

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF TAMPA GENERAL EMPLOYEES
RETIREMENT FUND,

Petitioner,

vs.

Case No. 19-2747

DEIRDRE WILLIAMS,

Respondent.

_____ /

RECOMMENDED ORDER

On July 31, 2019, Administrative Law Judge Hetal Desai of conducted a final hearing by video teleconference between sites in Tampa and Tallahassee, Florida.

APPEARANCES

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

For Respondent: Deirdre Williams, pro se
Apartment B
2426 East Harper Street
Tampa, Florida 33605

STATEMENT OF THE ISSUE

Whether Respondent's rights and benefits under the City of Tampa General Employees' Retirement Fund (the Fund) are required to be forfeited pursuant to section 112.3173, Florida Statutes (2018).^{1/}

PRELIMINARY STATEMENT

On March 12, 2019, the City of Tampa (City) issued a Notice of Disciplinary Action to Respondent, Deirdre Williams (Respondent), dismissing her from her employment for providing false and misleading information during an investigation of City funds, in violation of sections B28.2A(3)(d)(1) (relating to falsification of information related to employment), and B28.2A(3)(d)(11) (relating to theft or unauthorized removal or use of City property) of the City's Personnel Manual. Pursuant to its "Policies and Procedures," on May 22, 2019, the Fund referred the matter to the Division of Administrative Hearings and requested it be assigned to an administrative law judge to conduct proceedings and submit recommended findings pursuant to sections 120.57 and 112.3173, Florida Statutes, regarding the potential forfeiture of Respondent's pension benefits.

A pre-hearing telephone conference was conducted on July 19, 2019, at which the burden of proof, presentation of evidence, and general procedural issues regarding the final hearing were addressed.

At the final hearing, Petitioner presented the testimony of Respondent, Michelle Keeler (a City Parks and Recreation employee), and Raymond Rodriguez (a City Human Resources employee). Petitioner's Exhibits 1 through 4 were admitted in

evidence. Respondent presented no witnesses and offered no evidence.

On August 12, 2019, the Transcript of the hearing was filed with DOAH. That same day, an Amended Notice of Filing Transcript was issued informing the parties that they were to submit proposed recommended orders (PROs) no later than August 22, 2019. Petitioner timely filed its PRO, which has been considered in the preparation of this Recommended Order. Respondent did not file a PRO.

FINDINGS OF FACT

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

2. Respondent was an employee of the City's Parks and Recreation Department. Although she began working as a seasonal employee during the summers when she was in college, Respondent began in a permanent capacity as a recreation leader in October 2006.

3. As part of her duties, Respondent was responsible for working in the City's afterschool and cheerleading program.

4. In Fall 2018, Respondent was responsible for ordering the uniforms for the participants in the cheerleading program. The money for the uniforms was provided to the City by the participants' parents. Initially, the money was collected by a

parent representative who converted it to a pre-paid purchasing card in the amount of \$762.00, and submitted the card to Respondent. Respondent was to use the card to order the uniforms for the cheerleaders, and the uniforms were to be delivered to the City's Parks and Recreation office.

5. Michelle Keeler, Respondent's supervisor, noticed the uniforms had not arrived at the expected date. On October 26, 2018, she questioned Respondent about the delay. Respondent initially told Ms. Keeler there had been a mistake by the delivery company. At this point, Ms. Keeler, who had supervised Respondent since Respondent had started working at the City, had no reason to suspect Respondent was lying.

6. Over the next few weeks, Ms. Keeler periodically asked Respondent about the status of the cheerleading uniforms and was told there was a problem with the delivery.

7. By mid-November, Ms. Keeler became suspicious and again asked Respondent about the uniforms. Respondent indicated the uniforms had been delivered and left in the office, but were now missing. Respondent suggested to Ms. Keeler that the cleaning crew may have thrown out the box of uniforms.

8. On November 26, 2018, Ms. Keeler called the cheerleading uniform company and discovered no uniforms had been ordered for delivery to the City's Parks and Recreation Department.

9. The same day, Ms. Keeler confronted Respondent about the uniforms. Respondent insisted she had ordered them, but could not produce any records to show that she had made the order. She was also questioned by another Parks and Recreation supervisor, and gave the same response.

10. Upon further interrogation, Respondent changed her story, admitting she had not actually ordered the uniforms. She claimed the card had been stolen from her.

