

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDDIE DAVIS and KEVIN DAVIS,)
)
 Petitioners,)
)
vs.) CASE NO. 95-4790
)
DEPARTMENT OF MANAGEMENT)
SERVICES, DIVISION OF)
RETIREMENT,)
)
 Respondent,)
and)
)
EARNESE DAVIS,)
)
 Intervenor.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on December 22, 1995, in Fort Lauderdale, Florida, before Stuart M. Lerner, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Emilie M. Tracy, Esquire
1323 Southeast Third Avenue
Fort Lauderdale, Florida 33316

For Respondent: Larry D. Scott, Esquire
Division of Retirement
Cedars Executive Center, Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

For Intervenor: Charles S. Curtis, Esquire
1177 Southeast Third Avenue
Fort Lauderdale, Florida 33316

STATEMENT OF THE ISSUE

Whether Petitioners are entitled to, and should receive, survivor retirement benefits from the Florida Retirement System account of their deceased mother, Adrianna Davis, which are presently being paid to their sister, Earnese Davis?

PRELIMINARY STATEMENT

By letter dated August 14, 1995, in response to correspondence from Petitioners requesting that it pay Petitioners survivor retirement benefits from

the Florida Retirement System account of their deceased mother, Adrianna Davis, the Division of Retirement (hereinafter referred to as the "Division") notified Petitioners of its intention to continue to pay these benefits to Earnese Davis, their sister, "since Earnese Davis is the designated beneficiary on Form FR-11 and the member did not submit a change of beneficiary after retirement." On or about September 8, 1995, Petitioners filed a petition requesting a Section 120.57 formal hearing on the Division's proposed action. On September 28, 1995, the matter was referred to the Division of Administrative Hearings for the assignment of a hearing officer to conduct the formal hearing Petitioners had requested.

On October 16, 1995, Earnese Davis filed a petition for leave to intervene in the instant case. By order issued October 30, 1995, the petition was granted.

The formal hearing that Petitioners requested was held, as scheduled, on December 27, 1995. A total of seven witnesses testified at the hearing: Elizabeth Gassew (formerly Sarkissian), a registered nurse and a Florida notary public employed by Westside Regional Medical Center (formerly Humana Hospital Bennett) in Plantation, Florida; Victoria Moten, a retirement specialist with the Broward County School Board; Tim Hagger, the president of Affordable Copy Service and the records custodian for Westside Regional Medical Center; Patrick Connolly, chief of the Division's Bureau of Benefit Payments; Intervenor Earnese Davis; Petitioner Kevin Davis; and Petitioner Eddie Davis. In addition to the testimony of these seven witnesses, a total of four exhibits (Joint Exhibits 1 and 2 and Petitioner's Exhibits 1 and 2) were offered into evidence. The Hearing Officer received Joint Exhibits 1 and 2 and Petitioner's Exhibit 2 into evidence and deferred ruling on the admissibility of Petitioner's Exhibit 1 to allow the parties the opportunity to research and present additional argument, in writing, on the issue. Having given further careful consideration to the matter, the Hearing Officer has determined to receive Petitioner's Exhibit 1 into evidence.

At the close of the evidentiary portion of the hearing, the Hearing Officer, on the record, advised the parties of their right to submit post-hearing submittals and established a deadline (January 22, 1996) for the filing of these submittals.

Petitioners and the Division filed their proposed recommended orders on January 22, 1996. Intervenor filed her proposed recommended order on January 24, 1996. These post-hearing submittals have been carefully considered by the Hearing Officer. Each contains what are labelled as "findings of fact." These "findings of fact" proposed by the parties are specifically addressed in the Appendix to this Recommended Order.

FINDINGS OF FACT

Based upon the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. Adrianna Davis was a public school teacher in Broward County for more than 35 years before her retirement in or about the end of January of 1991.
2. She enrolled in the Teacher's Retirement System of Florida in 1955, when she started her teaching career. On the enrollment form that she filled out, she designated her father, Charles Williams, who is now deceased, as her beneficiary.

3. Adrianna subsequently became a member of the Florida Retirement System.

4. At the time of her death, Adrianna had two adult sons, Kevin and Eddie Davis, (the Petitioners in this case) and one adult daughter, Earnese Davis, (the Intervenor in this case), all three of whom lived with her in the house she and the children's aunt co-owned. Adrianna was the undisputed head of the household and its primary decision maker.

