

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

SCOTT KESSLER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2023-0288
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On June 10, 2024, the Presiding Officer submitted her Recommended Order to the State Board of Administration (hereafter “SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Scott Kessler and upon counsel for Respondent. Neither party filed exceptions to the Recommended Order, which were due June 25, 2024. 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) hereby is adopted in its entirety. Petitioner was a public employee convicted of several "specified offenses" prior to his retirement and, as such, Petitioner has forfeited all the rights and benefits he possessed by virtue of his Florida Retirement System Investment Plan account, except for the amount of his accumulated employee contributions as of the date of his termination of employment. There is no statutory authority to grant Petitioner’s request for relief based on the fact that

his crimes purportedly resulted from his addiction to prescription medications and the fact he has made significant efforts to remain sober.

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 31st day of July 2024, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



---

**Daniel Beard**  
Chief of Defined Contribution Programs  
Office 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.



Hillary Eason,  
Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by email transmission to the *pro se* Petitioner, Scott Kessler, at [REDACTED] and by UPS to [REDACTED]; and by email transmission to Deborah Minnis, Esq. ([dminnis@ausley.com](mailto:dminnis@ausley.com)) and Ian White, Esq. ([iwhite@ausley.com](mailto:iwhite@ausley.com)); [jmcvaney@ausley.com](mailto:jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 31st day of July, 2024.



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

SCOTT KESSLER,

Petitioner,

vs.

CASE NO. 2023-0288

STATE BOARD OF ADMINISTRATION,

Respondent.

\_\_\_\_\_ /

**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on April 16, 2024, with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA)

**APPEARANCES**

For Petitioner: Scott Kessler, *pro se*  
[REDACTED]  
[REDACTED]

For Respondent: Ian C. White, Esq.  
Ausley McMullen, P.A.  
123 S. Calhoun Street  
Tallahassee, FL 32302

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner’s rights and benefits under the Florida Retirement System (FRS) Investment Plan have been forfeited as a result of Petitioner’s plea of guilty in a criminal case for certain offenses that occurred prior to his retirement.

## PRELIMINARY STATEMENT

Petitioner testified on his own behalf and presented two other witnesses, Brandon Kessler and Jarrod Urrely, who read statements into the record. Respondent's Exhibits R-1 through R-8 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on April 29, 2024. The parties were invited to submit proposed recommended orders within 30 days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

## FINDINGS OF FACTS

1. Petitioner was once employed with the Miami-Dade County Board of County Commissioners, an FRS-participating employer.
2. On May 11, 2023, while performing his job duties at the Miami-Dade County Clerk of Court's Office, Petitioner was arrested and charged with the following three felony counts:
  - a. Organized Scheme to Defraud/Conspiracy (violation of Section 817.034(4)(A)3, Florida Statutes);
  - b. Official Misconduct/Public Servant (violation of Section 838.022, Florida Statutes); and
  - c. Grand Theft 3rd Degree (violation of Section 812.014(2)(C), Florida Statutes).
3. On November 3, 2023, Petitioner pled guilty to these felony counts and signed an Order of Probation.
4. The Court found Petitioner guilty on all counts but ordered that the adjudication of guilt be stayed and withheld.

5. Based upon Petitioner's guilty plea, Petitioner's rights and benefits in the Investment Plan were forfeited.

6. On or about January 4, 2024, Petitioner submitted a Petition for Hearing requesting that his Investment Plan account not be forfeited, and explaining his recovery from addiction.

### CONCLUSIONS OF LAW

7. As a matter of law, and pursuant to Section 112.3173(3), Florida Statutes, Section 19-11.008(2)(a) of the Florida Administrative Code, and Article II, Section 8(d) of the Florida Constitution, a member's rights and benefits under any public retirement system of which they are a member of is forfeited, except for the return of their accumulated contributions as of the date they were terminated, as follows:

Section 112.3173(3), Florida Statutes, states, in pertinent part:

(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..

Section 19-11.008(2)(a) of the Florida Administrative Code states, in pertinent part:

(a) Any member who has been found guilty by a verdict of a jury or by the court trying the case without a jury, or who has entered a plea of guilty or a plea of nolo contendere to certain specified offenses committed prior to retirement; or any member whose employment is terminated because the member admitted committing, aiding, or abetting any such offenses;...shall forfeit all rights and benefits under the FRS except for return of any accumulated employee contributions.

Article II, Section 8(d) of the Florida Constitution, states, in pertinent part:

8(d) Any public officer or employee who is convicted of a felony involving a 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.

8. The Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under those statutes are clear and the SBA cannot deviate from them. *Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement*, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that an agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

9. Respondent's construction and application of Chapter 121, Florida Statutes, are entitled to great weight and 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, 778 (Fla. 1st DCA 1998).

10. Respondent, as an administrative entity of the State of Florida, has only those powers conferred upon it by the legislature. *See, e.g., Pesta v. Dep't of Corrections*, 63 So.3d 788 (Fla. 1st DCA 2011).

11. The Florida Administrative Procedure Act expressly provides that statutory language describing the powers and functions of such an entity are to be construed to extend "no further than...the specific powers and duties conferred by the enabling statute." §§ 120.52(8) and 120.536(1), Fla. Stat.

12. Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements before being granted the relief requested. *Young v. Dep't of Community Affairs*, 625 So. 2d 831 (Fla. 1993); *Dep't of Transp. v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).


13. It is unfortunate that Petitioner must now lose his retirement assets, but Respondent does not have the authority to grant the relief requested in the Petition for Hearing. Petitioner's

rights and benefits in his Investment Plan are forfeited, except for the return of his accumulated contributions as of the date he was terminated.

**RECOMMENDATION**

Having considered the law and undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested by Petitioner.

DATED this 10<sup>th</sup> day of June 2024.

*s/Anne Longman*   
Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
106 East College Avenue, Suite 1500  
Tallahassee, FL 32301

**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  
[Hillary.eason@sbafla.com](mailto:Hillary.eason@sbafla.com)  
[Nell.Bowers@sbafla.com](mailto:Nell.Bowers@sbafla.com)  
[mini.watson@sbafla.com](mailto:mini.watson@sbafla.com)  
[Ruthie.Bianco@sbafla.com](mailto:Ruthie.Bianco@sbafla.com)  
[Allison.Olson@sbafla.com](mailto:Allison.Olson@sbafla.com)  
[Ruth.smith@sbafla.com](mailto:Ruth.smith@sbafla.com)  
(850) 488-4406



COPIES FURNISHED via mail and electronic mail to:

Scott T. Kessler

[REDACTED]

Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire  
123 South Calhoun Street  
Post Office Box 391  
Tallahassee, FL 32301  
[dminnis@ausley.com](mailto:dminnis@ausley.com)  
[iwhite@ausley.com](mailto:iwhite@ausley.com)  
[jmcvaney@ausley.com](mailto:jmcvaney@ausley.com)  
Counsel for Respondent