11. Respondent later provided a written statement to the City, in which Respondent claimed she still had the pre-paid card in her possession, but that the card no longer had any funds.

12. Eventually, Respondent admitted to City staff that she no longer had the funds.

13. On November 30, 2018, the City placed Respondent on suspension, pending an investigation. The City considered the funds collected for the purchase of the uniforms to be City property. Ultimately, the City ordered the missing uniforms and covered the cost.

14. Based on the investigation, the City found Respondent to be in violation of section B28.2A(3)(d)(1) of the City's Personnel Manual concerning "Moral Turpitude," prohibiting "[f]alsification, misrepresentation, or material omission of statements, testimony, or any document or record completed in the

course of employment or in obtaining employment, including group insurance claims.”

15. The City also found Respondent had violated section B28.2A(3)(d)(11) of the Personnel Manual prohibiting theft or unauthorized removal or use of City property.

16. As a result of its investigation and the violations, the City terminated Respondent on March 12, 2019.

17. At the hearing, Respondent admitted she collected the money for the uniforms, misled City staff about the missing uniforms, and was terminated for theft.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties to, and subject matter of, this proceeding, pursuant to sections 120.569, 120.57(1), and 112.3173(5), Florida Statutes.

19. The Fund initiated this action to determine whether Respondent’s pension benefits must be forfeited under section 112.3173(3) based on her admission of a specified offense.

20. The Fund has the burden of proof, by a preponderance of the evidence, that Respondent must forfeit her retirement benefits. See Rivera v. Bd. of Trs. of Tampa’s Gen Empl. Ret. Fund, 189 So. 3d 207, 210 (Fla. 2d DCA 2016); § 120.57(1)(j), Fla. Stat. Preponderance of the evidence is defined as “the greater weight of the evidence,” or evidence that “more likely

than not" tends to prove a certain proposition. S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC, 139 So. 3d 869, 872 (Fla. 2014).

21. Article II, section 8(d) of the Florida Constitution provides:

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.

22. Section 112.3173(3) is the operative forfeiture law, implementing the constitutional provision. Rivera, 189 So. 3d at 210; Simcox v. City of Hollywood Police Officers' Ret. Sys., 988 So. 2d 731, 733 (Fla. 4th DCA 2008). This section provides:

Any public officer or employee . . . 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. (emphasis added).

23. Applying the statutory framework to this matter, Petitioner is required to prove: (1) Respondent was a public employee; (2) Respondent admitted to committing a "specified offense" under section 112.3173(2)(e); and (3) Respondent's employment was terminated because of her admission. See Rivera, 189 So. 3d at 210.

24. As an initial matter, there is no dispute Respondent was a public employee.

25. Second, section 112.3173(2)(e) defines "specified offense" to include theft: "[t]he committing, aiding, or abetting of any theft by a public officer or employee from his or her employer." § 112.3173(2), Fla. Stat.; see also Newmans v. Div. of Ret., 701 So. 2d 573, 574 (Fla. 1st DCA 1997) (a "specified offense" for purposes of forfeiture includes theft). Although Respondent did not explicitly admit to committing a theft, during the City's investigation and at the final hearing Respondent admitted she had misled Ms. Keeler and no longer had the funds on the card. This constitutes an admission. See Hames v. City of Miami Firefighters' & Police Officers' Tr., 980 So. 2d 1112, 1117 (Fla. 3d DCA 2008) (where respondent admitted to giving a false sworn statement to investigators to hide his fellow officers' actions, respondent breached the public trust in violation of a "specified offense" requiring the forfeiture of retirement benefits); Hayward v. State, 24 So. 3d 17, 39 (Fla. 2009) ("Evidence of conduct or speech of the accused which demonstrates a consciousness of guilt . . . supplies the basis for an inference that the accused is guilty of the offense.").

26. Finally, the City terminated Respondent based on its investigation and on Respondent's admission of her wrongful conduct. As such, forfeiture is appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, City of Tampa General Employees' Retirement Fund enter a final order determining Respondent, Deirdre Williams, has forfeited all of her rights and benefits in the pension plan administered by the Fund, except to the extent of Respondent's accumulated contributions, if any, as of March 12, 2019.

DONE AND ENTERED this 29th day of August, 2019, in Tallahassee, Leon County, Florida.



HETAL DESAI
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of August, 2019.

ENDNOTE

^{1/} References to Florida Statutes are to the 2018 version, unless otherwise noted.

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.