STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AUBRIE PEREZ, as Personal Representative of the Estate of EDWARD PEREZ,

Petitioner,

vs. Case No. 16-1101

DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF RETIREMENT,

Respondent.
_____/

FINAL ORDER ON ATTORNEYS' FEES

This matter came before Administrative Law Judge Darren A. Schwartz on Petitioner's Motion for Attorneys' Fees, filed May 15, 2017.

APPEARANCES

For Petitioner: Lee P. Teichner, Esquire
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Miami, Florida 33131

For Respondent: Richard C. Swank, Esquire
Department of Management Services
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STATEMENT OF THE ISSUE

Whether Petitioner, Aubrie-Elle Perez ("Petitioner"), is entitled to an award of attorneys' fees and costs to be paid by Respondent, Department of Management Services, Division of

Retirement ("Respondent"), pursuant to sections 120.595(1), 120.569(1) and (2)(e), or 57.105, Florida Statutes (2015).[1/]

PRELIMINARY STATEMENT

On January 23, 2017, the undersigned issued a Recommended Order, recommending that Respondent enter a final order requiring that the total sum of $214,202.60 be returned by Respondent to the Florida Retirement Systems ("FRS") Investment Plan for the benefit of Edward Perez ("Lt. Perez"), deceased, and that pursuant to section 121.091(8)(a), Florida Statutes, Petitioner, as the sole surviving child of and the sole beneficiary of Lt. Perez, immediately receive the amount of $214,202.60. Neither Petitioner nor Respondent filed any exceptions to the Recommended Order. On April 24, 2017, Respondent rendered its Final Order, adopting the Recommended Order in its entirety. Neither Petitioner nor Respondent appealed the Final Order.

Pursuant to the parties' request in the pre-hearing stipulation filed August 30, 2016, the undersigned reserved jurisdiction in the Recommended Order to address issues regarding Petitioner's entitlement to, and the amount of, attorneys' fees, costs, and interest. On May 15, 2017, Petitioner filed Petitioner's Motion for Attorneys' Fees. On May 26, 2017, Respondent filed its memorandum of law in opposition to the motion. On June 6, 2017, Petitioner filed a motion to strike Respondent's response. On June 12, 2017, the undersigned entered

an Order, denying the motion to strike, and allowed Petitioner until June 22, 2017, to file a reply to Respondent's response. On June 22, 2017, Petitioner filed her reply.

During a telephonic status conference on June 12, 2017, the parties stipulated that the issue of entitlement to attorneys' fees and costs should be determined by the undersigned based on the papers and record of this proceeding without an evidentiary hearing. The parties further stipulated that in the event the undersigned found Petitioner to be entitled to attorneys' fees and costs, an evidentiary hearing would then be scheduled to determine the amount of attorneys' fees and costs to which Petitioner is entitled.

FINDINGS OF FACT

1. The FRS is a public retirement system as defined by Florida law. There are approximately 400,000 active members within the FRS. Respondent is charged with managing, governing, and administering the FRS.

2. In 1997, Lt. Perez began employment with the Miami-Dade County Fire Department. For over 16 years, Lt. Perez served as a fire fighter with the Miami-Dade County Fire Department, his last position being a lieutenant.

3. Lt. Perez was a vested member of the FRS. Upon his initial employment and enrollment with the FRS in 1997, Lt. Perez entered the Investment Plan and made a retirement benefits

election designating that if he died before his retirement and chose not to designate a beneficiary, retirement benefits would be paid in accordance with section 121.091(8), Florida Statutes. Lt. Perez chose not to designate a beneficiary. Thus, according to this statute, retirement benefits would first be paid to Lt. Perez's spouse and, if no spouse, then to his only child, Petitioner.

4. Tragically, on April 7, 2013, Lt. Perez collapsed at the fire station. Subsequently, Lt. Perez was diagnosed with a grade-four malignant brain tumor known as a glioblastoma multi-forming--a very aggressive and generally terminal form of brain cancer. There is no cure, and the median survival rate for adults with this form of brain cancer is nine to 14 months.

