

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MYRON ROSNER,

Petitioner,

vs.

Case No. 17-0662

DEPARTMENT OF MANAGEMENT  
SERVICES, DIVISION OF  
RETIREMENT,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on May 3, 2017, by video teleconference at sites in Miami and Tallahassee, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Benedict P. Kuehne, Esquire  
Law Office of Benedict P. Kuehne, P.A.  
100 Southeast 2nd Street, Suite 3550  
Miami, Florida 33131-2154

For Respondent: Thomas E. Wright, Esquire  
Office of the General Counsel  
Department of Management Services  
4050 Esplanade Way, Suite 160  
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STATEMENT OF THE ISSUE

Whether Petitioner forfeits his rights to benefits under the Florida Retirement System.

PRELIMINARY STATEMENT

By letter dated April 20, 2016, Department of Management Services, Division of Retirement ("Division" or "Respondent"), notified Myron Rosner ("Rosner" or "Petitioner") that his rights and benefits under the Florida Retirement System were forfeited pursuant to section 112.3173(3), Florida Statutes, because Petitioner entered a guilty plea for one count of Unlawful Compensation or Reward for Official Behavior, a second degree felony in violation of section 838.016(2), Florida Statutes.

Petitioner filed a timely Petition for Formal Administrative Hearing contesting the notice. Subsequently, the case was referred to the Division of Administrative Hearings ("DOAH"). Pursuant to notice, a final hearing proceeded as scheduled on May 3, 2017.

At the final hearing, Petitioner did not present any witnesses. Petitioner's Exhibits numbered 1 through 13 were admitted into evidence. Respondent presented the testimony of Allison Olson, benefits administrator for the Respondent. Respondent's Exhibits numbered 1 through 5 were admitted into evidence.

The parties did not order a transcript of the hearing. The parties availed themselves of the right to submit proposed recommended orders 10 days after the final hearing. Both

parties filed timely proposed recommended orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. On May 5, 2011, Petitioner was mayor of North Miami Beach, Florida.

2. During Petitioner's employment as mayor with North Miami Beach, he was a member of the Florida Retirement System.

3. On or about October 17, 2012, Petitioner was charged by Information with nine criminal counts in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

4. On February 24, 2016, pursuant to a written Plea Agreement, Rosner entered a plea of guilty to Count 1<sup>1/</sup> Unlawful Compensation [or] Reward for Official Behavior, in violation of section 838.016(2), in Eleventh Circuit case F12023663.

5. That same day in the Eleventh Circuit case F12023663, Judge Martin Bidwill issued the following orders: an Order Ratifying Terms of Plea Agreement; a Disposition Order specifying Rosner's plea to Count 1 Unlawful Compensation [or] Reward for Official Behavior; and a Finding of Guilt Order to Count 1 Compensation [or] Reward for Official Behav[ior]/Influence.

6. The October 17, 2012, Information detailed the factual basis of Rosner's plea and conviction in Count 1.<sup>2/</sup> Petitioner

illegally received unpaid campaign advertising from Martin Outdoor Media, which had a continuing contract with the City of North Miami Beach while Petitioner served as mayor. Count 1 provides in relevant part, the following:

COUNT 1

MYRON JOEL ROSNER, on or about May 5, 2011, in the County and State aforesaid, being a public servant to wit: MAYOR OF NORTH MIAMI BEACH did unlawfully, feloniously, and corruptly request, solicit, accept, or agree to accept any pecuniary or other benefit not authorized by law, to wit; UNPAID CAMPAIGN ADS, for the past, future, or future exertion of any influence upon or with any other public servant regarding any act or omission which said public servant represented as being within the official discretion of a public servant, to wit: CONTINUE ALL MARTIN OUTDOOR MEDIA CONTRACTS WITH THE CITY OF NORTH MIAMI BEACH, in violation of s. 838.016(2), Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.<sup>3/</sup>

7. Rosner was notified by certified letter dated April 20, 2016, of the Division's proposed action to forfeit his Florida Retirement System rights and benefits pursuant to sections 112.3173 and 121.091(5)(f). The notice provided the following basis for the proposed action:

. . . . as a result of your guilty plea in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, for acts committed in connection with your employment with the City of North Miami Beach. Specifically, on or about October 18, 2012, in Case Number F12-023663

(2012-CF\_023663), you were charged by information, in relevant part, with unlawful compensation or award for official behavior, a second degree felony in violation of section 838.016(2), Florida Statutes, based on conduct which occurred on or about May 5, 2011. On or about February 24, 2016, you entered a guilty plea for one count of unlawful compensation or award for official behavior, a second degree felony in violation of section 838.016(2), Florida Statutes, and adjudication of guilt was withheld.

