

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

GLENDA BUENDIA,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2016-3678
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On May 25, 2017, 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, Glenda Buendia, and upon counsel for the Respondent. This matter was decided on after an informal hearing. 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 on June 9, 2017. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner has forfeited her Florida Retirement System (“FRS”) Investment Plan account benefit under Section 112.3173, Florida Statutes by having pled *nolo contendere* to, and by being adjudicated guilty of, the felony of grand theft that occurred by virtue of her

employment with an FRS participating employer. The felony clearly was connected to Petitioner's public employment and was committed prior to Petitioner's retirement.

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 27th day of June, 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 Glenda Buendia, pro se, both by email transmission, [REDACTED] and by U.P.S. to [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 27th day of June, 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

GLENDIA BUENDIA,

Petitioner,

vs.

CASE NO. 2016-3678

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 March 22, 2017, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Glenda Buendia, pro se


Petitioner

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

STATEMENT OF THE ISSUE

The issue is whether Petitioner's Florida Retirement System (FRS) Investment Plan account was rightly determined by Respondent to have been forfeited as a result of her plea of *nolo contendere* to a specified offence.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her 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 7 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 is a member of the FRS Investment Plan by virtue of her former employment with the Hendry County Board of County Commissioners.
2. As a Secretary III with the Hendry County Probation Department, Petitioner attended to the front desk and received payments from probationers that were to be paid to the Hendry County Probation Department.
3. In October 2012, Petitioner instructed a probationer to pay his \$300.00 fine with a blank money order. Petitioner then filled in the blank making the same payable to herself, and deposited the money order into her personal bank account.

4. Petitioner was able to commit this crime due to her position with the Hendry County Probation Department.

5. On June 18, 2015 Petitioner pled *nolo contendere* to a single count of Grand Theft, a third degree felony, and was adjudicated guilty of same.

6. As a result of her plea, Petitioner was notified by Respondent on December 7, 2016 that her FRS Investment Plan Benefits have been forfeited.

7. Petitioner filed a Petition for Hearing seeking reversal of the forfeiture because she has "had this retirement since 2004. It was not from the employment at Hendry County Probation."

8. It came to light during the hearing that Petitioner does, in fact, receive a monthly pension plan benefit, from her 2004 retirement from the Florida Department of Corrections. The forfeiture at issue here is applicable only to Petitioner's Investment Plan benefits from her employment with the Hendry County Board of County Commissioners from November 13, 2006 to July 2, 2013.

CONCLUSIONS OF LAW

9. 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. 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.

(b) "Court" means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified 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;
3. Bribery in connection with the employment of a public officer or employee;
4. **Any felony specified in chapter 838, except for ss. 838.15 and 838.16;**
5. The committing of an impeachable offense;
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; or

...

(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. (emphasis added).

10. An employee who is convicted of a “specified offense” committed prior to retirement from the FRS forfeits all rights and benefits. *Childers v. Department of Management Services*, 989 So.2d 716 (Fla. 4th DCA 2008). The definition of “convicted” includes a plea of *nolo contendere*. Petitioner was convicted of a specified offense under Section 112.3173(2)(e)1 because she embezzled public funds; under Section 112.3173(2)(e)2 because she was a public officer who committed theft from her employer; and under 112.3173(2)(e)6 because she committed a felony involving breach of the public trust. Under each and all of these specified offenses, Petitioner’s crime results in a forfeiture of her FRS benefit.

11. Respondent has no discretion as to whether to proceed with forfeiture of a participant’s Investment Plan account as the Constitution and statute make forfeiture mandatory. Forfeiture is regarded as enforcing 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).

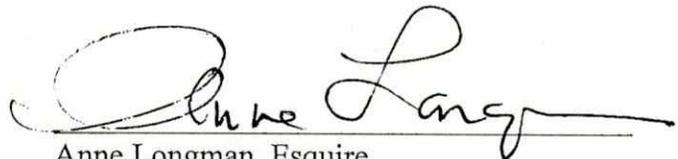
12. Here, there is no dispute that the crimes Petitioner was convicted of are enumerated felonies that constitute specified offenses committed before she retired from the Hendry County Board of County Commissioners position on July 2, 2013.

13. 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.). In this instance, forfeiture is not only appropriate, it is constitutionally mandated.

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 25th day of May, 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:

Glenda Buendia



Petitioner

and via electronic mail only to:

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Brandice D. Dickson, Esquire
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Counsel for Respondent