

YOUR PENSION MATTERS

9/30/10

End of FY Q 2009 - 2010

By: Chief Paul O'Connell
Board Chairperson
11/18/10

"A Public Office is a Public Trust"

Florida Constitution, Article II, Section 8

You will recall in several past newsletters that we announced the date of a Forfeiture Hearing against our Retirement System participant, Deputy Sam Sirico. On September 20th the Board heard arguments from both sides of this proceeding; the law firm of Klausner & Kaufman was hired by the Board to argue in favor of forfeiture. Ledford Parnell represented former Deputy Sirico (Sam is a former Pompano Beach Police Officer who joined BSO as a result of the 8/01/99 merger).

Please know that this hearing was conducted after the Board received an opinion from the Attorney General's Office (AGO opinion #2009-31, 6/15/2009) which compelled the Board to proceed with this hearing.

On November 1st the Board heard final summations from each of the parties and the Board then rendered its decision.

In a nutshell, here are the facts of the case:

- Officer Sirico terminated his active membership in the Pompano Beach Police and Firefighters' Retirement System (PBPFRS) on 7/31/99 and joined the FRS on the next day as a result of the merger. His status in the PBPFRS changed from active to *terminated vested retirement*.
- On November 7, 2005 Deputy Sirico was terminated from employment by BSO for reasons that will be explained herein and posted on our website.
- On April 20, 2009 Sam Sirico's status within the PBPFRS was scheduled to change from *terminated vested retirement* to fully retired (and collecting) as a result of him satisfying both of the requirements for retirement pension eligibility. However, the cause for his termination triggered the forfeiture review by the Board as opined by the AGO.
- On September 20, 2010, the Board heard oral arguments from both sides of this issue and reviewed evidence submitted.
- On November 1, 2010, the Board met in a specially set meeting for this case and decided that the Florida laws required that Sam Sirico's pension be forfeited, so that he will only receive a return of his contributions (the vote was 7 – 1).

In a nutshell, here are the different laws that apply to the facts of this case:

Florida Constitution – Article II, Section 8 (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."

FSS 112.3173 (3) is the legislative enactment of the Constitutional directive illustrated above. It reads:

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.

FSS 112.3173 (2) (e) identifies and defines the “specified offenses” which warrant forfeiture. Specifically, the Board looked at #4 which states:

Any felony specified in chapter 838, except 838.15 & 838.16.

Chapter 838.022 (1) identifies and defines “Official Misconduct” as follows: (1) it is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or cause harm to another, to (a) falsify, or cause another person to falsify, any official record or official document; (b) conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or (c) obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.

FSS 838.022 (3) – states that the violation of 838.022 (1) is a felony of the third degree.

The Board also looked at **FSS 112.3173 (2) (e) #6**, known as the “catch all provision” of this section, states as follows:

FSS 112.3173 (2) (e) - 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.

There was intense debate by the lawyers as to how the Board was to apply the laws, as illustrated above, to the facts of this case because Deputy Sirico was never convicted of any crime, misdemeanor or felony, yet he admitted to committing elements of “official misconduct” and his admission lead to his termination by BSO. Deputy Sirico was terminated from his BSO employment for a series of policy violations identified in *Exhibit I: BSO Termination Form*, dated 11/07/05, which lists the following policy violations:

PPM 2.2.43 Official Reports / Truthfulness in BSO Matters (2 counts)
PPM 2.2.39 Conduct Unbecoming an Employee
PPM 2.2.21 Reporting violations of regulations
PPM 2.2.47 Insubordination

This debate was complicated by the fact that in all Florida case law there was not a single case of a pension forfeiture in which the subject employee was not convicted of a crime. In other words, the Board was entering “uncharted territory” in relation to the forfeiture of a public pension benefit based solely on termination for admitted policy violations that also constitute the elements of a felony. In addition, there was the fact that Deputy Sirico was no longer an active member of the PBPFRS and was working for a different employer under a different retirement system when the offenses occurred. In other words, Deputy Sirico’s contract with the City of Pompano Beach was completed as of 7/31/99 when his employment with the City ended and he terminated his active membership with the pension system. How then can the PBPFRS go back in time and forfeit a pension that was earned by the employee when the offense which triggered forfeiture occurred when working for a different employer and under a different pension system? The Florida Attorney General’s Office wrote that the Board must review the facts and apply those facts to the law. The questions raised above were outside the Pension Board’s scope of review and must be addressed by the 4th District Court of Appeals should Deputy Sirico choose to appeal the Board’s decision.

