

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

NATALIE JONES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2017-0262
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
<hr style="border-top: 1px solid black;"/>		

**FINAL ORDER**

On March 30, 2018, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the pro se Petitioner, Natalie Jones, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due by April 16, 2018, were filed by either party. 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 that her FRS Investment Plan account not be forfeited hereby is denied. Petitioner pled guilty to the embezzlement of funds from her public entity employer which is a specified offense under Section 112.3173(2)(e)1., Florida Statutes. As such, forfeiture is constitutionally mandated.

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 17<sup>th</sup> day of April, 2018, 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*  
\_\_\_\_\_  
Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent to Natalie Jones, pro se, by U.S. Mail to: [REDACTED] and by email transmission to Brian Newman, Esq. ([brian@penningtonlaw.com](mailto:brian@penningtonlaw.com)) and Brandice Dickson, Esq., ([brandi@penningtonlaw.com](mailto:brandi@penningtonlaw.com)) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 17<sup>th</sup> day of April, 2018.



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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

NATALIE JONES,

Petitioner,

vs.

Case No. 2017-0262

STATE BOARD OF ADMINISTRATION,

Respondent.

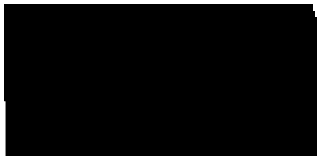
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**RECOMMENDED ORDER**

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 January 30, 2018, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Natalie Jones



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 Investment Plan account must be forfeited as a result of her plea of guilty to grand theft (\$20,000 to \$100,000), a second degree felony, for embezzling funds from her former Florida Retirement System (FRS) participating employer.

### **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, the Director of Compliance for the Investment Plan. Respondent's Exhibits 1 through 7 were admitted into evidence without objection.

The parties were invited to submit proposed recommended orders within 30 days after the transcript was filed. A transcript of the hearing was filed with the agency on February 14, 2018. By order dated March 16, 2018, the deadline to submit proposed recommended orders was extended through March 23, 2018. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

### **UNDISPUTED MATERIAL FACTS**

1. Petitioner is a member of the FRS Investment Plan by virtue of her former employment with the Brevard County School Board.
2. Petitioner was arrested for embezzling funds from her employer through her position as the bookkeeper for Southwest Middle School. From 2007 to 2014, Petitioner forged authorized signatures on checks made payable to her and logged the checks as being payable to vendors of the school system. An audit revealed a total of 110 checks made payable to Petitioner totaling \$108,254.15.
3. On June 30, 2017 Petitioner pled guilty to Grand Theft (\$20,000 to \$100,000), a second degree felony, was adjudicated guilty and sentenced to seven years of incarceration followed by eight years of probation.

4. On August 1, 2014, Petitioner took a total distribution of her almost \$20,000 FRS Investment Plan account. This occurred before the SBA was notified of her arrest and could place a hold on her Investment Plan account.

5. As a result of her plea, Petitioner was notified by Respondent on August 25, 2017 that her FRS Investment Plan benefits had been forfeited due to her embezzlement of funds from her FRS-participating employer.

6. Petitioner filed a Petition for Hearing disputing the forfeiture of her FRS benefits stating that she will be making restitution payments and “there will not be any extra funds to use to repay this.” Petitioner does not dispute the facts and circumstances that led to her criminal charge, her plea of guilty to the felony charge, or her resulting conviction.

#### CONCLUSIONS OF LAW

7. 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" includes:

1. The committing, aiding, or abetting of an embezzlement of public funds;

\* \* \*

(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.

\* \* \*

§ 112.3173, Fla. Stat. (2016)(emphasis added).

8. As the above makes clear, an employee who is convicted of a "specified offense" committed prior to retirement from the FRS forfeits all rights and benefits under the FRS. Childers v. Department of Management Services, 989 So.2d 716 (Fla. 4th DCA 2008). The definition of "convicted" includes a plea of guilty. Petitioner was convicted of a specified offense under section 112.3173(2)(e)1., Florida Statutes because she pled guilty to the felony charge of grand theft consisting of her embezzlement of funds from her public entity employer. Petitioner committed this crime before she retired from the FRS. The applicable law is clear that her FRS benefits must therefore be forfeited, and Respondent has no discretion as to whether to proceed with forfeiture under such circumstances.

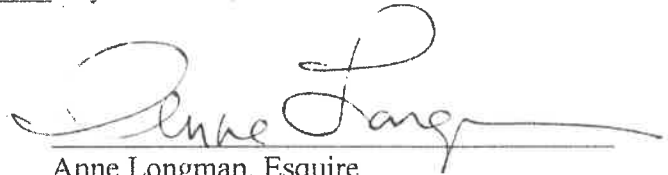
9. There is no dispute that the crime Petitioner was convicted of is an enumerated felony that constitutes a specified offense. Whether Petitioner currently has funds to repay the amounts now due to the SBA because of this forfeiture is irrelevant.

10. 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 30<sup>th</sup> day of March, 2018.



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](mailto:Tina.joanos@sbafla.com)  
[nell.bowers@sbafla.com](mailto:nell.bowers@sbafla.com)  
(850) 488-4406



COPIES FURNISHED via mail only to:

Natalie Jones, pro se

  
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