

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JESSICA WILLIAMS,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2017-0024
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On June 1, 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 counsel for Petitioner, Jessica Williams, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent timely filed a Proposed Recommended Order. Neither Petitioner nor her counsel filed a Proposed Recommended Order. The parties did not file exceptions to the Recommended Order which were due on June 16, 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's request for removal of the hold that had been placed on her Florida Retirement System ("FRS") Investment Plan account, pending resolution of the criminal charges that have been filed against her, hereby is denied. The criminal charges are for

offenses that would allow forfeiture pursuant to Section 112.3173(2)(e)6., Florida Statutes, if Petitioner eventually is convicted of such offenses. Therefore, the hold is appropriate. If the charges are dropped, the hold will be released.

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.

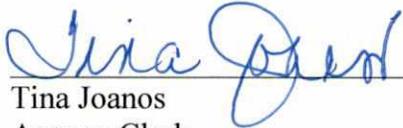
DONE AND ORDERED this 27th day of June 2017, in Tallahassee, Florida.

**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 Sylvain R. Robitaille, Esq., Counsel for Petitioner, both by email transmission, sylvain@clintcurtis.com and by U.P.S. to Law Offices of Clint Curtis & Associates, 7217 East Colonial Drive, Suite 113, Orlando, Florida 32807; 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

JESSICA WILLIAMS,

Petitioner,

vs.

Case No.: 2017-0024

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 April 4, 2017, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Sylvain R. Robitaille, Esq.
Law Offices of Clint Curtis & Associates
7217 E. Colonial Drive, Ste. 113
Orlando, FL 32807

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

STATEMENT OF THE ISSUE

The issue is whether a hold can be placed on Petitioner's Investment Plan account pending the resolution of criminal charges filed against her.

PRELIMINARY STATEMENT

Petitioner's counsel attended the hearing by telephone; Petitioner did not appear. Counsel for Respondent attended the hearing in person. Respondent's Exhibits 1 through 3 were admitted into evidence at the hearing without objection. No testimony was taken at the hearing. Petitioner's counsel stated that the only reason for the hearing was to put some matters on the record, and that she had no legal argument that Respondent should not place a hold on Petitioner's plan assets for now.

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 employment with the Florida Department of Children and Families. Petitioner was an Investigator with Adult Protective Services.

2. Petitioner has been charged with 3 felony counts of Falsifying Records by Officer of the State. Petitioner is alleged to have used her position as an investigator to falsify information regarding an initial home visit of a vulnerable adult that she was assigned to supervise. The statute Petitioner is charged with violating is §839.13(2), Fla. Stat. Petitioner's Investment Plan has been placed on hold pending the resolution of the charges against her.

CONCLUSIONS OF LAW

3. 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 this provision of the Florida Constitution and provides for the forfeiture of retirement benefits upon conviction of a qualifying crime that constitutes a breach of the public trust.

4. The SBA is not required to establish that the charges pending against Petitioner constitute a forfeitable offense in order to maintain a hold on her Investment Plan account. David Moran v. State Board of Admin., Case No. 2015-3304, Recommended Order July 31, 2015, Final Order October 21, 2015 (aff'd by PCA (Fla. 1st DCA September 20, 2016)); see also, Sharonda Bennett v. State Board of Admin., Case No. 2016-3538, Recommended Order June 7, 2016, Final Order July 27, 2015. The authority to place a hold pending the resolution of the criminal charges is found in Rule 19-11.008(2)(b), Florida Administrative Code:

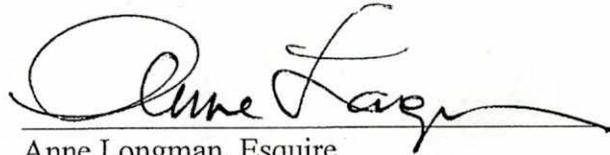
When the SBA becomes aware of any accusation of criminal wrongdoing against any member of the FRS Investment Plan, the SBA will put a hold on the member's account to preclude the member from removing any money from the account, until a determination is made on whether charges have been filed and whether the charges are for a forfeitable offense.

5. Thus, Respondent is not required to establish all of the elements of forfeiture at this time in order to continue the hold on Petitioner's account. If Petitioner is "convicted" of a qualifying offense, she will have the opportunity to contest the forfeiture of her retirement benefits at that time. If the charges are dropped, the hold will be released. See, Rule 19-1.008(2)(c) and (d), Florida Administrative Code. Additional authority for the SBA's hold on Petitioner's account is found in section 121.091(5)(k), Florida Statutes, made applicable to the Investment Plan by Section 121.012, Florida Statutes.

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 1st day of June, 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.

COPIES FURNISHED via email and U.S. mail to:

Sylvain R. Robitaille, Esq.
Law Offices of Clint Curtis & Associates
7217 E. Colonial Drive, Suite 113
Orlando, FL 32807
sylvain@clintcurtis.com

Attorney for Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301
slindsey@penningtonlaw.com

Counsel for Respondent