Know this; the Board agonized over this decision. There was no joy or any sense of justice being served. On a personal note, I too agonized over this decision. I have known Deputy Sirico for over 20 years and have known him to be a good person and a great cop. However, when you look at the facts of the case, which were nothing less than egregious, and you apply the law to these facts; the results were inescapable and economically fatal to Sam's pension. For the record, I voted in favor of forfeiture.

Turning the page; let us look at our performance during the past quarter, YTD and for the entire FY 2009 -2010.

Enclosed in this mailing is a quarterly report regarding the many investments held by our Retirement System. As you read the results of the final quarter of FY 09-10 you see that our performance was outstanding. Expanding our review for the entire FY, you see that, as a whole, the investment results exceeded our assumed rate of return. However, look at our 3 year return (-.76) and our 5 year return (+3.44). What this tells us is that we (just as all pension plans throughout the country) continue to climb out of the deep hole caused by the worse recession in our lifetime. As stated to you in past newsletters, the Board firmly believes that our investment portfolio is uniquely positioned to take advantage of the market's recovery going forward. Should you be interested in hearing a full review of our investments, please plan on attending our December 15th meeting during which Charlie Mulfinger, our Board Consultant, will give an in-depth report. In the alternative, you can plan on attending our next symposium which will be held April 28 – 30, 2011 in Deerfield Beach. At this event we have each money manager report in person to the Board on their respective investment results for the preceding calendar year, the preceding calendar quarter and their outlook for future investment results. It truly is an excellent learning experience which gives all of us insight into the world of investments.

Some good news to report, Sgt. Tony Lanza is home from the Moffet Center in Tampa and his recovery continues. We wish him the very best!! Allow us to take time to extend our condolences to the family of Charles "Sam" Kennedy who passed away on October 20th. More specifically, we extend our condolences to Sam's widow, Vera. Officer Kennedy retired on January 1, 1975 and was 83 years old when he died.

We have an award winning building! The Bank of America Building, owned by the Retirement System, was recently named a winner of a 2010-2011 TOBY – The Outstanding Building of the Year – Award in the Historical Building category. The TOBYs are sponsored by the Building Owners and Managers Association (Ft. Lauderdale and Palm Beach chapter) and honors excellence in Property Management. During the competition, all facets of building management are reviewed by a team of judges including site management, environmental policies and procedures, emergency planning and tenant relations. The Historical category recognizes the special challenges related to buildings more than 50 years old. Our building was nominated for the award by our property manager, Midgard Management. We thank Midgard Management for their diligence and oversight! The Board will present this award to the City Commission in the near future to remind them that this building is something to be proud of and it will be an important part of the Eastern CRA for Pompano Beach.

An application is being submitted to the Internal Revenue Service for a review and determination of our plan's compliance with the Internal Revenue Code. Please see the attached notice we are required to give our members. It is also included on our website: pbpfrs.org.

In our next newsletter we will write to you about a new investment vehicle ETF or exchange traded funds.

On behalf of the Pension Board of Trustees, I wish you a very happy holiday season as we look forward to a New Year.

In the meantime, please stay safe and stay in touch!



SUMMARY OF RELEVANT FACTS
Pompano Beach Police & Firefighters' Retirement System
As of September 30, 2010

Distribution of Assets:	
Equity	
-Large Cap. Value	\$26,599,667
-Large Cap. Growth	\$21,198,825
-Large Cap. Core	\$17,065,148
-Mid Cap. Value	\$9,363,353
-Small/Mid Cap. Growth	\$8,663,319
-International Value	\$8,779,931
-International Growth	\$8,890,708
Total Equity	\$100,560,952
Fixed Income	\$45,549,023
Real Estate (REIT)	\$4,131,323
Private Real Estate	\$7,169,363
Fund of Hedge Funds	\$16,326,103
Private Equity	\$120,996
Cash (Non-Managed Account)	\$1,879,454
Total Portfolio	\$175,737,214

Distribution by Percentages:	Policy	Current
Equity Breakdown		
-Large Cap. Value	15.00%	15.14%
-Large Cap. Growth	10.00%	12.06%
-Large Cap. Core	10.00%	9.71%
-Mid Cap. Value	5.00%	5.33%
-Small/Mid Cap. Growth	5.00%	4.93%
-International Value	5.00%	5.00%
-International Growth	5.00%	5.06%
Total Equity	55.00%	57.22%
Fixed Income	25.00%	25.92%
Real Estate (REIT)	2.50%	2.35%
Private Real Estate	5.00%	4.08%
Fund of Hedge Funds	10.00%	9.29%
Private Equity	2.5%	0.07%
Cash (Non-Managed Account)	0.00%	1.07%
Total Portfolio	100.00%	100.00%

