

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JAMES B. PRUITT)	
)	
Petitioner,)	
)	
vs.)	Case No. 2009-1529
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On October 30, 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, James B. Pruitt, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on November 13, 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 the State Board of Administration honor Petitioner's second election request to enroll in the Investment Plan 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 19th day of November, 2009, 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

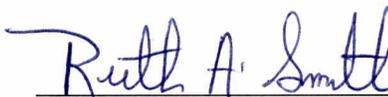
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Clerk TINA JOANDZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by US mail to James B. Pruitt, pro se, [REDACTED], [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 19th day of November, 2009.



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

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GENERAL COUNSEL'S OFFICE

JAMES B. PRUITT,

CASE NO. 2009-1529

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned presiding officer on July 28, 2009, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

James B. Pruitt


For Respondent:

Brian A. Newman, 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 Respondent State Board of Administration (SBA) should deem Petitioner's second election seeking to join the FRS Investment Plan to be valid.

EXHIBIT A

PRELIMINARY STATEMENT

On May 5, 2009, Petitioner executed a Request for Intervention requesting that his attempted second election into the Investment Plan be deemed valid. That request was investigated and denied by Respondent by letter of May 18, 2009. Petitioner then filed a Petition for Hearing requesting the same relief, and this hearing ensued.

Petitioner attended the hearing by telephone and testified on his own behalf. Respondent offered the testimony of Petitioner and Daniel Beard, SBA Director of Policy, Risk Management & Compliance, Office of Defined Contribution Programs. Respondent offered eight exhibits which were admitted into evidence without objection. A transcript of the hearing was filed with the agency and made available to the parties, who were invited to submit proposed recommended orders within 30 days. Respondent filed a proposed recommended order; Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. Petitioner was enrolled in the Florida Retirement System (FRS) in April of 2003 as a member of the FRS Pension Plan.
2. On March 1, 2008, he became employed by the Broward Community Charter School, Incorporated, an FRS-covered employer.
3. On July 1, 2008, The Leona Group Florida, LLC, (TLG) took over all administration and operation of the school, including the employment of Petitioner and other former employees of the school.
4. TLG is a private organization and is not an FRS-covered agency.
5. On October 24, 2008, Petitioner filed a second election form seeking to transfer assets from the FRS Pension Plan to the FRS Investment Plan. At the time this second election

form was filed, Petitioner was an employee of TLG, not the Broward Community Charter School, and thus was not employed by an FRS-covered employer.

6. Petitioner has at least six years of FRS creditable service and is therefore vested in and retains an FRS Pension Plan benefit.

7. In his Petition for Hearing, Petitioner stated that he requested a second election choice form from the SBA on July 11, 2008. Petitioner now contends that the July 11, 2008 date in his Petition was a typographical error, and that he requested the form from an unidentified representative of the SBA on June 1, 2008. I note for purposes of the record that Petitioner's testimony on this point is accepted as true in the context of this informal proceeding, but do not deem it to be material to my recommendation.

8. On October 24, 2008, Petitioner called the MyFRS Financial Guidance Line and received instructions on how to download a second election enrollment form. Petitioner downloaded the form from the internet, filled it out, and submitted it to the SBA on October 24, 2008.

CONCLUSIONS OF LAW

9. Participation in the FRS Investment Plan is limited to eligible employees under Section 121.4501(3), Florida Statutes. To make a valid second election to move from the Pension Plan to the Investment Plan, an FRS member must be earning service credit in an employer-employee relationship with an FRS-covered employer. §121.4501(4)(e), Florida Statutes (2008).

10. Petitioner was not earning service credit with an FRS-covered employer when he filed his second election form on October 24, 2008.

11. Petitioner testified that he requested a second election form on June 1, 2008,

while he was still employed by an FRS-covered agency. Nevertheless, Petitioner did not file a second election form before his FRS-covered employment terminated.

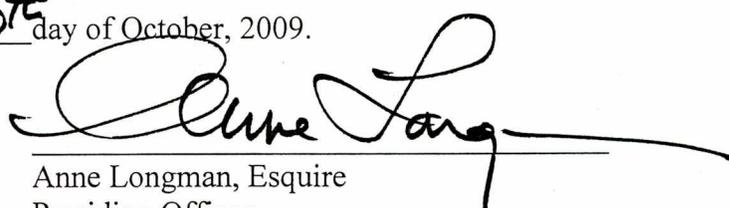
Respondent is not authorized to depart from the requirements of the statutes it is charged with implementing when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Respondent does not have statutory authority to process Petitioner's second election filed October 24, 2008.

12. Petitioner still can file a valid second election should he return to FRS-covered employment if he meets the requirements of Section 121.4501(4)(e), 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 30th day of October, 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 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

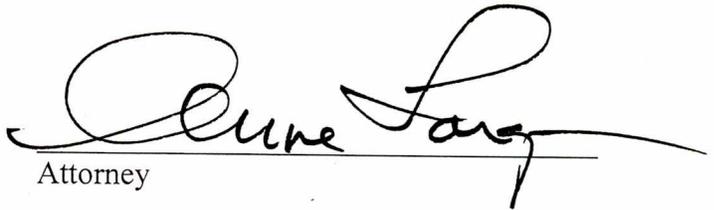
This 30th day of October, 2009.

Copies furnished to:



Petitioner

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



Elaine Lang

Attorney