

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

SHAWN GREAVES,)
)
Petitioner,)
)
vs.) SBA Case No. 2017-0173
)
)
STATE BOARD OF ADMINISTRATION,)
)
)
Respondent.)
)

FINAL ORDER

On September 21, 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 the Petitioner, Shawn Greaves, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Petitioner and Respondent timely filed Proposed Recommended Orders. Neither party filed exceptions to the Recommended Order which were due on October 5, 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 his Florida Retirement System ("FRS") Investment Plan account, pending resolution of the criminal charges that have been filed against him, hereby is denied. The criminal charges are for

felony 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.

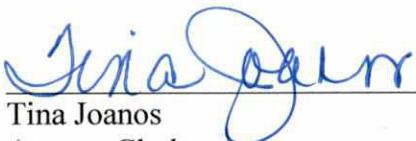
Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the 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 10th day of October, 2017, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

Joan B. Haseman
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 Branden Vicari, Esq., counsel for Petitioner, both by email transmission, [REDACTED] and by UPS to Herdman & Sakellarides, P.A., 29605 US Highway 19 N, Suite 110, Clearwater, Florida 33761; 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 10th day of October, 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

SHAWN GREAVES,

Petitioner,

vs.

Case No.: 2017-0173

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 July 28, 2017, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Shawn Greaves
 c/o Branden M. Vicari, Esq.
 29605 US Highway 19 N, Ste. 110
 Clearwater, FL 33761

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 a hold can be placed on Petitioner's Florida Retirement System (FRS) Investment Plan account pending the resolution of criminal charges filed against him.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner's attorney attended the hearing by telephone. Petitioner did not testify at the hearing and presented no exhibits or witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance.

Respondent's Exhibits 2 through 4 and 6 were admitted into evidence at the Hearing. Petitioner objected on hearsay grounds to pages 3 through 5 of Respondent's Exhibit 1, and to Respondent's Exhibit 5. Petitioner's objections to Respondent's Exhibits 1 and 6 are overruled; all exhibits presented at hearing are accepted and made part of the record in this proceeding. My recommendation is not, however, based on any fact supported only by those exhibits to which Petitioner has objected.

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 and Petitioner timely filed proposed recommended orders.

MATERIAL UNDISPUTED FACTS

1. Petitioner is a member of the FRS Investment Plan by virtue of his employment with the Osceola County School Board.
2. Petitioner has been charged with felony counts of Kidnapping (or False Imprisonment) and Battery. The Petitioner is alleged to have used his position as a teacher to grab another teacher, carry her to a classroom and touch her inappropriately. The statutes Petitioner is charged with violating are felony offenses under sections 787.02(2), 784.03(1)(a)(1), and 784.081(2), Florida Statutes.

3. Petitioner's FRS Investment Plan account has been placed on hold pending the resolution of the charges against him.

CONCLUSIONS OF LAW

4. The Florida Constitution provides 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. Sections 121.091(5), 112.3173, Florida Statutes, implement this provision of the Florida Constitution and provide for the forfeiture of retirement benefits upon conviction of a qualifying crime that constitutes a breach of the public trust.

5. Section 112.3173 states in pertinent part:

(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 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.

* * *

(c) "Public officer or employee" means an officer or employee of any public body, political subdivision, or public instrumentality within the state.

(d) "Public retirement system" means any retirement system or plan to which the provisions of part VII of this chapter apply.

(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 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
7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of 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.

6. The authority to place and maintain a hold pending the resolution of criminal charges is found in Rule 19-11.008(2)(4 Florida Administrative Code:

(b) When the SBA, becomes aware of any accusation of criminal wrong doing 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.

(c) If the charges against the member are not pursued and are dropped by law enforcement officials, the hold on the member's account will be released upon receipt of notification from the proper law enforcement agency.

(d) If the member is indicted and convicted or pleads guilty, or pleads nolo contendere, the SBA will acquire a certified copy of the judgment and will contact the member to advise the member that the Investment Plan benefit is forfeited and that the member has the right to a hearing to contest the forfeiture. The hold on the member's account will remain in place until:

1. The time to request a hearing has passed and no request for a hearing is made, or
2. The conclusion of the hearing and any appeal of the final order issued after the conclusion of the hearing.

Rule 19-11.008(2), F.A.C.

7. Respondent SBA is not required to establish that the charges pending against Petitioner constitute a forfeitable offense in order to place a hold on his 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 based on the SBA's becoming "aware of any accusation of criminal wrongdoing" by an Investment Plan member. Rule 19-11.008(2)(b), F.A.C.

8. Nor is Respondent SBA 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 within the terms of the applicable statutes, he will have the opportunity to contest the forfeiture of his retirement benefits after the conviction occurs. 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.

9. The Respondent has demonstrated that the hold is appropriate as it has made an initial showing that it has become aware that the Petitioner has been charged with potentially forfeitable felony offenses (e.g. False Imprisonment and Battery on School Employee (787.02(2), 784.03(1)(a)(1) and 784.081(2), Fla.Stat.) See §112.3173(2)(e)6., Fla.Stat.

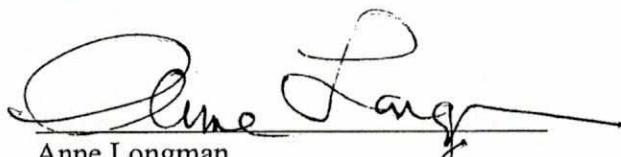
10. Respondent has shown that Petitioner has been charged with criminal violations that could reasonably constitute forfeitable offenses should he be convicted.

The evidence relied upon here need not meet the same level of scrutiny as that applied at a formal hearing. The SBA has met this burden, S. Bennett v. State Board of Administration, Case No. 2016-3538, July 27, 2015; J. Williams v. State Board of Administration, Case No. 2017-0024, June 27, 2017, and I make no finding as to whether his conviction of those charges would necessarily support forfeiture.

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 21st day of September, 2017.



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:

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branden@herdsaklaw.com

Attorney for Petitioner

and via electronic mail only to:

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Tallahassee, Florida 32301
slindsey@penningtonlaw.com

Counsel for Respondent