UBP Fund of Hedge Fund		
Fund of Hedge Fund	100.00%	\$5,307,414
Gain or (Loss)		\$120,195

Ironwood Fund of Hedge Fund		
Fund of Hedge Fund	100.00%	\$4,899,642
Gain or (Loss)		\$141,975

Pine Grove Fund of Hedge Fund		
Fund of Hedge Fund	100.00%	\$6,119,047
Gain or (Loss)		\$158,106

INVESCO (REIT)		
REIT	100.00%	\$4,131,323
Fees		(\$7,443)
Gain or (Loss)		\$490,578

INVESCO (Private Real Estate)		
Private Real Estate	100.00%	\$4,169,363
Fees		(\$18,971)
Gain or (Loss)		\$311,714

MAIN ACCOUNT (NON-MANAGED)		
Cash	100.00%	\$1,879,454
Gain or (Loss)		\$349

OFFICE BUILDING		
Total Assets	100.00%	\$3,000,000
Fees		
Gain or (Loss)		\$289,253

NB/MSSB Crossroads (Private Equity)		
Total Assets	100.00%	\$120,996
Fees		\$0
Gain or (Loss)		(\$43,005)

Other Important Facts:		
Total Portfolio		\$175,737,214
Total Gain or (Loss) - Gross of Fees		\$14,196,511

LORD ABBETT		
Total Assets	100.00%	\$26,599,667
Equity	95.77%	\$25,473,465
Cash	4.23%	\$1,126,202
Fees		(\$37,211)
Gain or (Loss)		\$2,373,697

SANDS CAPITAL MANAGEMENT		
Total Assets	100.00%	\$21,198,825
Equity	97.82%	\$20,737,055
Cash	2.18%	\$461,770
Fees		(\$28,009)
Gain or (Loss)		\$3,117,081

CORNERSTONE		
Total Assets	100.00%	\$17,065,148
Equity	98.61%	\$16,827,541
Cash	1.39%	\$237,607
Fees		(\$27,585)
Gain or (Loss)		\$1,708,819

RBC GLOBAL		
Total Assets	100.00%	\$9,363,353
Equity	98.26%	\$9,200,477
Cash	1.74%	\$162,876
Fees		(\$15,668)
Gain or (Loss)		\$998,059

WELLS		
Total Assets	100.00%	\$8,663,319
Equity	97.13%	\$8,414,643
Cash	2.87%	\$248,675
Fees		(\$20,038)
Gain or (Loss)		\$1,068,812

INVESCO (International Value)		
Total Assets	100.00%	\$8,779,931
Equity	97.99%	\$8,603,471
Cash	2.01%	\$176,460
Fees		(\$11,795)
Gain or (Loss)		\$1,149,468

RENAISSANCE (International Growth)		
Total Assets	100.00%	\$8,890,708
Equity	98.65%	\$8,770,862
Cash	1.35%	\$119,846
Fees		(\$12,038)
Gain or (Loss)		\$1,061,569

STANDISH MELLON		
Total Assets	100.00%	\$21,703,654
Fixed	97.42%	\$21,143,288
Cash	2.58%	\$560,366
Fees		(\$15,605)
Gain or (Loss)		\$581,482

MUNDER CAPITAL MANAGEMENT		
Total Assets	100.00%	\$21,438,489
Fixed	76.92%	\$16,491,340
Cash	23.08%	\$4,947,149
Fees		(\$14,016)
Gain or (Loss)		\$588,601

MUNDER - OTHER ASSETS		
Total Assets	100.00%	\$2,406,881
Fixed	88.85%	\$2,138,617
Cash	11.15%	\$268,264
Fees		\$0
Gain or (Loss)		\$79,758

BREAKDOWN OF RETURNS
Pompano Beach Police & Firefighters' Retirement System
As of September 30, 2010

