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ORDER FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

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DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida
Telephone No. (904) 488-6151
DATE: April 8, 1992
CASE NO.: 91-2014

LT 90-0274
ASSIGNED DOAH CASE NO. 92-4966F

FLAMINGO LAKE RV RESORT, INC. vs. DEPARTMENT OF TRANSPORTATION
Appellant/Petitioner Appellee/Respondent

ORDER

Having considered appellant's petition for attorney's fees and costs, we conclude that the Department of Transportation's denial of appellant's application to participate in the logo sign program was a gross abuse of the agency's discretion, and grant the petition pursuant to Section 120.57(1)(b)(10), Florida Statutes (Supp. 1990), and Florida Rule of Appellate Procedure 9.400.

By Order of the Court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Michael W. Fisher
Thomas F. Capshew
Thorton Williams
Thomas H. Bateman, III
Vernon L. Whittier
Eleanor Turner

John S. Ball
Deputy Clerk

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DISTRICT COURT OPINION
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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

FLAMINGO LAKE RV RESORT, INC.,

Appellant,

vs.

CASE NO. 91-2014
DOAH CASE NO. 92-4966F

DEPARTMENT OF TRANSPORTATION,

Appellee.
_____ /

Opinion filed June 2, 1992.

An Appeal from an order of the Department of Transportation.

Michael W. Fisher and John S. Ball of Fisher, Tousey, Leas & Ball, Jacksonville,
for Appellant.

Thornton J. Williams, General Counsel, and Thomas F. Capshew, Assistant General
Counsel, Department of Transportation, for Appellee.

ON REHEARING
[Original Opinion at 17 F.L.W. D947]

ERVIN, J.

Appellee's motion for rehearing is granted. Our opinion filed April 8,
1992, is withdrawn, and the following opinion is substituted therefor.

Appellant, Flamingo Lake RV Resort, Inc. ("Flamingo Lake"), operates a
camping facility in Duval County at the interchange of I-295 and State Road 115
(Lem Turner Road). Flamingo Lake applied to the Department of Transportation
(the department), pursuant to Section 479.26, Florida Statutes (Supp. 1990), and
Florida Administrative Code Chapter 14-85, to participate in the logo sign
program at the interchange. The department denied the application. After an
administrative hearing, the hearing officer recommended denial of the
application, and the department issued a final order denying the application.
We reverse and remand.

The hearing officer concluded that Flamingo Lake qualified for the program
under former rule 14-85.003(10), but that the rule was amended and replaced by
rule 14-85.003(15), which eliminated Flamingo Lake's eligibility as a "rural
interchange" for the logo sign program, on March 20, 1991, the day following the
hearing at bar. In its final order, the department adopted the hearing
officer's findings of fact and conclusions of law, but indicated that the

APPEARANCES

For Petitioner: John E. Lawlor, III, Esquire
John S. Ball, Esquire
Fisher, Tousey, Leas & Ball
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Jacksonville, Florida 32202

For Respondent: Charles G. Gardner, Esquire
Assistant General Counsel
Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450

STATEMENT OF THE ISSUE

Pursuant to the Order of the District Court of Appeal, First District, dated April 8, 1992, finding that the Department of Transportation's ("Department") denial of Petitioner's ("Flamingo Lake") application to participate in the logo sign program was a gross abuse of the agency's discretion and awarding attorney's fees pursuant to Section 120.57(1)(b)10, Florida Statutes, and Florida Rule of Appellate Procedure 9.400, the sole issue in this proceeding is the determination of the amount of reasonable attorney's fees and costs to be awarded to Flamingo Lake pursuant to Section 120.57(1)(b)10, Florida Statutes. Being unsure about the extent of the litigation for which attorneys' fees were awarded, evidence was received on the fees and costs from initiation to prevent the necessity for further evidentiary proceedings.

PRELIMINARY STATEMENT

On or about October 2, 1990, Flamingo Lake filed a logo application with the Department to participate in the Department's logo sign program. Flamingo Lake sought in its application to have a logo panel placed at the I-295 and Lem Turner Road (SR 155) interchange, Jacksonville, Florida. The Department denied Flamingo Lake's application by letter dated October 17, 1990 because: 1) the interchange on I-295 was "excluded from the program" under an incipient policy adopted by the Department; and 2) the interchange did not fit the definition of "rural interchange" in that it was located in an urban area or was bordering the urbanized area of Jacksonville and the number of eligible businesses at the interchange exceeded the logo sign's panel capacity.

