

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

LESTER BOHNENBLUST,

Petitioner,

vs.

Case No. 21-2476

MIAMI POLICE RELIEF AND PENSION
FUND,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted by video conference via Zoom on November 1, 2021, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Rawsi Williams, Esquire
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 Miami, Florida 33131

For Respondent: Gregg Rossman, Esquire
 Rossman Legal
 6840 Griffin Road
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STATEMENT OF THE ISSUE

Whether Petitioner Lester Bohnenblust (“Bohnenblust” or “Petitioner”) was convicted of a specified offense requiring forfeiture of his pension rights and benefits pursuant to section 112.3173, Florida Statutes.

PRELIMINARY STATEMENT

On July 17, 2019, the Board of Trustees of Respondent Miami Police Relief and Pension Fund (“Fund” or “Respondent”) notified Petitioner by a Notice of Proposed Agency Action (“Notice”) of its intention to terminate and forfeit his rights, privileges, and retirement benefits from the pension fund to which he “may be entitled to or as previously received from the Fund pursuant to section 112.3173.”

Petitioner filed a timely Petition for Formal Administrative Hearing in Response to Respondent’s Notice of Proposed Forfeiture of Retirement Benefits (“Petition”). Subsequently, the Petition was referred to DOAH. The case was assigned to the undersigned administrative law judge.

The case was noticed for hearing on October 13, 2021. The parties stipulated to continue the final hearing. Pursuant to notice, the final hearing proceeded as rescheduled on November 1, 2021.

The parties filed a Joint Pre-hearing Stipulation in which they identified stipulated facts for which no further proof would be necessary, and the relevant facts stipulated therein are accepted and made part of the Findings of Fact below. The parties stipulated that no minor 13 years of age or under was involved in the instant case as alleged in the Notice.

At the final hearing, the undersigned took official notice of section 397.575, Florida Statutes, the Marchman Act. Petitioner presented three witnesses: Lizbeth Martin; Dennis Sanchez; and Bohnenblust. Petitioner’s Exhibits A through G were received into evidence. Respondent presented the testimony of three witnesses: Lorena Rodriguez; James Nicholson; and Bohnenblust. Respondent’s Exhibits A through C were received into evidence.

At the close of the hearing, the parties stipulated that their proposed recommended orders would be filed within 20 days of the filing of the transcript at DOAH. The proceeding was recorded and transcribed. On December 1, 2021, the Transcript was filed at DOAH. Petitioner requested an unopposed extension to file the proposed recommended order, which the undersigned granted. Both parties filed proposed recommended orders, which have been considered in preparation of this Recommended Order.

Unless otherwise indicated, all statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. Bohnenblust was employed with the City of Miami police department for approximately 21 years and last held the job of a police officer.

2. While employed with the City of Miami, Bohnenblust qualified for pension benefits under the Fund. The Fund is a defined benefit plan.

3. On Wednesday, May 23, 2018, Bohnenblust was scheduled to work in uniform, and he was assigned to road patrol in the Brickell area, south district, on the day shift from 6:00 a.m. to 4:00 p.m.

4. That same morning, Bohnenblust was deposed at the State Attorney's Office. Petitioner entered a signal 8 on his daily activity report,¹ indicating he was attending court.

5. That same day, Dennis Sanchez ("Mr. Sanchez"), Petitioner's brother-in-law, took his 17-year-old daughter, Emily Sanchez ("Ms. Sanchez" or "niece")² to Jackson Memorial Healthcare ("Jackson") because he believed she was in crisis and wanted to commit suicide.

¹ Petitioner had to input each work location in his daily activity report during his patrol shift.

² Ms. Sanchez is Petitioner's niece.

6. Ms. Sanchez has a drug history and had been in the Jackson facility the previous weekend and discharged.

7. On May 23, 2018, when Mr. Sanchez brought Ms. Sanchez back to Jackson, Ms. Sanchez was admitted for evaluation at noon. After her evaluation, it was determined that she did not meet the criteria to be recommitted to the inpatient facility and she was discharged.