TRADITIONAL INVESTMENTS

LORD ABBETT		Your Returns				
Large Cap. Value		Gross	Net	Russ 1000 Value	PSN Money Mgrs.	S&P 500
	Quarter	9.80	9.64	10.13	10.59	11.29
	1 year	6.99	6.34	8.91	9.23	10.16
	3 year	(8.29)	(8.85)	(9.39)	(7.08)	(7.16)
	5 year	0.41	(0.18)	(0.49)	1.20	0.63
	Since 10/31/2004	1.74	1.16	1.93	NA	2.25
	Lord Abbett/Boston - Since 9/30/2002	6.30		5.71	7.36	6.39
	Lord Abbett/Boston - Since 6/30/1995	6.88		7.83	8.46	6.88
SANDS CAPITAL						
Large Cap. Growth				Russ 1000 Growth	PSN Money Mgrs.	
	Quarter	17.05	16.88	13.00	12.06	
	1 year	21.90	21.18	12.66	11.10	
	3 year	0.51	(0.06)	(4.36)	(5.03)	
	5 year	4.01	3.42	2.06	2.20	
	Since 5/31/2003	8.36	7.76	4.69	NA	
CORNERSTONE						
Large Cap. Core				S&P 500	PSN Money Mgrs.	
	Quarter	11.13	10.93	11.29	11.01	
	1 year	4.20	3.53	10.16	9.93	
	Since 1/31/2009	21.21	20.52	24.18	NA	
RBC GLOBAL						
Mid Cap. Value				Russ Mid Value	PSN Money Mgrs.	
	Quarter	11.93	11.73	12.14	9.88	
	1 year	16.56	15.77	16.94	13.49	
	Since 1/31/2009	29.38	28.61	35.72	NA	
WELLS						
Small/Mid Cap. Growth				Russ 2500 Growth	PSN Money Mgrs.	
	Quarter	14.07	13.79	13.14	11.58	
	1 year	25.32	24.19	17.27	14.37	
	Since 1/31/2009	38.57	37.53	36.23	NA	
INVESCO						
International Value				MSCI EAFE Net		
	Quarter	15.54	15.36	16.48		
	1 year	2.37	1.74	3.25		
	3 year	(8.02)	(8.66)	(9.52)		
	5 year	2.34	1.68	1.96		
	Since 1/31/2004	5.83	5.16	5.46		
RENAISSANCE						
International Growth				MSCI AC Wld x US		
	Quarter	13.88	13.70	16.58		
	1 year	6.37	5.72	7.56		
	Since 1/31/2009	26.65	25.99	33.03		
STANDISH MELLON						
Fixed Income				BC Aggregate	BC Int. Aggregate	BC Int. Gov/Credit
	Quarter	2.75	2.68	2.48	2.07	2.76
	1 year	9.01	8.70	8.16	7.52	7.77
	3 year	7.58	7.26	7.42	7.10	6.94
	5 year	6.14	5.83	6.20	6.09	5.95
	Since 4/30/2003	5.27	4.92	5.25	5.05	4.82
MUNDER CAPITAL						
Fixed Income				BC Aggregate	BC Int. Aggregate	BC Int. Gov/Credit
	Quarter	2.81	2.75	2.48	2.07	2.76
	1 year	8.04	7.77	8.16	7.52	7.77
	3 year	8.05	7.78	7.42	7.10	6.94
	5 year	6.68	6.44	6.20	6.09	5.95
	Since 9/30/2002	5.63	5.36	5.35	5.11	4.97

ALTERNATIVE INVESTMENTS

INVESCO					
<i>REIT</i>		Gross	Net	NAREIT	
	Quarter	13.46	13.24	12.83	
	1 year	28.17	27.21	30.27	
	3 year	(4.01)	(4.66)	(6.07)	
	Since 6/30/2006	0.69	(0.03)	(1.03)	
INVESCO					
<i>Private Real Estate</i>				NCREIF Property	NCREIF ODCE
	Quarter	8.07	7.55	3.86	5.45
	1 year	5.87	5.37	5.84	6.97
	3 year	(10.48)	(10.62)	(4.61)	(10.56)
	Since 7/31/2006	(4.64)	(4.75)	1.27	NA
OFFICE BUILDING					
<i>Private Real Estate</i>				BC Aggregate	90-Day T-Bill
	Quarter	10.16	10.16	2.48	0.04
	1 year	(34.26)	(34.26)	8.16	0.12
	3 year	(9.83)	(10.06)	7.42	0.78
	Since 3/31/2007	(7.80)	(7.99)	7.02	1.31
UBP					
<i>Fund of Hedge Funds</i>				HFRI FOF Cons	
	Quarter	2.32	2.32	2.99	
	1 year	4.26	4.26	4.28	
	Since 4/30/2008	(3.26)	(3.26)	(3.05)	
Ironwood					
<i>Fund of Hedge Funds</i>				HFRI FOF Cons	
	Quarter	2.98	2.98	2.99	
	1 year	7.11	7.11	4.28	
	Since 7/31/2008	(5.20)	(5.20)	(3.07)	
Pine Grove					
<i>Fund of Hedge Funds</i>				HFRI FOF Cons	
	Quarter	2.65	2.65	2.99	
	1 year	7.13	7.13	4.28	
	Since 9/30/2008	5.48	5.48	0.06	
Neuberger Berman					
<i>Private Equity</i>					
	Quarter	(26.22)	(26.22)		
	Since 3/31/2010	7.13	7.13		
TOTAL FUND					
				Policy Index	Composite Index
	Quarter	8.82	8.69	8.68	8.49
	1 year	9.89	9.33	10.44	10.49
	3 year	(0.76)	(1.21)	(1.51)	(0.78)
	5 year	3.44	2.98	3.35	3.87
	Since 9/30/2002	6.78	6.31	6.89	7.17
	Since 6/30/1995	6.51			

