

**STATE BOARD OF ADMINISTRATION
OF FLORIDA**

ANTHONY BADALATI,

Petitioner,

vs.

SBA Case No. 2024-0066

STATE BOARD OF ADMINISTRATION,

Respondent.

FINAL ORDER

On February 27, 2025, the Presiding Officer submitted his Recommended Order to the State Board of Administration of Florida (SBA) in this proceeding. The Recommended Order indicates that copies were served upon the *pro se* Petitioner, Anthony Badalati, and upon counsel for the Respondent. No exceptions to the Recommended Order were filed. 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. Petitioner began employment as a firefighter recruit with the Miami-Dade County Board of County Commissioners, a Florida Retirement System (FRS) employer, on December 4, 2006. He was given a deadline of May 31, 2007, to make an initial election between the Pension Plan and the Investment Plan (then called the Public Employee Optional Retirement Program). Petitioner made an election to enroll in the Investment Plan, effective June 1, 2007.

As a member of the FRS, pursuant to section 121.4501(4)(f), Florida Statutes,

Petitioner has the option to utilize his one-time second election and become a member of the Pension Plan if he pays the required “buy in” amount. Specifically, the statute requires the member to “transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee’s actuarial accrued liability.” § 121.4501(4)(f)3., Fla. Stat. There are no exceptions provided by law.

Petitioner seeks to become a member of the Pension Plan without paying the buy in amount. Specifically, he asserts that he should have defaulted into the Pension Plan initially. However, a person only defaults into a plan when the person does not make a timely election between the Pension Plan and the Investment Plan. *See* 121.4501(4)(a)1.b., Fla. Stat. (2006) (“Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System . . .”). Because Petitioner elected to participate in what is now called the Investment Plan, the default provision of the statute does not apply.

Regarding the FRS, the SBA has only the authority granted to it by the legislature and is not authorized to depart from the statute. *See Balezentis v. Dep’t of Mgmt. Servs.*, Case No. 04-3263, ¶ 10 (DOAH Mar. 2, 2005; DMS Apr. 4, 2005). Accordingly, because the statute requires the buy in amount to transfer to the Pension Plan, Petitioner is not entitled to the relief requested.

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 of Florida in the Office of the General Counsel, State Board of

Administration of Florida, 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 March, 2025, in Tallahassee, Florida.

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION
OF FLORIDA



Daniel Beard
Chief of Defined Contributions Programs
State Board of Administration of Florida
1801 Hermitage Boulevard, Suite 100
Tallahassee, FL 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

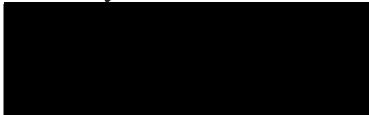
CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Final Order was served this 31st day of March, 2025, by mail and electronic mail to the following:



Brittany Adams Long
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard, Suite 100
Tallahassee, FL 32308

Anthony Badalati



Petitioner

Deborah Minnis
Ausley McMullen, P.A.
P.O. Box 391
Tallahassee, FL 32301
dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com
Counsel for Respondent

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ANTHONY BADALATI,

Petitioner,

vs.

CASE NO. 2024-0066

STATE BOARD OF ADMINISTRATION.

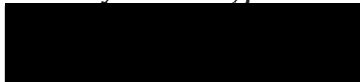
Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on December 13, 2024. All parties appeared telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

APPEARANCES

For Petitioner: Anthony Badalati, *pro se*



For Respondent: Deborah S. Minnis
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether the Petitioner may use his one-time second election to enroll in the Florida Retirement System (FRS) Pension Plan without payment of the “buy-in” amount required by section 121.4501(4)(f)2, Florida Statutes.

PRELIMINARY STATEMENT

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding on December 13, 2024, via telephone conference. The hearing was held before the undersigned presiding officer for the State of Florida, State Board of Administration.

