

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF TAMPA GENERAL EMPLOYEES
RETIREMENT FUND,

Petitioner,

vs.

Case No. 16-6666

RODNICK BOYD,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was conducted via video teleconferencing sites in Tampa and Tallahassee, Florida, on January 19, 2017, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Luis A. Santos, Esquire
Daniel K. Miles, Esquire
Ford & Harrison LLP
Suite 900
101 East Kennedy Boulevard
Tampa, Florida 33602

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether Respondent's pension should be forfeited based on his conviction for petit theft, a violation of the City of Tampa personnel manual.

PRELIMINARY STATEMENT

By notice of Disciplinary Action dated September 7, 2012, the City of Tampa (the City) notified Respondent Rodnick Boyd of its intention to terminate his employment as a Parks and Recreation Services Attendant II. In accordance with the terms of the "Administrative Law Judge Services Contract" (the Contract) entered into between the City of Tampa General Employees Retirement Fund (Petitioner) and the Division of Administrative Hearings (DOAH), Petitioner requested DOAH to assign an Administrative Law Judge to conduct "all necessary proceedings required under the law and submit recommended findings to the Fund."

At the final hearing, Petitioner called two witnesses: Adriana Colina, Employee Relations Specialist, and Dan Hinsz, a retired Tampa Police Department detective. Petitioner's Exhibits 1 through 8 were admitted into evidence.^{1/} Respondent did not appear and was not represented by counsel.

The Transcript of the proceeding was filed on January 31, 2017. A Notice of Filing was issued advising the parties to file their proposed recommended orders (PRO) no later than February 10, 2017. Petitioner timely filed its PRO which has been considered in the rendering of this Order. Respondent has not filed any post-hearing pleadings.

Unless otherwise indicated, all statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. Respondent was employed by the City as a Parks and Recreation Services Attendant II beginning in June 1999 through notification of his employment termination in 2012.

2. At the time of his employment and on each three-year anniversary of the Union renegotiation of its contract with the City, Respondent was provided a copy of the City's personnel manual. Specifically, Respondent was provided "Policy B28.2 Discipline Administration - Cause for Dismissal." The manual states, in relevant part:

2. Employees may be dismissed from employment for a variety of causes. The examples of misconduct and/or unsatisfactory performance enumerated in this policy for which dismissal is considered appropriate are not all inclusive. . . .

3. The City of Tampa Civil Service Rules and Regulations authorize the City to dismiss employees due to incompetence, insubordination, neglect of duty, moral turpitude, and/or breach of peace (Article J. Section 4.a.). The types of conduct and/or performance which fall into these categories which may be considered cause for dismissal are listed below. As stated above, these lists are not all-inclusive.

* * *

c. Neglect of Duty

* * *

9) Use of City equipment, including vehicles, for any unauthorized purpose.

* * *

d. Moral Turpitude

* * *

2) Violation of City Code or other City policies relating to impartiality, use of public property, conflict of interest, disclosure and/or confidentiality.

* * *

11) Theft or unauthorized removal or use of City property.

3. The City has a program to recycle metal through a specific pre-selected vendor. All employees are advised of the process by which recycle materials are to be disposed. Should a City employee dispose of City property in a method not contracted for, that employee must secure a letter and additional documentation for the different method of disposal.

4. In or about July 2012, Respondent and a coworker removed at minimum five metal trash cans from the NFL-YET Center, which is City property. Respondent and the coworker, while in their City uniforms, loaded the metal trash cans into a marked City truck. They proceeded to a non-authorized metal recycling center and attempted to sell the five metal trash cans. That metal recycling center declined to buy the trash cans as Respondent and his coworker did not have the appropriate letter or other

documentation. Respondent and his coworker returned the metal trash cans to the NFL-YET Center.

5. On July 11, 2012, Respondent and the coworker, while in civilian clothes, returned to the NFL-YET Center and loaded five metal trash cans belonging to the City into a private vehicle. They also had other metal in the vehicle. They proceeded to Trademark Metal Recycling (TMR). At TMR, Respondent and the coworker sold the five metal trash cans for \$42.05. TMR staff reported the transaction to the Tampa Police Department (TPD) as the metal trash cans appeared to belong to the City. TPD conducted a criminal investigation.