5. Due to his terminal brain cancer and the treatments he had undergone and was undergoing, Lt. Perez was unable to continue his duties with the Miami-Dade County Fire Department.

6. On February 19, 2014, a two-page FRS Investment Plan Application for Disability Retirement Form PR-13 ("application for disability retirement") and an FRS Investment Option Selection Form PR-11o ("option selection form") were submitted to Respondent for Lt. Perez. They were sent to Respondent by mail by Lt. Perez's sister, Alecs Perez-Crespo ("Ms. Perez-Crespo").

7. The effect of the application for disability retirement and the selection of Option 1 on the option selection form would

be to transfer the monies from the Investment Plan into the Pension Plan, and convert Lt. Perez's accumulated Investment Plan retirement benefits to monthly disability retirement benefits during his lifetime. Then, upon his death, the monthly benefit payments would stop, and the beneficiary would receive only a relatively small amount, if any--a refund of contributions Lt. Perez had paid into the Investment Plan retirement account, which are in excess of the amount he received in benefits, not including the transferred Investment Plan account balance.[2/]

8. On their face, the application and option selection form appeared facially valid to Respondent. They appeared to Respondent to have been completed by the member, Lt. Perez, and signed by Lt. Perez in the presence of a notary public.

9. Accordingly, Respondent processed the application for disability retirement and option selection form. As a result, Lt. Perez was deemed to have retired effective April 1, 2014, and he forfeited approximately $238,000, which was transferred from the Investment Plan to the Pension Plan.

10. Subsequently, two disability retirement benefit warrants were issued by the State of Florida, Department of Financial Services, to Lt. Perez, via the Pension Plan, in care of Alecs Perez-Crespo, POA. The dates of these warrants are April 30, 2014, and May 30, 2014. Both warrants were endorsed by Ms. Perez-Crespo, "POA for Edward Perez." Respondent made these

disability retirement gross benefit disbursements resulting in net payments to Lt. Perez on the following dates and in the following amounts: April 30, 2014--gross disbursement of $4,950.63, less deducted taxes of $413.20, for a net payment to Lt. Perez of $4,537.43; and May 30, 2014--gross disbursement of $4,950.63, less taxes of $413.20 and less a medical insurance deduction of $386.00, for a net payment to Lt. Perez of $4,151.43.[3/]

11. A direct deposit authorization for electronic transfer of future retirement benefit warrants into a checking account solely in the name of Lt. Perez was signed by Ms. Perez-Crespo, "POA for Edward Perez," on May 9, 2014.

12. Two additional disability retirement gross benefit disbursements resulting in net payments to Lt. Perez were sent to the checking account of Lt. Perez on the following dates and in the following amounts: June 30, 2014--gross disbursement of $4,950.63, less taxes of $413.20 and less a medical deduction of $386.00, for a net payment to Lt. Perez of $4,151.43; and July 31, 2014--gross disbursement of $4,981.32, less taxes of $417.81 and less a medical insurance deduction of $386.00, for a net payment to Lt. Perez of $4,177.51, bringing the total sum of the gross disbursements for the four payments made to Lt. Perez $19,833.21, and the total sum of the net disbursements for the four payments made to Lt. Perez $17,017.80.

13. The net sum of $17,017.80, issued by the Pension Plan as disability retirement benefits to Lt. Perez, was deposited into Lt. Perez's checking account. Accordingly, $19,833.21 (gross)/$17,017.80 (net) was received by Lt. Perez.

14. Lt. Perez died on July 16, 2014, from the cancer. At the time of Lt. Perez's death, Petitioner was, and remains, his sole surviving child (natural or adopted). Lt. Perez was not married at the time of his death and, thus, left no surviving spouse.

15. Because of the receipt of the four payments during his lifetime, which are applied first to the personal contributions made by Lt. Perez into the Investment Plan during his lifetime, the amount of Lt. Perez's small contributions into the plan were exhausted by the time of his death. Therefore, if the option selection form was valid, Petitioner, as the sole beneficiary and child of Lt. Perez, would receive nothing.