Petitioner testified on his own behalf and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Educational Services. Respondent's Exhibits R-1 through R-4 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on December 26, 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 UNDISPUTED FACTS

1. Petitioner began employment as a firefighter recruit with the Miami-Dade County Board of County Commissioners, an FRS participating employer, on December 4, 2006.
2. Petitioner was given a deadline of May 31, 2007, to make his initial election to enroll in either the Pension Plan or the Investment Plan.
3. Petitioner testified at the hearing that while he was attending the Fire Academy, he was brought into a classroom along with other recruits and was handed two pieces of paper by his employer. He was told to make an election between the FRS Investment Plan and the Pension Plan. He further testified that "at no point in time was it ever disclosed that there would be a buy-in" to switch to the Pension Plan.
4. Petitioner elected to enroll in the Investment Plan by submitting an EZ Retirement Plan Enrollment Form for Regular, Special Risk, and Special Risk Administrative Support Class

Employees (form ELE-1-EZ). By signing signed the enrollment form, Petitioner acknowledged that he has read and understands the following: “I understand that I have a one-time future opportunity to switch to the FRS Pension Plan at any time during my FRS career, and there will be a cost for doing so.”

5. His signature also indicated acknowledgment that he read and understood that he could find a description of his “rights and responsibilities under the FRS Pension Plan and the FRS Investment Plan in the respective Summary Plan Descriptions, Florida Statutes and Administrative Rules available through the MyFRS Financial Guidance Line or MyFRS.com.”

6. Petitioner’s election form was received and processed by the Plan Choice Administrator on May 21, 2007, with an effective date to the Investment Plan of June 1, 2007.

7. Petitioner did not place any calls to the MyFRS Financial Guidance Line prior to making his initial enrollment into the Investment Plan.

8. Petitioner made a call to the MyFRS Financial Guidance Line on November 3, 2016, and discussed issues relating to transferring to the Pension Plan, including but not limited to, the requirement to buy into the Pension Plan.

9. Petitioner made another call to the MyFRS Financial Guidance Line on March 3, 2017, and requested a buyback estimate.

10. On June 29, 2017, a representative from the MyFRS Financial Guidance Line reached out to Petitioner to see if he had any additional questions but did not reach Petitioner and could not leave a message because the mailbox was full.

11. On February 23, 2018, a representative from the MyFRS Financial Guidance Line again reached out to Petitioner regarding the buy back to the Pension Plan but the Petitioner stated that he was not interested.

12. On June 18, 2021, Petitioner called the MyFRS Financial Guidance Line to request a buy in amount for switching from the Investment Plan to the Pension Plan.

13. Petitioner was provided with buy in estimate on July 3, 2021.

14. There are no facts demonstrating that the Respondent or any employees or agents of Respondent or any employees or agents of the MyFRS Financial Guidance Line provided any inaccurate, deceptive or misinformation to Petitioner regarding his rights, requirements, or benefits under the FRS system.

15. To date, Petitioner still has his 2nd election remaining.

CONCLUSIONS OF LAW

16. Pursuant to Section 121.4501(4)(a)1, Florida Statutes, beginning in 2002, persons hired into FRS eligible positions before January 1, 2018, will have the opportunity to make an election between the Pension Plan and the Investment Plan. In accordance with this provision, Petitioner was initially hired into an FRS-qualifying position on December 4, 2006, and was given an initial Choice deadline of May 31, 2007.

17. The Petitioner made his initial election to enroll into the Investment Plan on or about May 21, 2007, by submitting an EZ Retirement Plan Enrollment for Regular, Special Risk, and Special Risk Administrative Employee Form ELE-1-EZ form. The Plan Choice Administrator received and processed the election on May 21, 2007, with an effective date of June 1, 2007. In his Request for Intervention and Petition for Hearing, Petitioner suggests that the default provisions (section 121.4501(4)(a)1b, Florida Statutes) should have resulted in his participation in the Pension Plan. However, as the term “default” implies, those provisions dictate the plan into which a member is automatically placed when no election is made by the initial choice deadline. Because

Petitioner exercised his initial election prior to the deadline, the default provisions are not applicable here.

18. It is the responsibility of the FRS member to use all resources available to make an educated decision when making an election. The Petitioner had access to the following educational resources.

- Toll-free access to MyFRS Financial Guidance Line
- Access to the public information on MyFRS.com (including detailed information on the election process, copies of all publications and FAQ's)

19. Petitioner acknowledged in writing that he understood he could access the MyFRS Financial Guidance Line or MyFRS.com for additional information about his rights and responsibilities. However, he did not access either resource before making his initial election to enroll in the Investment Plan, or immediately following that election. Therefore, Petitioner's election was not influenced by any omissions, misstatements, or misrepresentations by Respondent or any of its agents.