5. Although Earnese lived under the same roof as her brothers, she did not have a good relationship with them.

6. Shortly after the beginning of the 1990-91 school year, Adrianna was told by a physician that he suspected that she had cancer. In October or November, she underwent exploratory surgery. The surgery confirmed that she had cancer, which was determined to be inoperable.

7. Following the exploratory surgery, Adrianna received chemotherapy and radiation treatment.

8. Adrianna was admitted to Humana Hospital Bennett (now Westside Regional Medical Center and hereinafter referred to as "Humana") on December 6, 1990. She was brought to Humana by Earnese, who remained with her in the hospital during the entire period of her hospitalization. 1/ After a medical history was taken and a physical examination was conducted, the following initial "assessment" was made of Adrianna's condition by the admitting physician: "Lung carcinoma with dehydration post chemotherapy."

9. Approximately two days prior to her December 6, 1990, hospitalization, Adrianna had asked Earnese to go to the Broward County School Board (hereinafter referred to as the "School Board") offices to obtain a Florida Retirement System Application for Service Retirement form (hereinafter referred to as a "Form 11).

10. Form 11 has four sections that need to be filled out.

11. In the first section of Form 11 (hereinafter referred to as "Section 1"), the following information has to be provided: the applicant's name; the applicant's social security number; the applicant's job title; the applicant's birth date; the applicant's present or last employer; the applicant's home address and home and work phone numbers; and the date of termination of applicant's employment.

12. In the second section of Form 11 (hereinafter referred to as "Section 2"), the following information has to be provided: the name of the beneficiary designated by the applicant; the beneficiary's social security number; the relationship of the beneficiary to the applicant; the beneficiary's home mailing address; and the "option" selected by the applicant. 2/

13. The following advisement is printed at the top of Section 2: "All previous beneficiary designations are null and void."

14. The third section of Form 11 (hereinafter referred to as "Section 3") contains the following statement, underneath which the applicant has to place his or her signature "in [the] presence of [a] notary:" "I UNDERSTAND I MUST TERMINATE ALL EMPLOYMENT WITH FRS EMPLOYERS TO RECEIVE A RETIREMENT BENEFIT UNDER CHAPTER 121, FLORIDA STATUTES." It also has a certificate that has to be

completed and signed by the notary public in whose presence the applicant signs this section of the form.

15. The fourth and last section of Form 11 (hereinafter referred to as "Section 4") contains the following certification that has to be completed, signed and dated by an authorized representative of the applicant's employer, "if termination was within the last 2 years:" "This is to certify that _____ was employed by this agency and will terminate or has terminated on ___/___/___, with the last day worked on ___/___/___."

16. As her mother had asked her to do, Earnese went to the to the School Board offices at 1320 Southwest 4th Street in Fort Lauderdale to pick up a Form 11. There she met with Victoria Moten, a School Board retirement specialist.
3/

17. Earnese told Moten about her mother's situation. She explained that her mother was ill and it looked like she was "not going to make it." 4/

18. Moten obtained a blank Form 11. After typing in the information that needed to be provided in Section 1 of the form, Moten handed the partially completed form to Earnese and indicated what further steps needed to be taken in order to complete the application process.

19. After her visit with Moten, Earnese returned home and gave her mother the partially completed Form 11 (with only Section 1 filled in) that Moten had provided Earnese with earlier that day (hereinafter referred to as the "Designation Form").

20. Adrianna kept the Designation Form in her possession and took it with her (in a knapsack, along with other papers) to the hospital on December 6, 1990. She explained to Earnese that she wanted to have the Designation Form filled out while she was in the hospital. It was Adrianna, not Earnese, who brought up the subject.

21. On the morning of December 10, 1990, while Adrianna was still in the hospital, she told Earnese that she wanted to designate Earnese as the sole beneficiary of her retirement benefits so that Earnese would be able to get her "life together" and she asked Earnese to fill out Section 2 of the Designation Form accordingly. 5/ Adrianna also requested Earnese to obtain the services of a notary public to assist in filling out Section 3 of the Designation Form.

22. Earnese thereupon left her mother's hospital room (without the Designation Form, which remained with Adrianna) to find a Florida notary public in the hospital. Her search was successful. She made contact with Elizabeth Sarkissian (now Gassew), a registered nurse and a Florida notary public, 6/ who agreed to help in filling out Section 3 of the Designation Form.