16. On January 13, 2016, Respondent issued a final agency action letter to Petitioner, denying her request for FRS benefits from Lt. Perez's disability retirement account. Dissatisfied with Respondent's determination, Petitioner timely requested an administrative hearing.

17. In her petition, Petitioner asserted that the application for disability retirement and option selection form were void. According to Petitioner, Lt. Perez lacked the legal

or mental capacity at the time he allegedly executed the forms, and the forms were not properly notarized and signed by Lt. Perez.

18. In paragraph 37 of the petition, included within the section titled, "Relief Sought by Petitioner," Petitioner "requests a final order requiring FDMS [Respondent] to pay to Aubrie . . . her attorney fees and costs for pursuing this action." On February 24, 2016, Respondent referred this matter to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing.

19. On March 1, 2016, the parties filed an Agreed Motion for Abeyance based on their ongoing settlement discussions. On March 4, 2016, the undersigned entered an Order denying the motion and set this matter for final hearing on May 9, 2016.

20. The parties then commenced discovery.

21. On April 15, 2016, Dr. Deborah Heros ("Dr. Heros"), a board-certified neurologist and Lt. Perez's treating oncologist was deposed. Dr. Heros testified that within a reasonable degree of medical probability that Lt. Perez was not mentally, physically, cognitively, or legally competent to understand or execute the application for disability retirement and option selection form at the time the forms were purportedly executed by Lt. Perez.

22. The deposition of Ms. Perez-Crespo on April 7, 2016, also revealed that the application for disability retirement, option selection form, and POA were not completed by Lt. Perez and were not signed by Lt. Perez in the presence of a notary public.

23. On April 20, 2016, the notary public, Dianne Hamilton, refused to answer any questions in her deposition related to the purported notarization of Lt. Perez's signature.

24. On April 19, 2016, counsel for Respondent filed an unopposed motion for a continuance of the hearing date based on some recent "significant medical issues that may require treatments with multiple physicians and related recovery time." On April 22, 2016, the undersigned entered an Order granting the motion, resetting the final hearing for August 9, 2016.

25. In May and June 2016, Respondent's agency representatives were deposed. According to Mr. David Heidel ("Mr. Heifel"), one of the agency representatives deposed, Respondent does not look beyond the face of the application for disability retirement and option selection form in determining whether a request should be processed.

26. Mr. Heidel testified that in the instant case, Respondent did not look beyond the face of the application for disability retirement and option selection form in processing the forms. According to Mr. Heidel, Respondent processed the

application for disability retirement and option selection form because they appeared at the time of their submission to be facially valid--they appeared to have been signed by Lt. Perez in the presence of a notary.

27. On July 7, 2016, Petitioner filed Petitioner's Motion for Summary Final Order or, Alternatively, for Judicial Determination of Undisputed Facts. On July 14, 2016, Respondent filed its opposition to the motion.

28. On July 22, 2016, a telephonic hearing on the motion was held with counsel for parties participating in the hearing. On July 25, 2016, the undersigned entered an Order denying the motion.

29. Shortly thereafter, on July 29, 2016, Petitioner filed a Joint Motion for Status Conference. In the motion, Petitioner's counsel indicated that the "parties are presently negotiating and are near agreement regarding a possible settlement that may obviate the need for the final hearing entirely." That same day, a telephonic status conference was held between the undersigned and counsel for the parties, during which the parties requested a continuance of the final hearing. Following the telephonic status conference, the undersigned entered an Order on August 1, 2016, resetting the final hearing for September 8, 2016.

30. The Parties' Joint Stipulation was filed on August 30, 2016. In the stipulation, the parties reached agreement on numerous significant facts. Most importantly, Respondent conceded that the option selection form was not completed by the member, Lt. Perez, and was not signed by Lt. Perez in the presence of a notary public.

31. Respondent also conceded that affirmative medical and factual evidence establishes, and rebuts any legal presumption to the contrary, that Lt. Perez was not mentally, physically, cognitively, or legally competent to execute the option selection form or the application for disability retirement in February 2014, or to understand their legal nature and effect.