Flamingo Lake timely filed a petition for administrative hearing. An all day evidentiary hearing under the Administrative Procedures Act was held on March 19, 1991 at Jacksonville, Florida. On the eve of the hearing held on March 19, 1991, the Department interposed a third ground for its denial of Flamingo Lake's application. Specifically, the Department sought to rely upon amendments to Chapter 14-85, the logo program regulations, the effect of which would be to remove the exception for interchanges located within urban or urbanized areas under which Flamingo Lake was seeking entry into the program. Although these amendments would not take effect until March 20, 1991, the Department sought to have the new regulations applied retroactively so as to provide a basis for its original denial of Flamingo Lake's application.

After the hearing on March 19, 1991, attorneys for Flamingo Lake filed proposed findings of fact and conclusions of law. On April 24, 1991, in his Recommended Order, Hearing Officer Stephen F. Dean opined that the Department's

incipient policy under which it had denied Flamingo Lake's application appeared, in the manner of its adoption and in substance, inconsistent with the statutory requirements and contrary to existing rules. However, the Hearing Officer went on to find that the formal amendment of the rule effective March 20, 1991, to eliminate the exemption relied upon by Flamingo Lake, altered the issues which had to be considered and thus did not rule upon the incipient policy. In his Recommended Order, the Hearing Officer found that, as a matter of fact and law, Flamingo Lake qualified to participate in the logo program as the program existed prior to March 20, 1991, but that the formal amendment to the rule effective March 20, 1991, should be applied retroactively with the result that Flamingo Lake's application for participation in the logo program should be denied. After the entry of the Recommended Order, Flamingo Lake's attorneys filed exceptions to the Recommended Order. In the Final Order entered on June 10, 1991, the Department abandoned its position that the rule amendment effective March 20, 1991, should be applied retroactively and, in this respect, it refused to adopt the recommendation of the Hearing Officer. However, the Department denied Flamingo Lake's application for participation in the logo program based upon its existing incipient policy that no logo panels would be erected on I-295.

Flamingo Lake filed its Notice of Appeal of the agency's Final Order. Attorneys for Flamingo Lake filed opening and reply briefs before the District Court of Appeal, First District. Attorneys for Flamingo Lake travelled from Jacksonville, Florida, to Tallahassee, Florida to present oral argument in the case. Attorneys for Flamingo Lake responded to the Department's Motion for Rehearing after the appellate court reversed the agency decision by its opinion filed on April 8, 1992. Flamingo Lake's attorneys also filed a Motion to Award Attorney's Fees against the Department pursuant to Section 120.57(b)(1)10, Florida Statutes, and Florida Rule of Appellate Procedure 9.400.

In granting the Motion for Attorney's Fees and Costs, the First District Court of Appeal concluded "that the Department of Transportation's denial of the appellant's application to participate in the logo sign program was a gross abuse of the agency's discretion." Fees and costs were awarded pursuant to Section 120.57(1)(b)10, Florida Statutes, and Florida Rule of Appellate Procedure 9.400.

Pursuant to notice of the Hearing Officer, a six hour evidentiary hearing on the issue of costs and reasonable attorney's fees was held at Jacksonville, Florida, on February 18, 1993. Following the hearing, both parties submitted proposed recommended orders which were read and considered. Appendix A to this order states which of the proposed findings were adopted, and which were rejected and why.

FINDINGS OF FACT

1. The Petitioner, Flamingo Lake, is a corporation operating a recreational vehicle campground and park in Duval County, Florida. Mr. Billy Webb is the President and a Director of Petitioner, and owns a 33 1/3 percent share in Flamingo Lake. Mr. Raymond Lane is a 33 1/3 percent shareholder, and Vice President and Director of Flamingo Lake.

2. Michael W. Fisher, a senior partner with the law firm of Fisher, Tousey, Leas & Ball (FTLB), is a 33 1/3 percent stockholder in Flamingo Lake. Mr. Fisher is neither an officer nor director of Flamingo Lake.

3. Mr. Lane, who has been a client of Mr. Fisher and FTLB for over twenty years, has never had a written contract with FTLB for professional services of Mr. Fisher or FTLB. Throughout the years of their professional relationship, the customary course of dealing between Mr. Lane and his various business entities and FTLB has been to pay FTLB at the standard hourly rate billed by the attorney within FTLB providing the services.

4. Participation in the logo program operated by the Department of Transportation was very important to Flamingo Lake because the logo signs are one of the best ways for a recreational vehicle campground to obtain visitors and customers. FTLB was retained by Flamingo Lake to represent it in pursuing its application for participation in the logo program, in pursuing an administrative appeal of the Department's denial of its application, and in pursuing a judicial appeal of the Department's final order denying its application to the First District Court of Appeal.

