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DIVISION OF
ADMINISTRATIVE HEARINGS

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May 2, 2017

VIA FED EX

Linzie F. Bogan, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

Re: *City of Tampa General Employees Retirement Fund v. Bobby E. Richardson*,
DOAH Case No. 16-6668

Dear Judge Bogan:

Please find enclosed a copy of the Final Order of Forfeiture entered on April 18, 2017 in the above-referenced matter.

Sincerely,

FORDHARRISON LLP



Luis A. Santos

Enclosure

WSACTIVELLP:9136864.1

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CITY OF TAMPA GENERAL EMPLOYEES' RETIREMENT FUND

FINAL ORDER OF FORFEITURE
DIVISION OF ADMINISTRATIVE HEARINGS

Employee Name: BOBBY RICHARDSON
Employee ID No.: 44531

BACKGROUND

1. On November 4, 2016, the City of Tampa General Employees' Retirement Fund ("the Board") filed a request with the State of Florida Division of Administrative Hearings ("DOAH") to have this matter assigned to an Administrative Law Judge for submission of recommended findings to the Board regarding whether Bobby Richardson's pension benefits should be forfeited pursuant to section 112.3173, Fla. Stat.

2. On December 29, 2016, Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing.

3. On February 8, 2017, Judge Bogan submitted his Recommended Order recommending that forfeiture not take place because no nexus between Mr. Richardson's conduct and his public employment was established. The Recommended Order included findings of fact and conclusions of law in support of the recommendation.

4. On February 23, 2017, independent counsel for the Board filed exceptions to the Recommended Order (attached as Exhibit A).

5. On March 21, 2017, the Board voted to reject the Recommended Order's conclusion of law which found that Fla. Stat. 112.3173(2)(e)4 requires a showing that Mr. Richardson committed the specified offense through the use or attempted use of the power, rights, or duties associated with his public employment (e.g. "nexus"). Instead, the Board was persuaded by the argument included in the exceptions filed by independent counsel—that the

clear language of section 112.3173(2)(e)4 does not state that a nexus is required when seeking forfeiture under that subsection of the forfeiture statute.

FINDINGS

6. The Board rejects the Recommended Order's conclusion of law that finds section 112.3173(2)(e)4 requires a nexus. The single case that the Recommended Order cites in support of this requirement¹ deals with section 112.3173(2)(e)7, which, unlike section 112.3173(2)(e)4, specifically states that a nexus is required under that particular subsection. The Recommended Order fails to cite to any binding or persuasive authority in support of its legal conclusion. Notably, a different ALJ previously looked at this issue and concluded that no nexus is required under the clear language of section 112.3173(2)(e)4. In *W.D. Childers v. Department of Management Services, Division of Retirement*, No. 07-2128, 2007 WL 2467619 (Fla. Div. Admin. Hrgs. Aug. 31, 2007), the employee argued that forfeiture should not take place because no nexus existed between his Chapter 838 felony and his public employment. *Id.* at *5. The ALJ found that a nexus is not required when, as here, the forfeiting body is proceeding under § 112.3173(2)(e)4. *Id.* The ALJ noted that “[h]ad the Legislature intended that the felonies arise out of the public official’s employment for purposes of forfeiture, it could have included this language in Section 112.3173(2)(e)4,” as it did with some other specified offenses under the statute. *Id.*

7. Given the clear statutory language and cited case law, the Board finds that section 112.3173(2)(e)4 does not require showing of a nexus. The Board finds that its substituted conclusion of law is more reasonable than that which was presented in the Recommended Order.

¹ *Rivera v. Bd. of Trustees of City of Tampa's Gen. Empl. Ret. Fund*, 189 So. 3d 207, 212 (Fla. 2d DCA 2016).

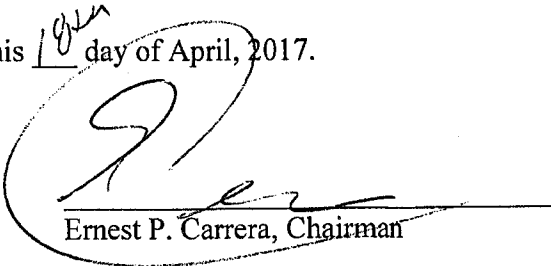
8. Naturally, the Board rejects the Recommended Order's recommendation that no forfeiture take place because a nexus was not established.

9. Based on a review of the entire record and the substituted conclusion of law, the Board finds that the City terminated Mr. Richardson's employment as a result of his admission to engaging in the offense of official misconduct found in 838.022, Fla. Stat., which falls under section 112.3173(2)(e)4 and consequently subjects him to forfeiture under section 112.3173(3). Finding otherwise would be contradictory to the competent substantial evidence found in the record.

ORDER

It is hereby ORDERED that all rights, privileges and benefits to which Bobby Richardson, or any beneficiary claiming through him, is or may be entitled from the City of Tampa General Employees' Retirement Fund are now and forever irrevocably FORFEITED, pursuant to and as required by Fla. Stat. § 112.3173.

DONE and ORDERED by The Board of Trustees for the City of Tampa General Employees' Retirement Fund, this 10th day of April, 2017.


Ernest P. Carrera, Chairman