23. Earnese returned to her mother's room with Sarkissian.

24. Earnese filled out Section 2 of the Designation Form in accordance with her mother's previous instructions.

25. Sarkissian, upon entering the room, engaged in conversation with Adrianna, who was sitting up in her hospital bed. Adrianna was alert and oriented. She spoke clearly and responded appropriately to questions Sarkissian asked her. By all appearances, she was in no way mentally incapacitated.

26. After Earnese had finished filling out Section 2 of the Designation Form, Adrianna signed Section 3 of the form in Sarkissian's and Earnese's presence. 7/

27. Sarkissian then completed and signed the notary certificate underneath Adrianna's signature (in Section 3 of the Designation Form), 8/ after which the form (now with Sections 1, 2 and 3 filled in) was returned to the knapsack in which Adrianna kept the papers she had brought with her to the hospital.

28. Her presence no longer needed, Sarkissian left Adrianna's hospital room.

29. Sarkissian's visit lasted approximately five or ten minutes.

30. Later that day (December 10, 1990), in the evening, Adrianna underwent a surgical procedure involving the insertion of a vascular access port.

31. Adrianna was discharged from the hospital on December 12, 1991. She took the knapsack which contained the Designation Form home with her.

32. Adrianna kept the Designation Form in her possession until January 3, 1991, when she gave it to Earnese, with instructions that Earnese deliver it to Moten for filing.

33. Earnese followed her mother's instructions. Later that same day (January 3, 1991), she went to Moten's office (without her mother) and handed Moten the Designation Form.

34. Moten thereupon completed Section 4 of the form.

35. The now fully completed form was then filed for processing.

36. In June of 1991, Adrianna went into a coma and eventually died.

37. At the time of her death, the Designation Form (which, in Section 2, designated Earnese as the sole Option 2 beneficiary of Adrianna's retirement benefits) was the most recent designation of beneficiary form executed by Adrianna.

38. At no time subsequent to signing the Designation Form did she express to Earnese a desire to make any changes to Section 2 of the form, nor were any such changes made.

39. It has not been shown that Adrianna's designation of Earnese as the sole beneficiary of her retirement benefits was the product of any fraud, misrepresentation, trickery, coercion, undue influence, active procurement, or suggestion on Earnese's part or that it was anything other than a decision made freely, voluntarily and knowingly by a woman who, although terminally ill, was in all respects capable of making such a decision 9/ and fully understood the consequences her decision.

40. On or about July 18, 1991, through the submission of a completed Application of Beneficiary for Retirement Benefits form, Earnese requested that the Division begin to pay her Adrianna's retirement benefits. On the form, Earnese designated her brothers, Eddie and Kevin, as the first and second contingent beneficiaries, respectively, of these benefits in the event of her death.

41. Earnese has received monthly payments from her mother's retirement account since July of 1991. 10/ She currently receives a monthly payment of \$1,986.30.

CONCLUSIONS OF LAW

42. Adrianna was a member of the Florida Retirement System (hereinafter referred to as the "System") at the time of her death.

43. The "benefits payable under the [S]ystem" are described in Section 121.091, Florida Statutes.

44. Subsection (6) of Section 121.091, Florida Statutes, addresses the subject of "optional forms of retirement benefits." It provides, in pertinent part, as follows:

(a) Prior to the receipt of the first monthly retirement payment, a member shall elect to receive the retirement benefits to which he or she is entitled under subsection (1), subsection (2), subsection (3), or subsection (4) in accordance with one of the following options: . . .

2. A decreased retirement benefit payable to the member during his or her lifetime and, in the event of his or her death within a period of 10 years after retirement, the same monthly amount payable for the balance of such 10-year period to his or her beneficiary

45. Subsection (8) of Section 121.091, Florida Statutes, addresses the subject of "designation of beneficiaries." It provides as follows:

Each member may, on a form provided for that purpose, signed and filed with the [D]ivision, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary who shall receive the benefits, if any, which may be payable in the event of the member's death pursuant to the provisions of this chapter. If no beneficiary is named in the manner provided above, or if no beneficiary designated by the member survives the member, the beneficiary shall be the spouse of the deceased, if living. If the member's spouse is not alive at his or her death, the beneficiary shall be the living children of the member. If no children survive, the beneficiary shall be the member's father or mother, if living; otherwise, the beneficiary shall be the member's estate. The beneficiary most recently designated by a member on a form or letter filed with the [D]ivision shall be the beneficiary entitled to any benefits payable at the time of the member's death, except benefits shall be paid as provided in

paragraph (7)(d) when death occurs in the line of duty.