8. When Bohnenblust finished the deposition, he received a personal call from Lizbeth Martin (“Martin”), his sister-in-law, the mother of his niece, Ms. Sanchez. Martin requested Petitioner go to Jackson to assist Mr. Sanchez in understanding his niece’s discharge paperwork that Jackson had provided. The discharge paperwork was written in English. Mr. Sanchez’s primary language is Spanish.

9. After the conversation, Bohnenblust went to Jackson at Martin’s request to help Mr. Sanchez understand the discharge paperwork instead of returning to his district to his work duties on his shift.

10. Petitioner asked the sergeant attending the deposition, not his immediate supervisor, to go to Jackson.

11. Upon arrival at Jackson around 1:59 p.m., Petitioner, in his official City of Miami police uniform with his badge, went to the reception area and told them that he needed to go to the mental health unit. The reception area buzzed him in because he was in a police uniform.

12. Petitioner went to the back of the facility, contacted Mr. Sanchez, and read his niece’s discharge paperwork. The discharge paperwork Petitioner reviewed stated that his niece had been admitted that same day at noon; that there was a minor evaluation; instructed Ms. Sanchez to see a primary care physician within one or two days; and scheduled Ms. Sanchez for an outpatient appointment on May 28, 2018, at 9:00 a.m.

13. Around the same time, James Nicholson (“Nicholson”), the nurse manager, was in a staff meeting. The staff reported to him that Marie Joseph

(“Joseph”), charge nurse, might need help. Nicholson looked up and saw Petitioner, a uniformed police officer, and Joseph.

14. Bohnenblust was able to speak to the charge nurse about his niece and was informed his niece had been discharged from Jackson that day.

15. Bohnenblust did not have any interaction with his niece that day. He only observed her through the glass and saw her pacing and screaming.

16. Bohnenblust decided he wanted to recommit his niece to Jackson involuntarily and would do so as a police officer under the Marchman Act.³

17. Bohnenblust left the facility to return to his police car in the Jackson parking lot. He took approximately 20 minutes to fill out a Marchman Act form to have his niece committed to Jackson.

18. Bohnenblust completed the biographical information on the Marchman Act form. In the justification section on the form, requesting “circumstances under which the person was taken into custody, and which support this opinion,” Petitioner provided the following:

Consumer has lost all control in regards to substance abuse (Marijuana) and because of such co-occurring mental health disorder has caused the Consumer to attempt to kill herself latest episode on Saturday (by walking in and out of traffic endangering herself and others. Consumer is in dire need of professional assistance. Consumer when gi[v]en prescriptions has refused to take her medications.

Petitioner called in and requested a case number for the form, printed the form, and returned to Jackson's mental health unit to commit his niece.

19. Around 2:32 p.m., Bohnenblust also changed his daily activity report from a signal 8, court, to signal 56, Baker Act.

20. When Nicholson’s meeting ended, he went to see what was going on.

21. Petitioner was no longer present.

³ The Marchman Act provides police officers a way to initiate an individual with a substance abuse disorder to be involuntarily committed to a treatment facility for evaluation, stabilization, and treatment.

22. Soon thereafter, Nicholson observed Bohnenblust back in the facility waving paper in his hand and pointing to staff to buzz him in. After Petitioner was let in, he went to address Joseph, accompanied by Mr. Sanchez and Ms. Sanchez, in the unauthorized in-patient side of the facility. This was a secured area where only authorized personnel were allowed.

23. Upon seeing the policeman, father, and daughter in the unauthorized in-patient side of the unit, Nicholson approached Petitioner, Mr. Sanchez, and Ms. Sanchez and told them they needed to go outside, while dressed in a suit and tie with his identification badge clipped to his jacket.⁴

24. Nicholson was enforcing the rules that prohibited unauthorized individuals from being on the in-patient side of the facility.

25. Mr. Sanchez and Ms. Sanchez headed outside after being instructed to do so by Nicholson.

26. Bohnenblust did not leave and tried to give Nicholson the paperwork. Nicholson repeated to him to leave.

27. Bohnenblust demanded Nicholson's identification. At some point, Bohnenblust walked up behind Nicholson and grabbed him by the collar of his suit jacket, moving Nicholson forward and demanding his identification.

