

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

CYNTHIA DAWKINS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2012-2371
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On July 31, 2012, 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, Cynthia Dawkins, 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 August 15, 2012. 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.

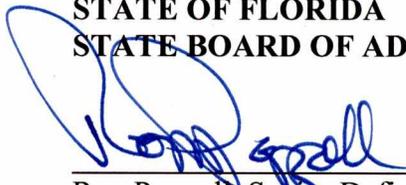
ORDERED

The Recommended Order (Exhibit A) hereby is adopted in its entirety. Petitioner's request that her Florida Retirement System Investment Plan account not be forfeited, since adjudication was withheld after she pled guilty to a third degree felony involving a breach of the public trust, hereby 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 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 4th day of September, 2012, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



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

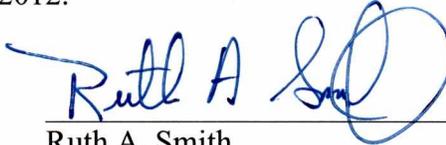
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



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 Cynthia Dawkins, pro se, 522 NW 5th Street, Boynton Beach, Florida 33435, 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 4th day of September, 2012.



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

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GENERAL COUNSEL'S OFFICE

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

CYNTHIA DAWKINS,

Petitioner,

vs.

CASE NO. 2012-2371

STATE BOARD OF ADMINISTRATION,

Respondent.

_____ /

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.27, Florida Statutes, before the undersigned Presiding Officer for the State of Florida, State Board of Administration (SBA) on May 3, 2012, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Cynthia Dawkins, *pro se*
522 NW 5th Street
Boynton Beach, Florida 33435

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

STATEMENT OF THE ISSUE

The issue is whether Petitioner forfeited her Florida Retirement Systems (FRS) Investment Plan account where adjudication was withheld after her plea of guilty to a third

degree felony involving a breach of the public trust.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and testified on her own behalf. The Respondent presented the testimony of Daniel Beard, SBA Director of Policy, Risk Management, and Compliance. Petitioner's Exhibit 1 and Respondent's Exhibits 1 through 5 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 after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner was employed by the Department of Highway Safety and Motor Vehicles (DHSMV) a FRS-participating employer, and was a member of the Investment Plan.
2. On June 2, 2011, Petitioner received a total distribution of her FRS Investment Plan account in the amount of \$89,924.40.
3. Petitioner was arrested on August 3, 2011 for a crime committed in the course and scope of her FRS-covered employment; specifically, for using her position as an Examiner I with the DHSMV to realize a personal profit by illegally giving licenses or answers to tests for licenses.
4. After the arrest, on February 2, 2012, Petitioner entered a negotiated plea of guilty to the charge of Unauthorized Issuance of Driver's License(s), a third degree felony.
5. Petitioner was notified by the SBA on February 16, 2012 that her rights and

benefits in her FRS Investment Plan account had been forfeited pursuant to Section 112.3173, Florida Statutes. Petitioner was further informed that she must return the total distribution monies she had received by March 30, 2012.

6. Petitioner contests the forfeiture, asserting that because she retired prior to entering her guilty plea, the retirement assets she received should not be forfeited, and this administrative proceeding followed. The distribution has not been returned.

CONCLUSIONS OF LAW

7. The Florida Constitution makes plain that "[a]ny public officer or employee who is convicted of a felony involving 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." FLA. CONST. ART. II, § 8(d). Under Section 112.3173, Florida Statutes, Florida Retirement benefits must be forfeited upon conviction of:

[A]ny 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.

§112.3173(2)(e)6., Fla. Stat. (2011.)

8. A "conviction" means "an adjudication of guilt 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." §112.3173(2)(a), Fla. Stat. (emphasis added.)

9. Because Petitioner pled guilty to a felony charge involving a breach of the public trust, she has been convicted of the charge within the meaning of the forfeiture statute, and has forfeited her FRS retirement benefit regardless of whether adjudication was withheld. See discussion of related issue in Montgomery v. State of Florida, 897 So.2d 1282 (Fla. 2005).

10. Although forfeiture statutes are strictly construed, the plain meaning of the applicable statute requires forfeiture if there has been a plea of guilty to a covered offense.

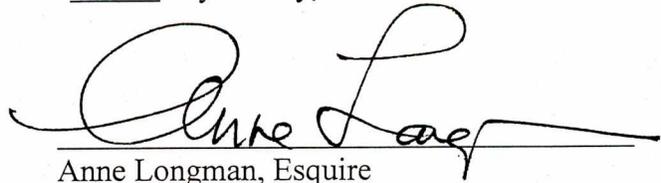
11. Respondent SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

11. Petitioner has not shown that application of the governing statutes in this case is erroneous or amounts to an abuse discretion. The fact that Petitioner retired and received a distribution from her retirement account before she was convicted of an offense requiring forfeiture is irrelevant to the recommended result.

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 31st day of July, 2012.



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: THIS IS NOT A FINAL ORDER

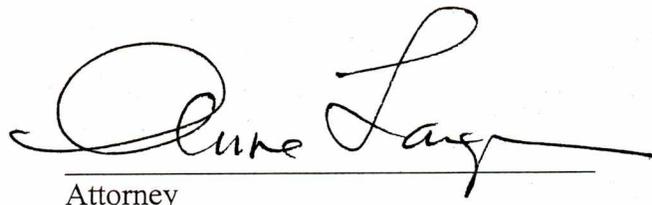
All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order, which must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed 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 31st day of July, 2012.

Copies furnished to:
Cynthia Dawkins
522 N.W. 5th St.
Boynton Beach, FL 33435
Petitioner

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



Attorney