46. The Division is responsible for administering the System. Its "mission . . . is to provide quality and cost-effective retirement services as measured by member satisfaction and by comparison with administrative costs of comparable retirement systems." Section 121.1905(2), Fla. Stat.

47. The Florida Legislature has authorized the Division to "make such rules as are necessary for the effective and efficient administration of this [S]ystem." Section 121.031(1), Fla. Stat.

48. Among the rules that the Division has adopted pursuant to such authority are Rules 60S-4.010 and 60S-4.011, Florida Administrative Code.

49. Rule 60S-4.010, Florida Administrative Code, like subsection (6) of Section 121.091, Florida Statutes, addresses the subject of "retirement benefit payment options." It provides, in pertinent part, as follows:

(1) Prior to the receipt of his first monthly benefit payment, a member . . . shall select one of the four optional forms of payment of such benefits, as provided in paragraphs (a), (b), (c), or (d), on the appropriate retirement application form as required in 60S-4.0035(1), or the Option Selection for FRS Members, Form FRS 110. . . . The four options are as follows: . . .

(b) Option 2. A retirement benefit payable during his lifetime and, in the event of his death within a period of 10 years after his retirement, the same monthly amount payable to his beneficiary for the balance of such 10-year period.

50. Rule 60S-4.011, Florida Administrative Code, like subsection (8) of Section 121.091, Florida Statutes, addresses the subject of "designation of beneficiary." It provides, in pertinent part, as follows:

(1) A member may designate a beneficiary . . . to receive the benefits which may be payable pursuant to these rules in the event of the member's death. No designation of beneficiary shall be effective unless it has been filed with the Division. The most recent designation of beneficiary filed with the Division shall replace any previous designation whether made before or after the member's retirement.

(2) As provided in s. 121.091(8), F.S., if no beneficiary is designated or if no designated beneficiary survives the member, the beneficiary shall be determined in the following order: the spouse of the deceased member; or if the spouse is not living, the living children of the deceased member, or on their behalf if under 18 years of age; or if no children survive, the deceased member's

father and/or mother, if living; otherwise, the legal representative of the deceased member's estate.

(3) If a member has transferred from an existing system, any person whom the member had designated as his beneficiary under that existing system shall remain the member's designated beneficiary and shall receive the benefits, if any, which may be payable pursuant to these rules in the event of the member's death, unless the member changes his designation of beneficiary on the proper form provided by the Division. . . .

(5) Upon application for retirement, a member shall be required to complete a new designation of beneficiary on the appropriate application form . . . as follows:

(a) A member who selects option 1. or 2., as provided in 60S-4.010(1)(a) or (b), may:

1. Designate as beneficiary any person, organization, trust, or his estate; or designate that benefits be paid according to law as provided in 60S-4.011(2) and s. 121.091(8), F.S.

2. Designate one or more beneficiaries to receive benefits jointly or sequentially.

3. Change his designation of beneficiary at any time on the Beneficiary Designation for Retired Members, Form FST-12, as adopted in 60S-9.001.

51. In the instant case, on a Florida Retirement System Application for Service Retirement form which was subsequently filed with the Division, Adrianna "select[ed] option . . . 2., as provided in [Rule] 60S-4.010(1) . . . (b)," Florida Administrative Code, and, in accordance with Rule 60S-4.011(5)(a)1, Florida Administrative Code, designated Earnese as the sole beneficiary of her retirement benefits in the event of her death. At no time thereafter did Adrianna make a change to this designation, as permitted by Rule 60S-4.011(5)(a)3, Florida Administrative Code. Earnese therefore was the "beneficiary most recently designated by [Adrianna] on a form or letter filed with the [D]ivision . . . at the time of [Adrianna's] death." According to Section 121.091(8), Florida Statutes, such a beneficiary is "entitled to any benefits payable at the time of the member's death."

52. Petitioners concede that their "mother designated Earnese Davis as beneficiary," but they argue that she did so "based on undue influence and/or fraud asserted by Earnese Davis, while Adrianna Davis suffered from diminished mental capacity" and that therefore such designation should be considered a nullity.