32. Respondent also conceded that notwithstanding the facial appearance of the option selection form and application for disability retirement, the documents are void and invalid because they failed to comply with the statutory, rule, and manual requirements applicable to properly effectuate the Option 1 selection, in that they were not completed by the member, Lt. Perez, and not signed by Lt. Perez in the presence of a notary public.

33. Respondent also conceded that due to Lt. Perez lacking the mental, cognitive, physical, and legal capacity to understand the nature and legal effect of executing the option selection form and application for disability retirement, the purported

execution by Lt. Perez of the option selection form and of the application for disability retirement are void and invalid.

34. Respondent also conceded that the option selection form is invalid and void ab initio, and Lt. Perez's earlier selection in 1997, pursuant to section 121.091(8), should be reinstated under the FRS Investment Plan. Respondent conceded that with Lt. Perez having died in 2014 with no surviving spouse, and with Petitioner being his sole surviving child at the time of his death, that the full retirement benefits of $234,035.81, to which Lt. Perez was entitled under his Investment Plan designation of beneficiary should be paid directly to Petitioner.

35. However, Respondent asserted that the payment of the retirement benefits to which Petitioner is entitled should be reduced by the amount of the four payments made by Respondent to Lt. Perez, which gross disbursements total $19,833.21, or net disbursements total $17,017.80, making the retirement benefits to which Petitioner is entitled to be $214,202.60 or $217,018.01, not $234,035.81.

36. The case proceeded to a final hearing on September 8, 2016. Petitioner did not appear at the final hearing. However, Petitioner's counsel was present at the hearing on behalf of Petitioner. Respondent appeared at the hearing through a representative or counsel. Neither party presented any live testimony at the hearing. The sole issue presented at hearing

was whether Respondent is entitled to a deduction of the retirement benefits to be paid to Petitioner, and, if Respondent is entitled to a deduction, whether the deduction should be in the amount of the gross disbursements of $19,833.21 or the net payments to Lt. Perez in the amount of $17,017.80.

37. Following the hearing and the parties' submission of proposed recommended orders, the undersigned entered a Recommended Order, concluding that Respondent was entitled to the deduction in the amount of the gross disbursements of $19,833.21. Accordingly, the undersigned recommended Respondent enter a final order requiring that the total sum of $214,202.60 be returned by Respondent to the FRS Investment Plan for the benefit of Lt. Perez, deceased, and that pursuant to section 121.091(8)(a), Petitioner, as the sole surviving child of and the sole beneficiary of Lt. Perez, immediately receive the amount of $214,202.60.

38. As indicated above, no exceptions to the Recommended Order were filed, and Respondent adopted the Recommended Order in its entirety in its Final Order.

39. The facts of this case do not show that Respondent participated in this proceeding for an improper purpose, exhibited egregious conduct, or acted in bad faith. Respondent did not participate in this proceeding primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly

increase the cost of litigation, licensing, or securing the approval of an activity.

40. Indeed, after the completion of discovery and prior to the final hearing, Respondent changed its mind as to the bulk of the monetary relief sought by Petitioner.

41. In the Parties' Joint Stipulation filed prior to the final hearing, Respondent stipulated to the fact that the application for disability retirement and option selection form were not signed by Lt. Perez and in the presence of a notary. Respondent also stipulated that Lt. Perez lacked the mental and legal capacity to execute the forms. Respondent stipulated that Petitioner is entitled to the full amount of retirement benefits, less a deduction for the four payments.

42. The case proceeded to final hearing over entitlement to the deduction and the amount of any deduction, only. Following the final hearing, the undersigned ruled that Petitioner is entitled to the full amount of retirement benefits of $234,035.81, less a deduction in the amount of the gross disbursements of $19,833.21. Thus, Petitioner recovered from Respondent the total sum of $214,202.60.

43. Petitioner is the prevailing party because she prevailed on a significant issue in the case--she received the bulk of the amount sought in the petition.

44. However, Respondent is not a nonprevailing adverse party under section 120.595.

45. There is no evidence that Respondent participated in two or more other such proceedings involving Petitioner.

46. There is no evidence that Petitioner served upon Respondent the 21-day "safe harbor" motion required by section 57.105(4), Florida Statutes. There is also no evidence that Petitioner was prohibited from serving the motion on Respondent as required by the statute.