28. Bohnenblust continued to use force to hold Nicholson by the back of his suit jacket, and Petitioner and Nicholson got into a verbal dispute. Nicholson began yelling for help hysterically. Bohnenblust demanded Nicholson provide him his identification several times. The identification badge was clipped to Nicholson's suit jacket and turned around backward.

29. While holding Nicholson by his collar, Petitioner knocked Nicholson on the ground, and his knee was bruised. Ultimately, Petitioner told Nicholson he was placing him under arrest, and he called for officer backup.

⁴ Mr. Sanchez testified he assumed that Nicholson was the manager the way he was dressed. The undersigned fails to find Petitioner's testimony credible that he did not know Nicholson was a Jackson employee when he was in a suit and tie and in the secured area of the facility.

30. Nicholson's screams caused employees to come see what was occurring.

31. Around 2:50 p.m., approximately four officers arrived at Jackson to assist Bohnenblust and placed Nicholson in handcuffs. The officers detained Nicholson, and he was taken to a room for questioning.

32. Nicholson was separated from Petitioner, and he remained in handcuffs for about 45 minutes before being released.

33. After the incident between Bohnenblust and Nicholson, internal affairs of the City of Miami conducted an on-location investigation at Jackson while Nicholson was still detained.

34. Lorena Rodriguez ("Rodriguez") oversaw the internal affairs investigation. She collected the statements from the various witnesses and viewed Jackson's video recordings from the time when Bohnenblust arrived at Jackson, including the incident with Nicholson.

35. Rodriguez interviewed Nicholson as part of the internal affairs investigation. Nicholson was allowed to leave the facility around 9:00 p.m. His work shift had officially ended around 6:30 p.m.

36. After Nicholson was released, he was not charged with any criminal offenses.

37. Petitioner was not allowed to charge Nicholson with any crime.

38. Ms. Sanchez was not committed to Jackson under the Marchman Act.

39. On or about December 13, 2018, Bohnenblust was criminally charged by Information with felony battery on a person 65 year[s] of age or older and felony false imprisonment in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in Case No. F18-24682.

40. The Information for Case No. F18-24682 detailed the charges and alleged, in relevant part, the following:

COUNT 1

LESTER A BOHNENBLUST, on or about May 23, 2018, in the County and State aforesaid, did

unlawfully, feloniously, and knowingly commit battery upon James Nicholson, a person sixty-five (65) years of age or older, by actually and intentionally touching or striking said person against said person's will and/or causing bodily harm, to wit: bruise to left knee, in violation of s. 784.03 and s. 784.08(2)(c), 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.

COUNT 2

And the aforesaid Assistant State Attorney, under oath, further information makes LESTER A BOHNENBLUST, on or about May 23, 2018, in the County and State aforesaid, without lawful authority did then and there forcibly by threat, or secretly confine, abduct, imprison or restrain another person, to wit: James Nicholson, against that person's will. In violation of s. 787.02(2), Fla. Stat., contrary to the form of the Statutes in such cases made and provided, and against the peace and dignity of the State of Florida.

41. On or about April 2, 2019, the City of Miami terminated Bohnenblust's employment as the disciplinary action imposed solely for his actions regarding the incident with Nicholson at Jackson on May 23, 2018.

42. On or about June 7, 2019, Bohnenblust went to a jury trial on the two felony charges and was found guilty and convicted of both counts, felony battery on a person 65 years of age or older and false imprisonment.

43. On July 26, 2019, the judge adjudicated Petitioner guilty on the two counts, and sentenced him to 45 days in Dade County jail and three years' probation for his convictions.

44. On July 17, 2019, the Board of Trustees of the Fund notified Petitioner of its intention to terminate and forfeit his rights, privileges, and retirement benefits to which he had been entitled.

ULTIMATE FINDINGS OF FACT

45. At hearing, Martin testified she called Bohnenblust requesting that he go to Jackson to help Mr. Sanchez understand Ms. Sanchez's discharge paperwork. The evidence shows that Bohnenblust reported to Jackson in a personal capacity to help his brother-in-law read his niece's discharge paperwork.

46. However, Bohnenblust changed his role while at Jackson. He began acting in his official capacity as a police officer on duty when he decided to take it upon himself to attempt to take the steps to have his niece involuntarily recommitted by the Marchman Act process. Bohnenblust changed his signal to 56, requested a case number for his niece's Marchman Act paperwork, and filled out the Marchman Act form.