5. Mr. Fisher prepared and filed the logo sign application. When the application was denied, Mr. Fisher was so certain that the Petitioner would prevail, that he offered to charge Petitioner for the firm's services only if the firm was successful in the litigation, and, if it did prevail, the Petitioner could pay the fee in installments equal to what it had been paying for commercial signage. (It had been decided that should a logo sign be erected with Flamingo Lake's logo, that the commercial signage could be abandoned and that the monies that were being paid for the commercial signage would then be paid to the FTLB to satisfy its bill for legal services. At various times during the course of the litigation herein, Flamingo Lake paid between \$750 and \$1,500 per month for commercial signage.)

6. The oral offer by Mr. Fisher was accepted by Mr. Lane, and Mr. John S. Ball was employed by Petitioner to prepare and file the administrative appeal of the denial of the logo sign as the lead counsel for Flamingo Lake. Mr. Ball presented Flamingo Lake's case at the administrative hearing and handled the oral argument before the First District Court of Appeal. Mr. Ball performed most of the legal research and brief writing that was required at the various stages of the proceedings herein. Mr. Ball's hourly billing rate for professional services was \$145.00 for the year 1990, \$150.00 for the year 1991, \$155.00 for the year 1992, and it is \$165.00 per hour for the current year, 1993.

7. In connection with the preparation of the petition for administrative hearing, legal research, presentation of Flamingo Lake's case at the administrative hearing held in this cause on March 19, 1991, and the preparation of post hearing memoranda of law, Mr. Ball expended and billed 69 hours for legal services to Flamingo Lake in this action through the date of the final order rendered in the administrative case on June 10, 1991 by the Department of Transportation.

8. In connection with the appeal of the final order before the First District Court of Appeal, Mr. Ball expended and billed Flamingo Lake for 125.4 hours for legal services to include legal research, authoring opening and reply briefs, researching and filing a motion for attorney's fees and costs, presenting oral argument, and responding to the Department's petition for rehearing after the appellate court ruled in favor of Flamingo Lake on April 8, 1992.

9. Upon conclusion of the appeal process in June of 1992, through July 13, 1992, Mr. Ball expended an additional 5.8 hours of legal services communicating

with DOT regarding the attorney's fees issue and implementation of the order of the First District Court of Appeal requiring the Department to erect a logo sign.

10. From Mr. Ball's first involvement in the case in 1990 through July 13, 1992, he expended 200.2 hours of legal services to Flamingo Lake.

11. On July 14, 1992, FTLB presented to the Department a statement for services rendered. This statement was for legal services rendered through July 13, 1992. It was admitted into evidence at the hearing herein as Petitioner's Exhibit 1. It shows that Mr. Ball has billed and claimed reimbursement for services provided to his client from October 29, 1990, through July 13, 1992, for a total of 200.2 hours, a total dollar amount of \$30,232.00.

12. Subsequent to July 13, 1992, Mr. Ball spent 8.3 hours in an effort to have the Department abide by the order of the First District Court of Appeal. These efforts included telephone calls and correspondence, and concluded when Mr. Ball researched and drafted a motion to enforce mandate. It was the threat of seeking enforcement which caused the Department to erect the logo sign.

13. Thereafter, Mr. Ball spent an additional 19.1 hours trying to negotiate a settlement of the attorney's fees issue to include correspondence, affidavits, and the motion for attorney's fees which was ultimately filed in this case. Mr. Ball expended time preparing for the attorney's fees hearing on February 18, 1993. The total time spent by Mr. Ball from July 14, 1992, until February 13, 1993, for both attorney's fees and enforcing the court's mandate was 27.4 hours.

14. In connection with the hearing held in this cause, Mr. Ball testified that he had spent approximately two hours preparing for the hearing on February 17 and the morning of February 18. At the attorney's fees hearing, Mr. Ball appeared not only as a witness, but briefly as an advocate for purposes of examining his law partner, John E. Lawlor, III, who had to appear as a witness in order to establish the amount and reasonableness of his own fees. The Hearing Officer finds that the added two hours of Mr. Ball's time at the hearing in addition to the 227.6 hours, makes a total of 229.6 hours which Mr. Ball expended in preparation for the case.

15. Michael W. Fisher is a senior partner with the law firm of Fisher, Tousey, Leas & Ball. He testified that his hourly billing rate throughout the course of the proceedings in this case was \$195.00 per hour. Mr. Fisher expended 7 hours filing and preparing the original logo program application.