53. The cancellation or rescission of an instrument (which is the action Petitioners are, in effect, asking the Division to take in the instant case) is relief that "is essentially equitable in character, the granting of which depends on application of equitable principles as distinguished from substantive rules of law." *Davis v. McGahee*, 257 So.2d 62, 64 (Fla. 1st DCA 1972). It is questionable whether the Division (which is an administrative body, without common law powers, having only that authority expressly or implicitly granted it by statute) is empowered to grant such equitable relief. 11/ See Department of

Environmental Regulation v. Puckett Oil Company, Inc., 577 So.2d 988, 991 (Fla. 1st DCA 1991); State ex rel. Greenberg v. Florida State Board of Dentistry, 297 So.2d 628, 636 (Fla. 1st DCA 1974). In any event, however, even assuming that the Division did have the authority to grant such equitable relief, it would be inappropriate for it to exercise such authority in the instant case inasmuch as Petitioners have failed to establish by even a preponderance of the evidence that their mother's written designation of their sister, Earnese, as her sole beneficiary was the product of any "undue influence and/or fraud" on Earnese's part or that their mother "suffered from diminished mental capacity" at the time she made such designation, as Petitioners have alleged. 12/

54. In view of the foregoing, the Division should continue to treat this written designation as a valid and effective instrument and, in accordance with the desires expressed therein by Adrianna, pay Earnese, and only Earnese, the retirement benefits from Adrianna's System account.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the Division enter a final order refusing to grant Petitioners' request that it treat as a nullity Adrianna Davis' written designation of Earnese Davis as her sole beneficiary and, based upon such nullification, discontinue paying Adrianna's retirement benefits to Earnese Davis and instead pay them to Petitioners. 13/

DONE AND ENTERED in Tallahassee, Leon County, Florida, this 8th day of February, 1996.

STUART M. LERNER, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of February, 1996.

ENDNOTES

1/ Earnese had quit her job after her mother had become ill so that she would be able to take care of her mother. She remained her mother's full-time helper (as well as her companion) until her mother's death.

2/ Four options are listed: "Option 1 (Benefit for the Member Only);" "Option 2 (Ten Years Certain);" "Option 3 (Member & Joint Annuitant Benefit);" and Option 4 (Member & Joint Annuitant Benefit)."

3/ Before traveling to the School Board offices, Earnese had telephoned Moten, on her mother's behalf, to obtain information concerning retirement.

4/ During her conversation with Moten, Earnese made no mention of her two brothers. Consequently, Moten was under the impression that Earnese was an "only child."

5/ Earnese often functioned as her mother's "personal secretary." It was not unusual for her to fill out forms for her mother pursuant to her mother's request and direction.

6/ Sarkissian performed notary services infrequently (approximately five to six times a year).

7/ Adrianna did not have on her reading glasses (which she had left at home) when she signed the form. She had had the opportunity, however, to read the form before her December 6, 1995, admission to the hospital.

8/ At the time of the final hearing in this case, Sarkissian was a defendant in a pending law suit in which Petitioners were suing her for the "improper notarization" of the Designation Form.

9/ At no time prior to her death were proceedings initiated to have Adrianna declared mentally incompetent.

10/ She did not immediately disclose to her brothers (with whom she did not have a good relationship) that she was receiving these benefits.

11/ A court, exercising its equitable powers, may order the rescission or cancellation of an instrument based upon a showing of undue influence, fraud or mental incompetency. See Hartnett v. Lotauro, 82 So.2d 362, 364 (Fla. 1955)(mental incompetency); Thomas for Fennell v. Lampkin, 470 So.2d 37, 39 (Fla. 5th DCA 1985)(undue influence); Fishman v. Thompson, 181 So.2d 604, 608 (Fla. 3d DCA 1965)(fraud). The Division, however, is an administrative, not a judicial, body. "While an administrative agency may exercise quasi-judicial power when authorized by statute, it may not exercise power which is basically and fundamentally judicial such as the grant of an equitable remedy." Biltmore Construction Company v. Florida Department of General Services, 363 So.2d 851, 854 (Fla. 1st DCA 1978); see also Broward County v. La Rosa, 505 So.2d 422, 423 (Fla. 1987)("although the legislature has the power to create administrative agencies with quasi-judicial powers, the legislature cannot authorize these agencies to exercise powers that are fundamentally judicial in nature").

12/ "In an action for the rescission or cancellation of an instrument, the burden is upon the complainant to establish his right to relief by clear and convincing evidence." 9 Fla Jur 2d, Cancellation, Reformation, and Rescission of Instruments, Section 48.