Per the Board's request, all performance results (including but not limited to rates of return, risk, measures, unit values, and dollar values) prior to September 30, 2002, were provided by GRS Asset Consulting Group, who was the previous consultant. The performance data is believed to be accurate, but there is no assurance. Graystone Consulting has not calculated or independently verified the accuracy of the returns or market values and is not responsible or liable for any mistake or miscalculations. Effective September 30, 2002, all valuations and rates of return are calculated by Graystone Consulting.

NOTICE TO INTERESTED PARTIES

1. Notice to: All employees eligible to participate in the Pompano Beach Police & Firefighters' Retirement System.

An application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit Plan.

2. Name of Plan: Pompano Beach Police & Firefighters' Retirement System
3. Plan Number: 001
4. Name and Address of Applicant:
Board of Trustees of Pompano Beach Police & Firefighters' Retirement System
c/o Glenda R. Rowley, CEBS, Deputy Administrator
2335 E. Atlantic Boulevard, Suite 400
Pompano Beach, FL 33062
5. Employer Identification Number of Applicant: 59-6499222
6. Name and address of Plan Administrator:
Glenda R. Rowley, CEBS, Deputy Administrator
2335 E. Atlantic Boulevard, Suite 400
Pompano Beach, FL 33062
7. The application will be filed on December 6, 2010 for an advance determination as to whether the plan meets the qualification requirements of Section 401 or 403(a) of the Internal Revenue Code of 1986, with respect to amendments to the plan since the most recent determination letter. The application will be filed with:

EPS Determinations
Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

8. The following employees are eligible to participate in the Plan: All full-time Firefighters of the City of Pompano Beach, and all former full-time Police Officers of the City of Pompano Beach who elected to continue to participate in this plan, are eligible to participate in the Plan as of the first day of their full-time employment.
9. The Internal Revenue Service has previously issued a determination letter with respect to the qualification of this plan.

RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to EP Determinations, at the above address, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code.

You may instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to EP Determinations regarding qualification of the plan. If the Department declines to comment on all or

some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to EP Determinations.

REQUEST FOR COMMENTS BY THE DEPARTMENT OF LABOR

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10% of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is 10. If you request the Department to comment, your request must be in writing and must specify the matters upon which comments are requested, and must also include:

- (1) the information contained in items 2 through 5 of this Notice; and
- (2) the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security Administration
ATTN: 3001 Comment Request
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

COMMENTS TO THE INTERNAL REVENUE SERVICE

12. Comments submitted by you to EP Determinations must be in writing and received by them by January 20, 2011. However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to EP Determinations to be received by them within 15 days from the time the Department notifies you that it will not comment on a particular matter, or by January 20, 2011, whichever is later, but not after February 4, 2011. A request to the Department to comment on your behalf must be received by December 21, 2010 if you wish to preserve your right to comment on a matter upon which the Department declines to comment, or by December 31, 2010 if you wish to waive that right.

ADDITIONAL INFORMATION

13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 17 and 18 of Rev. Proc. 2010-6. Additional information concerning this application (including, where applicable, an updated copy of the plan and related trust; the application for determination; any additional documents dealing with the application that have submitted to the Service; and copies of section 17 of Rev. Proc. 2010-6 are available at 2355 E. Atlantic Boulevard, Suite 400, Pompano Beach, FL, 33062, during the hours of 10 a.m. – 4 p.m. Monday through Friday for inspection and copying. A nominal charge for copying or mailing will apply.