8. By Petition dated May 9, 2016, Rosner contested the Notice and challenged the forfeiture.

#### CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016).<sup>4/</sup>

10. The Florida Retirement System is governed by the provisions of Chapter 121, Florida Statutes.

11. Respondent has the burden of proving by a preponderance of evidence that Petitioner has forfeited his Florida Retirement System benefits. Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139 (Fla. 4th DCA 1989).

12. The Florida Constitution sets forth ethical mandates to protect Floridians from any abuse of the trust placed in the public officers. Article II, Section 8(d) provides:

Section 8. Ethics in government.—A public office is a public trust. The people shall

have the right to secure and sustain that trust against abuse. To assure this right:

\* \* \*

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

13. Section 112.3173(3) provides in relevant part:

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

14. Section 112.3173(2) (a) provides in relevant part:

(a) "Conviction" and "convicted" mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or 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.

15. Section 112.3173(2) (e) defines "specified offense" and provides in relevant part:

(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 employee;

4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;

5. The committing of an impeachable offense;

6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.

16. Similarly, section 121.091(5)(f) provides in relevant

part:

(f) Any member who has been found guilty by a verdict of a jury, or by the court trying the case without a jury, of committing, aiding, or abetting any embezzlement or theft from his or her employer, bribery in connection with the employment, or other felony specified in chapter 838, except ss. 838.15 and 838.16, committed prior to retirement, or who has entered a plea of guilty or of nolo contendere to such crime, or any member whose employment is terminated by reason of the member's admitted commitment, aiding, or abetting of an embezzlement or theft from his or her employer, bribery, or other felony specified

in chapter 838, except ss. 838.15 and 838.16, shall forfeit all rights and benefits under this chapter, except the return of his or her accumulated contributions as of the date of termination.

17. In this matter, Rosner pled guilty to a felony Count 1 Unlawful Compensation [or] Reward for Official Behavior in violation of section 838.016(2) in the Eleventh Circuit case F12023663. Such a "plea of guilty" constitutes a conviction pursuant to section 112.3173(2)(a) and meets the criteria for a specified offense under section 112.3173(e)4. Sections 112.3173 and 121.091(5)(f), both require forfeiture for Petitioner's felony conviction of Unlawful Compensation [or] Reward for Official Behavior in violation of section 838.016(2). Therefore, Petitioner's rights and benefits must be forfeited under the Florida Retirement System.

#### RECOMMENDATION

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

RECOMMENDED that the Department of Management Services, Division of Retirement enter a final order finding that Petitioner was a public employee convicted of a specified offense committed prior to retirement pursuant to section 112.3173, Florida Statutes, and directing the forfeiture of his Florida Retirement System rights and benefits.



DONE AND ENTERED this 15th day of June, 2017, in  
Tallahassee, Leon County, Florida.

*June C. McKinney*

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JUNE C. MCKINNEY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of June, 2017.

ENDNOTES

<sup>1/</sup> The undersigned rejects Petitioner's assertion that no count in the Information was identified as a count to which Petitioner pled guilty. On the contrary, Respondent's Exhibits 4, Disposition Order, and 5, Finding of Guilt Order, list "Count 1" clearly and match the plea agreement that identifies section 838.016(2) as the felony as well as the Information identifies 1 and also mirrors the statutory title Unlawful Compensation or Reward for Official Behavior. Additionally, the same crime name is also recorded and identified on each of Respondent's Exhibits except the Order Ratifying Terms of Plea Agreement.

<sup>2/</sup> The undersigned rejects Petitioner's contention that no factual basis was presented at hearing to support Petitioner's plea. Although a plea colloquy transcript was not provided, the non-hearsay evidence of the certified copy of the Information detailed the factual basis for Count 1. Respondent's Exhibit 4, Disposition Order, specified that Rosner pled guilty to Count 1 of the Information Unlawful Compensation [or] Reward for Official Behavior and the certified copy of the Finding of Guilt Order provided that the defendant "has been found guilty of the charge of Count 1 Crime Compensation [or] Reward for Official Behav[ior]. Since no testimony was presented to contradict such

evidence, the undersigned finds such evidence persuasive to provide the proof for the factual basis.

<sup>3/</sup> Respondent's Exhibit 1, the certified copy of the Information in the Eleventh Circuit case F12023663, detailed each of the nine counts Petitioner was originally charged with including Count 1 to which Petitioner entered a plea of guilty.

<sup>4/</sup> All references are to Florida Statutes 2016 unless otherwise stated.

COPIES FURNISHED:

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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.