

STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

MYRON ROSNER,

Petitioner,

Final Order No. DMS – 18-0002

vs.

DOAH Case No. 17-0662

DMS No.: 16-34062

DEPARTMENT OF MANAGEMENT SERVICES,  
DIVISION OF RETIREMENT

Respondent.

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**FINAL ORDER**

This cause came before the Secretary for the purpose of the issuance of a final agency order. The Administrative Law Judge, June C. McKinney, assigned by the Division of Administrative Hearings (DOAH) in the above styled case, entered a Recommended Order on June 15th, 2017, attached hereto and incorporated herein as "Exhibit A."

Pursuant to Uniform Rules, Section 28-106.217, Florida Administrative Code, exceptions may be filed within 15 days of the date of the entry of the Recommended Order. The Petitioner has filed three exceptions.

**APPEARANCES**

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

For Respondent: Thomas E. Wright  
Asst. General Counsel  
Department of Management Services  
4050 Esplanade Way, Suite 160  
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## ISSUE

The issue in this case is to determine whether Petitioner has forfeited his rights under the Florida Retirement System (FRS) as a result of his plea and conviction for Unlawful Compensation.

## PRELIMINARY STATEMENT

On April 20th, 2016, Department of Management Services, Division of Retirement (Respondent) issued a final agency action letter to Petitioner. The letter informed Myron Rosner that he had forfeited all rights under the FRS, other than the refund of his personal contributions, as a result of his plea and conviction for one count of Unlawful Compensation.

The Petitioner timely filed a petition for hearing and the case was referred to the Division of Administrative Hearings on January 31st, 2017. A Final Hearing was held by video teleconference between Miami and Tallahassee, Florida on May 3rd, 2017.

At the final hearing Mr. Rosner did not present any testimony, but did submit 13 exhibits which were admitted. Respondent offered the testimony of Allison Olson, Benefits Administrator at the Division of Retirement. Respondent offered five exhibits which were admitted.

Both parties submitted Proposed Recommended Orders. A Recommended Order was issued June 15th, 2017, which is incorporated by reference into this Final Order. Exceptions to the Recommended Order have been filed by Petitioner.

## STANDARD OF REVIEW

Subsection 120.57(1)(l), Florida Statutes (2015), provides that an agency reviewing a Division of Administrative Hearings (DOAH) recommended order may not reject or modify the findings of fact of an administrative law judge, "unless the agency

first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." Florida law defines "competent substantial evidence" as "such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla., 1957). Furthermore, an agency may not create or add to findings of fact because an agency is not the trier of fact. See Friends of Children v. Department of Health and Rehabilitative Services, 504 So. 2d 1345, 1347, 1348 (Fla. 1st DCA, 1987).

Subsection 120.57(1)(l), Florida Statutes (2015), provides that an agency may reject or modify an administrative law judge's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction" whenever the agency's interpretations are "as or more reasonable" than the interpretation made by the Administrative Law Judge. Florida courts have consistently applied this subsection's "substantive jurisdiction limitation" to prohibit an agency from reviewing conclusions of law that are based upon the Administrative Law Judge's application of legal concepts such as collateral estoppel and hearsay; but not from reviewing conclusions of law containing the Administrative Law Judge's interpretation of a statute or rule over which the Legislature has provided the agency administrative authority. See Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So. 2d 1140, 1141-42 (Fla. 2d DCA, 2001); Barfield v. Department of Health, 805 So. 2d 1008, 1011 (Fla. 1st DCA, 2001). Further, an agency's interpretation of the statutes and rules that it administers is entitled to great weight, even if it is not the sole possible interpretation, the most logical interpretation, or even the

most desirable interpretation. See State Board of Optometry v. Florida Society of Ophthalmology, 538 So.2d 878, 884 (Fla. 1st DCA, 1998).

#### EXCEPTIONS

Petitioner's Exception 1 to the Recommended Order is hereby rejected. Although Petitioner is correct that Petitioner entered a plea to "one felony count" of Unlawful Compensation, as opposed to count one, both counts charged allege the connection to his employment required for forfeiture of benefits under the FRS.

Petitioner's Exception 2 to the Recommended Order is hereby rejected. Both counts of Unlawful Compensation contained in the Information (Respondent's Exhibit 1) contain factual allegations relating the charge to Petitioner's employment as Mayor of North Miami Beach, Florida.

Petitioner's Exception 3 to the Recommended Order is hereby rejected. The evidence adduced at the Final Hearing meets the criteria for forfeiture of benefits as Petitioner entered a plea of guilty to one count of Unlawful Compensation in violation of section 838.016(2), Florida Statutes, in violation of section 112.3173(2)(e)4., Florida Statutes.

#### FINDINGS OF FACT

The Department of Management Services accepts the Findings of Fact set forth in the Recommended Order, which are incorporated by reference.

#### CONCLUSIONS OF LAW

The Department of Management Services accepts the Conclusions of Law set forth in the Recommended Order, which are incorporated herein by reference.

ORDER

Based on the foregoing, it is hereby ORDERED AND DIRECTED that the Petitioner has hereby forfeited all rights under the FRS, except the return of his personal contributions.

DONE AND ORDERED this 3 day of January 2018, in Tallahassee, Leon County, Florida.



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Erin Rock  
Secretary  
Department of Management Services  
4050 Esplanade Way  
Tallahassee, Fl. 32399-0950  
(850) 488-2786

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 ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF MANAGEMENT SERVICES, 4050 ESPLANADE WAY, SUITE 160, TALLAHASSEE, FLORIDA 32399-0950, AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

I HEREBY CERTIFY that this Final Order was filed in the official records of the Department of Management Services, and copies distributed by U.S. Mail to the parties below, on the 3rd day of January, 2018.

Julie Mallick  
Diane Wint Deputy Agency Clerk  
Agency Clerk  
Department of Management Services

Copies Furnished To:

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