CONCLUSIONS OF LAW

47. Respondent's initial contention is that Petitioner failed to properly plead entitlement to attorneys' fees pursuant to sections 57.105, 120.595, and 120.569, Florida Statutes. Respondent argues that the petition cites no specific statute entitling her to attorneys' fees and only states that she should "recover her attorney fees and costs for pursuing this action." Respondent further states that in the Parties' Joint Stipulation, the facts requiring determination included: "Whether Petitioner is entitled to attorneys' fees, including but not limited to under Sections 57.105 or 120.595, Florida Statutes, or other applicable law or statute, from the inception of the Petition and/or following the deposition of Dianne Hamilton and/or Dr. Heros." Respondent further states that in her Motion for

Attorneys' Fees, Petitioner cites "Sections 120.595(1)(b) and/or 57.105."

48. Contrary to Respondent's assertion, generally pleading a claim for attorneys' fees is sufficient to notify the opposing party and allow it to consider the claim. No specific pleading of the statutory basis is required. Caufield v. Cantele, 837 So. 2d 371, 376 (Fla. 2002).

49. In the instant case, Petitioner sufficiently pled entitlement to attorneys' fees in the petition by alleging that Petitioner "requests a final order requiring FDMS [Respondent] to pay to Aubrie . . . her attorney fees and costs for pursuing this action." In the Parties' Joint Stipulation, Petitioner referenced sections 57.105 and 120.595, "or other applicable law or statute." Stating "or other applicable law or statute" was sufficient to preserve a claim of entitlement to attorneys' fees under section 120.569. Finally, contrary to Respondent's assertion, paragraph 28 on page 12 of the Motion for Attorneys' Fees specifically references sections 120.595(1), 120.569(1) and (2)(e), and 57.105.

50. Turning to the merits of Petitioner's motion, the statutes upon which Petitioner relies to support entitlement to attorneys' fees must be strictly construed because statutes providing for attorneys' fees are in abrogation of the common

law. Johnson v. Dep't of Corr., 191 So. 3d 965, 967 (Fla. 1st DCA 2016).

51. As to the claim of attorneys' fees pursuant to section 120.595, that provision requires that Respondent be a "nonprevailing adverse party" under the definition of the statute. As defined in section 120.595(1)(e)3., "'[n]onprevailing adverse party' means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding." Respondent did not seek to change its own action and did not fail to do so. Respondent therefore does not meet the statutory definition.

52. This case is analogous to Johnson v. Department of Corrections, 191 So. 3d 965 (Fla. 1st DCA 2016). In Johnson, the First District Court of Appeal affirmed the agency's Final Order adopting an Administrative Law Judge's denial of attorneys' fees because the agency did not meet the definition of "nonprevailing adverse party." In reaching this decision, the court stated:

> The Department did not seek to substantially change its own action and did not "fail" to change the outcome of its action. It was Mr. Johnson who succeeded in substantially changing the outcome of the agency action because his appeal of the agency action to the PERC eventually resulted in reinstatement of his employment. Under the statutory language defining "nonprevailing adverse party," section 120.595(1) cannot provide the statutory basis for an award to Mr. Johnson

> of his attorney's fees as against the Department.

Johnson, 192 So. 3d at 968.

53. In the instant case, Respondent denied Petitioner's initial request to invalidate Lt. Perez's election forms because they appeared notarized and facially valid. In light of evidence adduced by Petitioner during the discovery process, Respondent stipulated to the invalidity of the forms due to the lack of the required signature and notarization, and because of Lt. Perez's lack of competency to execute the forms. As in Johnson, Respondent cannot be a nonprevailing adverse party because it did not seek to change its own action and did not fail to change the outcome of its action.

54. Petitioner is a prevailing party under the generic definition as stated in Moritz v. Hoyt Enterprise, 604 So. 2d 807 (Fla. 1992), because she prevailed on significant issues in the litigation by recovering the bulk of the monetary relief sought in the petition. That Respondent was ultimately entitled to a deduction for the four payments following the execution of the Parties' Joint Stipulation does not mean that Petitioner is not a prevailing party under Moritz. However, Respondent fails to meet the statutory definition of nonprevailing adverse party in section 120.595, which is required to support Petitioner's claim of attorneys' fees under the statute.