47. Bohnenblust testified that he was "on duty" and admitted, at hearing, that he was only admitted to the mental health unit at Jackson because he was a police officer in uniform with a badge.

48. Petitioner also explained, at hearing, that he was aware that the Marchman Act required a serious drug problem and that the substance abuse had to be so severe that it created a danger. He testified that he was concerned about his niece's possible suicide.

49. Petitioner's testimony that his experience; Marchman Act certification and training; personal knowledge of his niece's drug history; observations of his niece through the glass door pacing and yelling; the conversation with her father about her wanting to kill herself; and her marijuana drug use made him determine that he should involuntarily commit her under the Marchman Act is not found to be persuasive or credible.

50. Instead, the following competent substantial evidence in the record demonstrates that Petitioner attempted to use his power as a police officer to accomplish what he wanted for his niece, involuntary commitment, contrary to Jackson's medical decision to discharge her: Bohnenblust's testimony at hearing that he wanted to commit his niece even though he could not

remember the last time he had seen her; Petitioner did not even interact with his niece on the day of the incident; Petitioner's full knowledge that his niece had been evaluated that day because he reviewed her Jackson discharge paperwork that specifically stated she had been "admitted" at noon, had a minor "evaluation," and was to schedule a follow up with her primary care physician in one or two days, and had a follow-up appointment five days later on May 28, 2018; and Bohnenblust's admission at hearing that he spoke to the charge nurse who informed him that his niece had been discharged.

51. Additionally, the evidence confirms that there was no dire need of professional services as stated in the Marchman Act form Bohnenblust created on the date of the incident. Petitioner's timeline for Ms. Sanchez's circumstances for the involuntary commitment in the Marchman Act paperwork stated that his niece's latest attempt "to kill herself ... [was] on Saturday," four days prior. Moreover, she had already had an evaluation that same day, and Jackson discharged her.

52. Petitioner attempted to use his powers as a police officer to circumvent Jackson's discharge decision, of which he was fully aware. Also, Petitioner tried to get an involuntary commitment for his niece with the knowledge of the medical discharge.

53. To that end, Bohnenblust committed felony crimes while trying to get his niece involuntarily committed by the Marchman Act. Petitioner's actions as alleged in the Information formed the basis for the felony convictions of sections 784.03 and 784.08(2)(c), Florida Statutes, battery upon a person over 65 years of age or older, and section 787.02(2), Florida Statutes, false imprisonment, in Case No. F18-24682.

54. Each felony conviction occurred during, and was related to, Petitioner's employment with the City of Miami.

CONCLUSIONS OF LAW

55. DOAH has jurisdiction over the subject matter and the parties to this action pursuant to sections 120.57(1) and 112.3173(5), Florida Statutes.

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

57. Article II, section 8(d) of the Florida Constitution, sets forth the ethical standards for public officers and employees in government and provides, in pertinent part:

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.

58. The Florida Legislature enacted section 112.3173 and entitled it “Felonies involving breach of public trust and other specified offenses by public officers and employees; forfeiture of retirement benefits” to set forth the parameters for forfeiture.

59. Because forfeitures are not favored in Florida, the pension forfeiture statute should be strictly construed. *Williams v. Christian*, 335 So. 2d 358, 361 (Fla. 1st DCA 1976).

60. Section 112.3173(3) defines forfeiture and 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.

61. Section 112.3173(2)(a) provides that “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.

62. Section 112.3173(2)(e) sets forth the specified offenses mandated for a forfeiture of retirement and provides, in relevant part:

(2) (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; or

7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

63. The record in this case is void of evidence that Petitioner violated any of the specified offenses set forth in subparagraphs 1. through 5. or 7. of section 112.3173(2)(e). If Bohnenblust is to be subjected to the forfeiture of his pension, his offense must be found to meet the conditions of the "catch-all" category set forth in subparagraph 6. of section 112.3173(2)(e). *Jenne v. Dep't of Mgmt. Servs., Div. of Ret.*, 36 So. 3d 738, 742 (Fla. 1st DCA 2010); *Simcox v. City of Hollywood Police Officers' Ret. Sys.*, 988 So. 2d 731, 733 (Fla. 4th 2008).