20. The focus of Petitioner's complaint is on the circumstances surrounding his initial election; specifically, that he was not provided enough time to make a sound, informed decision at the time his employer provided the documents for him to elect between the Investment Plan and the Pension Plan. In addition, he was not provided information at that time sufficient to make an educated decision and was not properly informed of the potential costs associated with a one-time second election to switch to the Pension Plan. While Petitioner may be justified in his frustration over the circumstances surrounding his plan election, that frustration is properly directed at Petitioner's employer and not the Respondent. There is no evidence that the Respondent was present during the election, or that Respondent contributed in any way to Petitioner's election to participate in the Investment Plan.

21. Petitioner was provided written notice that there would be a cost to transfer to the Pension Plan, as evidenced by his signed election form, acknowledging such a cost. Petitioner signed the election form on a line directly below a statement that the member understands there is a “one-time future opportunity to switch to the FRS Pension Plan ... *and there will be a cost for doing so.*” (Emphasis added). If Petitioner was not provided enough time or felt pressured to quickly sign the form without reading it, such circumstances are the fault of the Petitioner’s employer and not Respondent.

22. It is true that the election form does not include details from which a reader could determine the amount of the cost, or even how that cost is determined. But the statement contradicts Petitioner’ claim that he received *no* notice there would be a cost. It is also not possible to include the cost of a transfer on the initial election form, since the calculation of that amount is dependent upon years of service, salary, and other variables. Petitioner could have obtained information detailing how that cost is determined by consulting available resources, the existence of which was also acknowledged by his signature on his election form.

23. Erroneous or insufficient information provided to Petitioner by his employer’s human resources representatives is not binding on Respondent. Section 121.021(10), Florida Statutes, expressly states that “[e]mployers are not agents of the [Department of Management Services], the [State Board of Administration], or the Division of Retirement, and the department, the state board, and the division are not responsible for the erroneous information provided by the representatives of the employer.”

24. It should be noted that Petitioner executed his initial election over 5 years ago. According to section 121.4501(8)(g), Florida Statutes, the third-party administrator contracted by the State Board of Administration for record keeping is required to maintain members records for

use in resolving disputes for only 5 years. Neither Respondent nor the third-party administrator are required to produce records for actions that occurred 5 or more years before the complaint is submitted. In addition, pursuant to this provision, it is presumed that all action taken 5 years or more before the complaint is submitted was taken at the request of and with the member's full knowledge and consent, unless the member presents evidence to the contrary. No such contrary evidence has been submitted in this case.

25. Finally, movement between the two FRS plans is governed by Section 121.4501(4)(f), Florida Statutes. This section states, in pertinent part:

(f) After the period during which an eligible employee had the choice to elect the Pension Plan or the Investment Plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the Pension Plan to the Investment Plan or from the Investment Plan to the Pension Plan.

§121.4501(4)(f), Fla. Stat. As a current member of FRS, the Petitioner still has the option to utilize his one-time 2nd election and pay the required "buy-in" to transfer to the Pension Plan.

26. As a statutorily created entity, Respondent has only that authority granted to it by the legislature. 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. Dep't of Mgmt. Servs., Div. of Retirement*, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction"). Respondent has no statutory authority to transfer an FRS member from the Investment Plan to the Pension Plan, without requiring payment by the member of any amounts necessary to fund the Pension Plan benefit.

27. Therefore, Respondent has no statutory authority to grant the relief sought by Petitioner.

28. Here, Petitioner cannot demonstrate entitlement to the relief he has requested under the applicable law and his Petition for Hearing must therefore be dismissed.

29. Wherefore, it is recommended that Petitioner's request for relief be denied.

RECOMMENDATION

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

DATED this 27th day of February 2025.

Respectfully submitted,

/s/ Glenn E. Thomas

Glenn E. Thomas, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
106 East College Avenue, Suite 1500
Tallahassee, FL 32301-1872
gthomas@llw-law.com

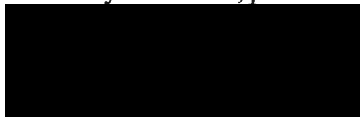
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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 Boulevard, Suite 100
Tallahassee, FL 32308
Hillary.Eason@sbafla.com.
Nell.Bowers@sbafla.com
Mini.watson@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
Lindy.Still@sbafla.com
Brittany.long@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Anthony Badalati, *pro se*



Petitioner

and via electronic mail only to:

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