6. In July 2012, then TPD Detective Hinsz interviewed Respondent. Respondent admitted that he sold the five metal trash cans belonging to the City to TMR. Respondent further admitted to Detective Hinsz that he knew he was not allowed to sell city property.

7. On July 12, 2012, Respondent was arrested and charged with petit theft and dealing in stolen property. On August 6, 2012, a Charge Sheet was filed in State of Florida v. Rodnick Vincent Boyd, Case No. 12-CM-13833, in the County Court of the Thirteenth Judicial Circuit in and for the County of Hillsborough, State of Florida, charging Respondent with one count of petit theft. In relevant part, the Charge Sheet:

RODNICK VINCENT BOYD, on the 11th day of July, 2012, in the County of Hillsborough and State of Florida, did unlawfully obtain or use, or endeavor to obtain or use certain property of another, to-wit: trash cans, the property of CITY OF TAMPA, the value of said property being less than one hundred (\$100.00) dollars in money current in the United States of America; and in so doing the defendant intended either to deprive the said CITY OF TAMPA of a right to the property or benefit there from, or to appropriate the property to his own use or to the use of any person not entitled thereto.

8. On September 24, 2012, Petitioner entered a plea of nolo contendere to count one, petit theft. The Court withheld adjudication of guilt.

9. The City's retirement system is a public retirement system as defined by Florida law. See § 112.3173(5), Florida Statutes.

CONCLUSIONS OF LAW

10. By contract with Petitioner, DOAH has agreed to assign Administrative Law Judges to conduct hearings and issue recommended orders in cases of this nature. DOAH has jurisdiction over the subject matter and the parties. §§ 120.569 and 120.570, Fla. Stat. (2016).

11. In this proceeding, Petitioner asserts and has the burden of proving by a preponderance of the evidence that Respondent has forfeited his rights and benefits under the

Pension Plan. Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139, 141-142 (Fla. 4th DCA 1989).

12. Section 112.3173 is part of the statutory code of ethics for public officers and employees. The statute states in pertinent part:

(1) INTENT.-It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.

(2) DEFINITIONS.-As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilt by a court of competent jurisdiction; a plea of nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

* * *

(c) "Public officer or employee" means an officer or employee of any public body, political subdivision, or public instrumentality within the state.

(d) "Public retirement system" means any retirement system or plan to which the provisions of part VII of this chapter apply.

(e) "Specified offense" means:

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

2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;

3. Bribery in connection with the employment of a public officer or employer;

* * *

(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 is member, except for the return of his or her accumulated contributions as of the date of termination.

13. There is no dispute that Respondent was a public employee at the time he committed the acts described above. There also is no dispute that Respondent pled nolo contendere to one count of petit theft.

14. The evidence establishes that the offenses to which Respondent pled nolo contendere are "specified offenses" within the meaning of section 112.3173(2)(e)6. As such, all requirements for forfeiture in section 112.3173(3) are met. Respondent has forfeited his rights and benefits under the Pension Plan. See § 112.3173(3), Fla. Stat.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the City of Tampa General Employees Retirement Fund enter a final order determining that Respondent has forfeited his rights and benefits under the Retirement Fund.

DONE AND ENTERED this 22nd day of February, 2017, in
Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of February, 2017.

ENDNOTE

^{1/} At the conclusion of the hearing, Petitioner's counsel asked that the last two pages of Exhibit 6 be struck. The undersigned assented, and those two pages were not a part of the record and were not reviewed in the preparation of this Recommended Order.

COPIES FURNISHED:

Rodnick Boyd
Apartment 904
6727 South Lois Avenue
Tampa, Florida 33616-1600

Luis A. Santos, Esquire
Ford & Harrison LLP
Suite 900
101 East Kennedy Boulevard
Tampa, Florida 33602
(eServed)

Daniel K. Miles, Esquire
Ford & Harrison LLP
Suite 900
101 East Kennedy Boulevard
Tampa, Florida 33602
(eServed)

Natasha Wiederholt, CPA, GE
Pension Plan Supervisor
General Employees Retirement Fund
City of Tampa
7th Floor East
306 East Jackson Street
Tampa, Florida 33602

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.