBA's intent to seek forfeiture of funds Petitioner withdrew from her Investment Plan account. The SBA sought forfeiture of these funds due to Petitioner's July 28, 2008 plea of guilty to certain crimes related to her employment with Miami-Dade County, an FRS-covered agency. Petitioner filed a Petition for Hearing on August 25, 2008, requesting that no forfeiture action be taken due to economic hardship.

At the informal hearing held at the offices of the State Board of Administration, Petitioner appeared by telephone and testified on her own behalf. Petitioner offered one exhibit, a letter dated October 2, 2008, itemizing her monthly expenses and the basis for her claim of economic hardship. This exhibit was admitted without objection. Respondent presented the testimony of Dan Beard, SBA Director of Policy, Risk Management & Compliance and introduced exhibits 1-4 which were received into evidence without objection.

A transcript of the hearing was made, filed with the agency and made available to the parties, who were invited to submit proposed recommended orders. Respondent filed a Motion for Leave to File its Proposed Recommended Order Outside of Scheduled Time, along with with its proposed recommended order. That motion is granted.

## **UNDISPUTED MATERIAL FACTS**

1. Petitioner was employed by Miami-Dade County, an FRS-covered agency, as a court clerk from 1991 until July 30, 2007. Petitioner was a member of the FRS Investment Plan.

2. On July 28, 2008, Petitioner entered a plea agreement in the Eleventh Judicial Circuit due to crimes she was charged with committing in connection with her employment with Miami-Dade County. Specifically, Petitioner accepted money for assisting the public with the preparation of uncontested divorce filings.

3. As a result of this plea agreement, Petitioner was found guilty of Unlawful Compensation/Reward for Official Behavior and Official Misconduct/Public Servant and the other crimes identified in the Judgment filed in Case Number F08-1640 in the Eleventh Judicial Circuit for Miami-Dade County, Florida. Specifically, Petitioner pled guilty to unlawful compensation in violation of Section 838.016(1), Florida Statutes, and official misconduct in violation of Section 838.022, Florida Statutes.

4. On November 1, 2007, Petitioner received a distribution from her FRS Investment Plan account in the amount of \$ [REDACTED]. These funds were paid to Petitioner before it was discovered that she had been adjudicated guilty of violations of Chapter 838, Florida Statutes.

## **CONCLUSIONS OF LAW**

5. Section 112.3173, Florida Statutes provides for the forfeiture of the right to retirement benefits under the Florida Retirement System upon a plea of guilty to certain crimes committed in connection with public employment. Specifically, Section 112.3173(2)(e) provides for forfeiture of retirement benefits for:

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 employer;

3. Bribery in connection with the employment of a public officer or employee;

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

5. The committing of an impeachable offense; or

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.

6. Further, Article II, Section 8(d) of the Florida Constitution provides:

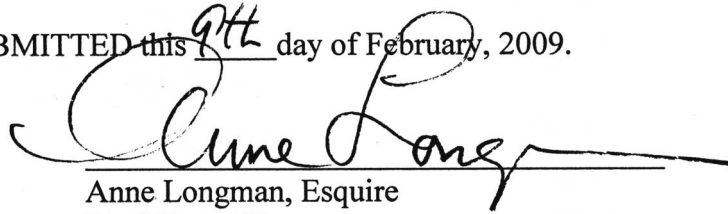
Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

7. The funds withdrawn by Petitioner are subject to forfeiture under the foregoing provisions of law due to her plea of guilty to Sections 838.016(1) and Section 838.022, Florida Statutes. I accept as a fact that Petitioner will experience economic hardship, but there is no statutory provision which would allow Respondent to avoid this result.

### **RECOMMENDATION**

Having considered the law and the undisputed facts of record in this matter, I recommend that a final order be entered by Respondent, State Board of Administration, denying the relief requested.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of February, 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 should be filed with the Agency Clerk of the State Board of Administration. 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

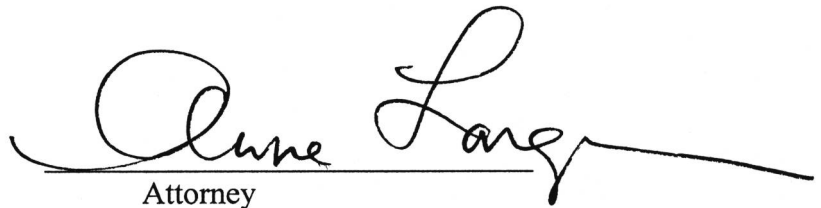
This 9<sup>th</sup> day of February, 2009.

Copies furnished to:  
Olga Avila



Petitioner

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



Attorney