13/ In their proposed recommended order, Petitioners request that the Hearing Officer recommend that "Earnese Davis be excluded from receiving any benefits." Even if Adrianna's designation of Earnese as her sole beneficiary was treated as a nullity and Petitioners were thereby deemed to be entitled to receive benefit payments from their mother's System account by virtue of their being the "living children of the member," as that term is used in Section 121.091(8), Florida Statutes, their sister, Earnese, as another one of the "living children of the member," would also be entitled to receive such payments in an amount equal to that received by each of her brothers.

APPENDIX TO RECOMMENDED ORDER IN CASE NO. 95-4790

The following are the Hearing Officer's specific rulings on the "findings of facts" proposed by the parties in their proposed recommended orders:

Petitioners' Proposed Findings

1. To the extent that this proposed finding states that Petitioners and Earnese Davis are the "lawful heirs" of Adrianna Davis, it has been rejected as a finding of fact because it is more in the nature of a conclusion of law than a finding of fact. Otherwise, it has been accepted and incorporated in substance, although not necessarily repeated verbatim, in this Recommended Order.

2. To the extent that this proposed finding states that Adrianna Davis died "intestate," it has been rejected because, even if it had sufficient evidentiary/record support, it would have no bearing on the outcome of the instant case. Otherwise, it has been accepted and incorporated in substance.

3. Accepted and incorporated in substance.

4. Rejected because it lacks sufficient evidentiary/record support.

5-7. Accepted and incorporated in substance.

8-9. Rejected as findings of fact because they are more in the nature of summaries of testimony adduced at hearing than findings of fact. See T.S. v. Department of Health and Rehabilitative Services, 654 So.2d 1028, 1030 (Fla. 1st DCA 1995)(hearing officer's factual findings which "merely summarize[d] the testimony of witnesses" were "insufficient").

10-12. Accepted and incorporated in substance.

13-14. To the extent that these proposed findings state that Earnese did not immediately disclose to her brothers that she was receiving their mother's retirement benefits, it has been accepted and incorporated in substance. Otherwise, they have been rejected because they are based upon testimony that the Hearing Officer finds, in light of other, more credible testimony elicited at hearing, to be unworthy of belief.

15. Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

16. Accepted and incorporated in substance.

17. To the extent that this proposed finding states that Earnese "procured her mother's signature on the Application for Service Retirement form," it has been rejected because it is contrary to testimony that the Hearing Officer finds believable and has credited. Otherwise, it has been accepted and incorporated in substance.

The Division's Proposed Findings

1-6. Accepted and incorporated in substance.

7. To the extent that this proposed finding states that the Division acted "in accordance with its rules," it has been rejected as a finding of fact because it is more in the nature of a conclusion of law than a finding of fact.

8-9. Rejected as findings of fact because they are more in the nature of summaries of testimony adduced at hearing than findings of fact.

10-11. Accepted and incorporated in substance.

12-13. Rejected as findings of fact because they are more in the nature of summaries of testimony adduced at hearing than findings of fact.

14. Accepted and incorporated in substance.

15. Rejected as a finding of fact because it is more in the nature of a summary of testimony adduced at hearing than a finding of fact.

16. Accepted and incorporated in substance.

Intervenor's Proposed Findings (which start at numbered paragraph 9 of its proposed recommended order)

9-20. Accepted and incorporated in substance.

21. To the extent that this proposed finding states that Sarkissian had "experience in observing persons who are impaired by the use of drugs or illness," it has not been incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

22-23. Accepted and incorporated in substance.

24. First sentence: Rejected as a finding of fact because it is more in the nature of a summary of testimony adduced at hearing than a finding of fact; Second sentence: Accepted and incorporated in substance.

25-26. Accepted and incorporated in substance.

27. Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

28-36. Accepted and incorporated in substance.

37-39. Not incorporated in this Recommended Order because they would add only unnecessary detail to the factual findings made by the Hearing Officer.

40-41. Accepted and incorporated in substance.

42. Rejected as a finding of fact because it is more in the nature of argument concerning Petitioners' evidentiary presentation than a finding of fact.

COPIES FURNISHED:

Emilie M. Tracy, Esquire
1323 Southeast Third Avenue
Fort Lauderdale, Florida 33316

Larry D. Scott, Esquire
Division of Retirement
Cedars Executive Center, Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

Charles S. Curtis, Esquire
1177 Southeast Third Avenue
Fort Lauderdale, Florida 33316

A. J. McMullian, III, Director
Division of Retirement
Cedars Executive Center, Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period of time within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.