

Bureau of Retirement Calculations
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Ron DeSantis, Governor
J. Todd Inman, Secretary

Jan. 5, 2022

HONORABLE BRENT LATHAM, MAYOR
CITY OF NORTH BAY VILLAGE
1666 KENNEDY CAUSEWAY 3RD FLOOR
NORTH BAY VILLAGE FL 33141

Dear Mayor Latham:

The purpose of this letter is to notify you of the Division of Retirement's (Division's) decision following a termination and reemployment violation for Mr. Lewis Velken.

A member of the Florida Retirement System (FRS) is subject to the termination requirement found in Section 121.021(39)(b), Florida Statutes, which states:

"Termination" for a member electing to participate in the Deferred Retirement Option Program occurs when the program participant ceases all employment relationships with participating employers in accordance with s. 121.091(13), however:

* * *

2. For termination dates occurring on or after July 1, 2010, if the member becomes employed by any such employer within the next 6 calendar months, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence constitutes a continuation of the employment relationship."

The City of North Bay Village (City) is an FRS participating employer for police and general employees. Due to the City allowing Mr. Velken to serve as Chief of Police beginning April 18, 2018, he never satisfied the FRS termination requirement of ceasing all employment relationships with FRS employers for six calendar months following his DROP termination date of Jan. 31, 2018. As a result, Mr. Velken's FRS DROP retirement was voided, and Mr. Velken was improperly paid \$691,307.41 in FRS benefits. Under Florida law, whenever a participating employer employs a retired FRS member in violation of the termination requirements, both the employee and the participating employer are liable for repayment of the overpaid retirement benefit to the FRS Trust Fund. Specifically, section 121.091(9)(c)3., Florida Statutes, provides:

"(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer. However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination, except as provided in paragraph (f). However, a DROP participant

shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

* * *

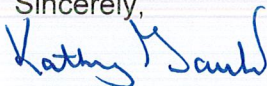
3. A retiree initially reemployed in violation of this paragraph and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any retirement benefits paid to the retirement trust fund from which the benefits were paid, including the Florida Retirement System Trust Fund and the Florida Retirement System Investment Plan Trust Fund, as appropriate. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's 6-month reemployment limitation period shall apply toward the repayment of benefits received in violation of this paragraph."

Based upon the foregoing, the City is jointly and severally liable for repayment of all retirement benefits previously paid to Mr. Velken. The total overpayment of Mr. Velken's benefits from Feb. 2018 through Feb. 2019 is \$691,307.41. Mr. Velken has repaid benefits in the amount of \$345,653.70. Enclosed is an invoice number 287658 for the remaining balance of \$345,653.71 to be paid by the City of North Bay Village. Please make the city's check payable to the Florida Retirement System and notate that the check is for an "overpayment of benefits to Mr. Velken." The invoice number should be noted on the face of the check and a copy of the invoice returned with your payment.

As a result of the voided retirement, Mr. Velken's FRS membership was retroactively established to July 1, 2013, the date he initially began DROP participation. The City is also responsible for all retirement contributions totaling \$126,893.44 due during Mr. Velken's DROP participation period of July 2013 through January 2018 (see enclosed invoice number 287417) based upon the special risk membership class associated with Mr. Velken's former position at Miami Dade County. Please make the city's check payable to the Florida Retirement System and notate that the check is for an "overpayment of benefits to Mr. Velken." The invoice number should be noted on the face of the check and a copy of the invoice returned with your payment.

You may contact me at 850-488-9623 if you have questions or need additional information.

Sincerely,



Kathy Gould, Chief
Bureau of Retirement Calculations

Enclosures: Invoice Number 287658 Dated 01/05/2022 Overpayment of Benefits
Invoice Number 287417 Dated 12/16/2021 DROP Void Contributions