55. Even if Respondent was the nonprevailing adverse party under the statute, however, Petitioner is still precluded from recovering attorneys' fees because the evidence fails to demonstrate that Respondent participated in this proceeding for an improper purpose. § 120.595(4), Fla. Stat. "'Improper purpose' means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity." As detailed above, the facts do not show that Respondent participated in this proceeding for an improper purpose.

56. Moreover, in determining whether a party participated for an improper purpose, section 120.595(1)(c) requires that the undersigned "consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving the same prevailing party . . . and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position." As detailed above, the facts of this case do not show that Respondent acted for an improper purpose, let alone in two or more proceedings.

57. As to the claim of entitlement to attorneys' fees under section 120.569(1), the statute does not contain any provision regarding attorneys' fees. Accordingly, Petitioner is not entitled to attorneys' fees under section 120.569(1).

58. As to the claim of entitlement to attorneys' fees under section 120.569(2)(e), that provision provides as follows:

> (e) All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

59. As detailed above, the facts do not establish that Respondent filed any pleading, motion, or other paper for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation. Accordingly, Petitioner is not entitled to attorneys' fees under section 120.569(2)(e).

60. As to the claim of entitlement to attorneys' fees under section 57.105, section 57.105(4) requires that "[a] motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim,

defense, contention, allegation, or denial is not withdrawn or appropriately corrected."

61. In the instant case, there is no evidence that Petitioner served the required motion on Respondent as required by section 57.105(4). Accordingly, Petitioner is not entitled to attorneys' fees under section 57.105.

62. Finally, Petitioner argues on page four of her reply memorandum that she "is entitled to attorney's fees and costs pursuant to the Court's inherent authority to sanction bad faith litigation conduct through the inequitable conduct doctrine. *Bitterman v. Bitterman*, 714 So. 2d 356, 365 (Fla. 1998)("the inequitable conduct doctrine permits the award of attorney's fees where one party has exhibited egregious conduct or acted in bad faith."); *Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002); *Rosenberg v. Gaballa*, 1 So. 3d 1149, 1150 (Fla. 4th DCA 2009)."

63. As detailed above, the facts do not show that Respondent's counsel exhibited egregious conduct or acted in bad faith. Accordingly, Petitioner is not entitled to attorneys' fees based on the undersigned's inherent authority.

64. In sum, chapter 120 formal administrative proceedings are designed to give affected parties, such as Petitioner, the opportunity to change the agency's mind. The underlying case was a typical chapter 120 proceeding in which Petitioner aided Respondent in formulating final agency action and convincing the

agency, for the most part, to change its mind following discovery within the formal administrative process. J.D. v. Fla. Dep't of Child. & Fams., 114 So. 3d 1127, 1131 (Fla. 1st DCA 2013).

65. Although Petitioner prevailed to a significant degree in the case, she has failed to establish entitlement to attorneys' fees and costs.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Motion for Attorneys' Fees is DENIED.

DONE AND ORDERED this 19th day of July, 2017, in Tallahassee, Leon County, Florida.

DARREN A. SCHWARTZ
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of July, 2017.

ENDNOTES

[1/] Unless otherwise indicated, all references to the Florida Statutes are to the 2015 codification in effect at the time Respondent issued its final agency action letter to Petitioner.

[2/] The amount in an FRS member's Investment Plan account is comprised of employer and employee contributions.

[3/] In March 2014, Ms. Perez-Crespo obtained a durable power of attorney ("POA") purportedly executed by Lt. Perez. By this time, Lt. Perez was living with Ms. Perez-Crespo. In March or April 2014, Ms. Perez-Crespo submitted to Respondent the POA form purportedly signed by Lt. Perez. These documents also appeared facially valid to Respondent when they were received and reviewed by Respondent because they were notarized and appeared to have been signed by Lt. Perez.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.