64. To constitute a "specified offense" under section 112.3173(2)(e)6., the offense in question must meet all the following elements:

- (a) It is a felony;
- (b) It was committed by a public employee;
- (c) It was done willfully and with intent to defraud the public or the employee's public employer of the right to receive the faithful performance of the employee's duty;
- (d) It was done to obtain a profit, gain or advantage for the employee or some other person; and
- (e) It was done through the use or attempted use of the power, rights, privileges, duties, or position of his public employment.

Bollone v. Dep't of Mgmt. Servs., Div. of Ret., 100 So. 3d 1276, 1280-81 (Fla. 1st DCA 2012).

65. Petitioner contends that he acted in good faith with his actions toward Nicholson and concerning Ms. Sanchez and that his actions do not meet the definition of a specified offense. However, the undersigned finds that such assertions are misplaced. Contrary to Petitioner's claims, the Findings of Fact above demonstrate Petitioner acted willfully with intent to defraud the public of the right to receive the faithful performance of his duties. Specifically, Petitioner used his job duties as a police officer to attempt to implement the Marchman Act, a police power, with the intention to circumvent Jackson's decision not to recommit his niece, which meets the intent to defraud element of the statute. Furthermore, it is uncontested that Bohnenblust was a public employee in his role of police officer. Therefore, the competent evidence proved Petitioner's willful intent to defraud Jackson of its right to receive the faithful performance of Petitioner's duties as a police officer.

66. In *Jenne*, the court held that the term "specified offense" is defined by the conduct of the public official, not by the elements of the crime for which the official was convicted. *Id.* at 741–43 (explaining that whether the crime for which the former public officer was convicted qualifies as a specified offense "depends on the way in which the crime was committed"). Thus, "any felony could qualify as a specified offense, so long as the remaining conditions in the statute have been met." *Id.* at 742.

67. As set forth in *Rivera v. Board of Trustees of the City of Tampa's General Employment Retirement Fund*, 189 So. 3d 207, 210-11 (Fla. 2d DCA 2016), the Fund has established the nexus between the offenses committed by Petitioner and his position as a City of Miami police officer. The record demonstrates that while Bohnenblust tried to circumvent Jackson's medical discharge decision in his capacity as a police officer by attempting to impose the Marchman Act, he committed two felonies in which he was convicted by a jury and adjudicated guilty. He was convicted of battery on a person 65 years of age or older pursuant to sections 784.03 and 784.08(2)(c) and false

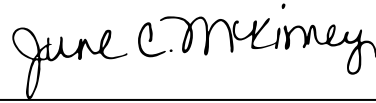
imprisonment pursuant to section 787.02(2), for his interaction with Nicholson on the date of the incident. Therefore, Petitioner's convictions constitute a "conviction" for purposes of section 112.3173(2)(a).

68. The Findings of Fact above also demonstrate Petitioner's personal decision to recommit his niece by the Marchman Act after the medical facility decided she should not be committed constitutes use of Petitioner's police power for his own advantage or gain. Furthermore, while Petitioner was seeking his advantage, as stated above, Petitioner committed the two felonies of which he was convicted. To that end, the record evidence also shows that Bohnenblust attempted to use his power, rights, privileges, duties, and position as a police officer when he committed the felonies in an attempt to recommit his niece contrary to Jackson's discharge. Accordingly, Respondent carried its burden and demonstrated all the elements set forth in *Bollone* to establish Bohnenblust was convicted of the specified offense pursuant to section 112.3173(2)(e)6. Therefore, section 112.3173(3) requires forfeiture of Petitioner's rights, privileges, and retirement benefits for Petitioner's felony convictions.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Trustees of the Miami Police Relief and Pension Fund enter a final order finding that Petitioner was a public employee convicted of the specified offenses committed while employed with the City of Miami pursuant to section 112.3173(2)(e)6., Florida Statutes, and directing the forfeiture of his rights, privileges, and retirement benefits.

DONE AND ENTERED this 26th day of January, 2022, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of January, 2022.

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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.