

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF TAMPA GENERAL
EMPLOYEES RETIREMENT FUND,

Petitioner,

vs.

Case No. 17-2484

DWIGHT RIVERA,

Respondent.

_____ /

RECOMMENDED ORDER

D. R. Alexander, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing in this matter in Tampa, Florida, on June 26, 2017.

APPEARANCES

For Petitioner: Luis A. Santos, Esquire
Ford & Harrison LLP
Suite 900
101 East Kennedy Boulevard
Tampa, Florida 33602-5133

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue is whether, pursuant to section 112.3173, Florida Statutes, Respondent has forfeited his rights and benefits under the City of Tampa General Employees Retirement Plan (Fund).

PRELIMINARY STATEMENT

By letter dated October 21, 2013, the Fund notified Respondent, a former employee of the City of Tampa (City) and a vested participant in the Fund, that he had forfeited his rights and benefits under the Fund by reason of his admitted violation of the City's Personnel Manual in 2011. On April 24, 2017, the matter was referred by the Fund to DOAH to conduct a formal hearing.

At the final hearing, the Fund presented the testimony of two witnesses. Fund Exhibits 8 through 14 were accepted in evidence. Respondent did not appear at the hearing.

A one-volume Transcript of the hearing has been prepared. Proposed Findings of Fact and Conclusions of Law were filed by the Fund and have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Fund is a public retirement system as defined by Florida law and is charged with administering and managing a pension fund for employees of the City.

2. Respondent was employed by the City from February 2, 2000, until April 18, 2012, when he was terminated. He worked in various positions, most recently as Acting Lead Specialty Equipment Operator in the Solid Waste and Environmental Program Management/Quality Control program.

3. By reason of his employment with the City, Respondent was enrolled in the pension plan administered by the Fund and was a vested participant.

4. On April 18, 2012, the City terminated Respondent based on a violation of three items in the City's Personnel Manual: neglect of duty by using a City vehicle for an unauthorized purpose; moral turpitude involving the violation of the City Code relating to use of public property; and moral turpitude by engaging in an illegal enterprise. The events leading to his termination are described below.

5. On July 11, 2011, City of Tampa Detective DeGagne was investigating environmental crimes (illegal dumping) in the East Tampa area. After being alerted that illegal dumping had occurred on a vacant lot in the Highland Pines neighborhood, and the debris was immediately picked up by a City vehicle, Detective DeGagne located the City truck involved. Because the truck was under the supervision of Respondent, Detective DeGagne spoke to Respondent who initially explained that code enforcement had told him to pick up the debris. Because Respondent could not identify anyone in code enforcement who gave him that instruction, he was arrested.

6. During a recorded interview with Detective DeGagne later that day, Respondent admitted that on at least two occasions, he was paid \$40.00 to pick up the illegally-dumped

debris as a favor to a friend. This conduct is a violation of section 838.016(1), which makes it unlawful for a public employee to receive compensation for performing an illicit act.

7. Based on his admission of guilt, the City terminated Respondent effective April 18, 2012.

CONCLUSIONS OF LAW

8. By contract with Respondent, DOAH has agreed, on request of the Fund, to assign Administrative Law Judges to conduct hearings and issue recommended orders in cases of this type.

9. In this proceeding, Petitioner asserts that Respondent has forfeited his rights and benefits under the Fund pursuant to section 112.3173 by reason of his admission to accepting money for performing an illegal act. The City bears the burden of proving by a preponderance of the evidence that this allegation is true. Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139, 142 (Fla. 4th DCA 1989); .

10. Respondent is a "public employee" within the meaning of the law. § 112.3173(2)(c), Fla. Stat. He is also a member of the City's retirement system. As such, Respondent is subject to the pension forfeiture provisions in section 112.3173(3). That provision provides as follows:

(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. (emphasis added).

11. The forfeiture statute defines a "specified offense" to include any felony under chapter 838, except two provisions not relevant here. See § 112.3173(2)(e)4., Fla. Stat.

12. Unlawful compensation or reward for official behavior, also known as bribery, is a felony covered by chapter 838. Section 838.016(1) makes it unlawful for a public employee to accept any money not authorized by law for the performance of an act that violates his public duty.

13. The evidence clearly establishes that Respondent violated section 838.016(1) by accepting money from a third party in exchange for using his position as the Acting Lead Specialty Equipment Operator for the City to transport and dispose of illegally-dumped debris. Therefore, Respondent has forfeited his retirement rights and benefits. § 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 in the pension fund.

DONE AND ENTERED this 28th day of July, 2017, in Tallahassee, Leon County, Florida.

D.R. Alexander

D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of July, 2017.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.