

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

MEERA KHAN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2012-2458
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
_____	)	

**FINAL ORDER**

On March 14, 2013, 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, Meera Khan, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions, which were due on March 29, 2013. 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 guilty plea to, and adjudication of guilt of, a felony specified in Chapter 838, Florida Statutes and several other felonies that all were committed while she was employed by an Florida

Retirement System (“FRS”) participating employer subjects the Petitioner’s FRS Investment Plan benefits to forfeiture under 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 2nd day of April, 2013, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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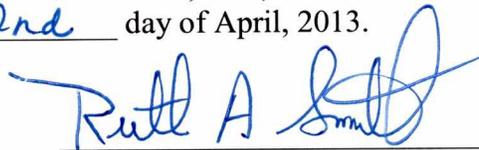
Ron Poppell, Senior Defined Contribution  
Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

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.

  
\_\_\_\_\_  
Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Meera Khan, 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 2nd day of April, 2013.



\_\_\_\_\_  
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

MEERA KHAN,

Petitioner,

vs.

Case No. 2012-2458

STATE BOARD OF ADMINISTRATION,

Respondent.

---

**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on January 16, 2013, at the SBA offices, 1801 Hermitage Blvd. Suite 100, Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner:

Meera Khan  


For Respondent:

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

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner's guilty plea and adjudication of guilt as to certain crimes subjects her Florida Retirement System (FRS) benefits to forfeiture.

**EXHIBIT A**

### **PRELIMINARY STATEMENT**

Petitioner attended the hearing by telephone and testified on her own behalf. Respondent presented the testimony of Daniel Beard, Director of Policy, Risk Management, and Compliance, State Board of Administration. Respondent's Exhibits R-1 through R-6 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties, who were invited to submit proposed recommended orders within 30 days. Respondent filed a proposed recommended order; Petitioner has made no further filings.

### **MATERIAL UNDISPUTED FACTS**

1. Petitioner was an Economic Self-Sufficiency Specialist with the State of Florida, Department of Children and Families (DCF), an FRS-participating employer, from October 13, 2000 through June 4, 2009, when she was forced to resign.
2. Through her employment with DCF, Petitioner was a member of the FRS Investment Plan, a defined contribution plan.
3. On October 1, 2009, Petitioner took a total distribution from her Investment Plan account in the amount of [REDACTED].
4. On April 5, 2012, in Case Number F11-022260, Petitioner pled guilty to, and was adjudicated guilty of, the crimes identified in a judgment entered in the Eleventh Judicial Circuit, in and for Miami-Dade, Florida.
5. The judgment adjudicated Petitioner guilty of ten (10) felonies including Official Misconduct by a Public Servant in violation of Section 838.022, Florida Statutes.
6. Petitioner committed these crimes while she was employed as a case worker with the DCF and before she retired.

7. Petitioner used her position as a case worker to enable her to commit the felonies enumerated by creating fraudulent food stamp accounts and converting them for her own use.

8. On May 11, 2012, Petitioner was notified by Respondent that her Investment Plan account was deemed forfeited because she pled guilty to these crimes on April 5, 2012.

9. Petitioner was given until June 29, 2012 to repay the total distribution from her Investment Plan account. To date, no repayment has been received.

10. Petitioner is currently incarcerated for a term of five (5) years based on having been adjudicated guilty of the ten felonies enumerated in the judgment.

11. Petitioner specifically questioned at hearing whether funds she had contributed to her Investment Plan account could be forfeited, but no such contributions were ever made by Petitioner during the entire course of her DCF, FRS-covered employment.

### CONCLUSIONS OF LAW

12. The Florida Constitution requires 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.

13. 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).

14. Petitioner asserts that she is not subject to the forfeiture statute because she resigned and took a total distribution prior to being convicted of the crimes at issue here. This is irrelevant; her crimes took place prior to her resignation, and so forfeiture is required.

15. Petitioner is subject to forfeiture if she committed one or more “specified offenses” that led to the conviction below. *Childers v. Department of Management Services*, 989 So.2d 716 (Fla. 4th DCA 2008). If the necessary showing is met, Respondent has no discretion as to whether to proceed with forfeiture of a participant’s Investment Plan account; the Constitution and statute compel forfeiture because forfeiture simply enforces the terms of the retirement “contract” entered into between the State and the employee. 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).

16. Because Petitioner was convicted of a violation of Section 838.022, Florida Statutes, an expressly specified offense, forfeiture here is mandatory. See Section 112.3173(2)(e)4., Florida Statutes.

17. She would also be subject to forfeiture under the “catch all” provision. 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. *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).

18. Here, Petitioner has been convicted of multiple felony charges because she sought a personal gain (food stamps and cash) through the use of her position (to create fraudulent food stamp accounts) that resulted in a breach of the public trust. Specifically, she exploited her authority as a public officer by using her position in DCF to create food stamp benefit accounts, sent the benefits to herself, and converted or had them converted into cash which she kept for her own use. Thus, under *Jenne, Holsberry, Marsland, Jacobo, and DeSoto*, she has forfeited her right to a FRS retirement benefit.

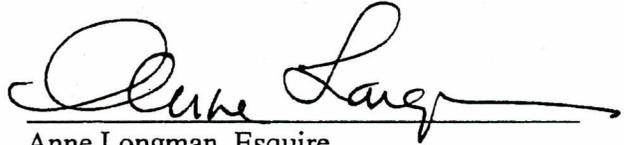
19. Breach of the public trust requires forfeiture of retirement benefits under section 112.3173(2)(e)6., Florida Statutes.

20. 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.). The fact that Petitioner cashed out her Investment Plan account before she was charged with a crime has no bearing on the outcome required here by law.

### **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 14<sup>th</sup> day of March, 2013.



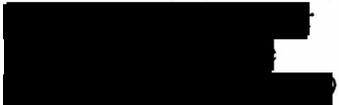
Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, FL 32301-1872

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

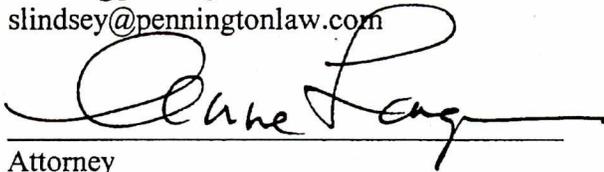
All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which 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  
Daniel.B Beard@sbafla.com  
(850) 488-4406

This 14<sup>th</sup> day of March, 2013.

Copies furnished to:  
Via U.S. Mail  
Meera Khan (DC#164095)  
  
Petitioner

Via electronic mail:  
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Pennington P.A.  
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Attorneys for Respondent  
Brandi@penningtonlaw.com  
slindsey@penningtonlaw.com



Attorney