16. At the administrative hearing held in this cause on March 19, 1991, Mr. Fisher briefly appeared as rebuttal witness. The testimony of Mr. Fisher and Mr. Ball at the hearing herein on February 18, 1993, established that it was never the intention of Mr. Fisher or Mr. Ball that Mr. Fisher would be called as a witness at the hearing on March 19, 1991. Rather, his attendance at the hearing was solely as a co-counsel. Based upon this testimony, the Hearing Officer finds that the need to call Mr. Fisher, if ever there was a need, could not have been reasonably anticipated. In fact, other witnesses called during the rebuttal case probably covered the facts and the matters about which Mr. Fisher testified. Thus, his testimony was to a large degree, if not absolutely, cumulative to the other witnesses.

17. Mr. Fisher attended the appellate proceedings but did not participate in the appellate argument. Subsequent to the appellate proceedings, Mr. Fisher

expended 7.75 hours in communicating with the Department in an effort to have the Department comply with the mandate issued by the First District Court of Appeal and place the logo sign at the intersection of Lem Turner Road and I-295 as required by the court. Finally, Mr. Fisher proved and claims two hours during the summer of 1992 attempting to settle the attorney's fees issue, and an additional four hours in preparing for and attending the hearing on attorney's fees held in this cause on February 18, 1993.

18. Mr. Fisher testified to additional time for which he seeks compensation and for which he billed his client which he expended in interviews with Mr. Ball which a client might provide, or reviewing Mr. Ball's work. This time expended by Mr. Fisher in this case and claimed by him did not constitute time expended in providing compensable legal services. The time Mr. Fisher was involved in seeking enforcement of the court's mandate, and on reviewing the firm's records for the attorney's fees claim are compensable. In the first instance he was involved as a legal representative, and in the second, as a principal of the law firm. Petitioner's Exhibit 2 was identified as a bill containing all the hours claimed by members of the law firm in this case. The hours claimed and billed in Petitioner's Exhibit 2 are accepted as an accurate statement of the professional services provided for the rates stated. Petitioner's Exhibit 2 is attached to and made a part of this order.

19. John E. Lawlor, III, is a shareholder in the firm of Fisher, Tousey, Leas & Ball. He first became involved in the case during the summer of 1992 in connection with the attorney's fees issue. The testimony of Mr. Lawlor and Petitioner's Exhibit 1 support the finding that Mr. Lawlor expended 5.5 hours through July 13, 1992, on the attorney's fees issue. From July 14, 1992 through February 13, 1993, he expended an additional 13.9 hours in researching the attorney's fees issue and interviewing witnesses, including Flamingo Lake's expert, John A. DeVault, III. From February 13, 1993, through February 17, 1993, Mr. Lawlor expended an additional 8.1 hours preparing for the hearing, performing legal research, drafting and filing a legal memorandum in support of the petition for attorney's fees and responding to a memorandum previously filed by the Department. On February 18, 1993, Mr. Lawlor expended seven (7) hours in presenting Flamingo Lake's case before the Hearing Officer. Therefore, through the hearing on February 18, 1993, Mr. Lawlor expended 34.5 hours in preparing and presenting Flamingo Lake's case on the attorney's fees issue. Mr. Lawlor's rates as stated in Petitioner's Exhibit 2 varied from \$110 to \$160 depended upon the time the service was rendered, and the service which was rendered. In connection with the posthearing briefs and the submission of a proposed recommended order, Mr. Lawlor claims an additional twelve (12) hours of attorney time in reviewing the transcript of the hearing on February 18, 1993, performing legal research into issues posited by the Hearing Officer, and drafting a proposed recommended order for the Hearing Officer. Thus, Mr. Lawlor now seeks reimbursement for a total of 46.5 hours.

20. Flamingo Lake called as an expert witness John A. DeVault, III. It was Mr. DeVault's opinion that the hourly rates of Messrs. Ball, Fisher and Lawlor were reasonable based upon the prevailing rates of attorneys with similar experience and expertise in the Jacksonville legal community. Mr. DeVault also opined that the costs and expert fees that Flamingo Lake sought were reasonable. For his time, Mr. DeVault testified that he was to be compensated at the hourly rate of \$190.00 for total compensation of \$1,520.00. Although Mr. DeVault had not reviewed all of the time records of the attorneys for Flamingo Lake subsequent to July 14, 1992, he was advised during the course of his testimony about the amount of time expended by Messrs. Ball, Fisher and Lawlor subsequent to July 13, 1992, through the date of the hearing, given a description of the

services provided, and asked to render an opinion as to whether or not such time was reasonable. Mr. DeVault's opinion on this point was, as with the time expended by the attorneys for Flamingo Lake through July 13, 1992, that the time expended up to and including the date of the hearing on February 18, 1993, was reasonable based upon the facts presented.

21. Mr. DeVault also rendered the opinion that the fact that Mr. Fisher testified at the hearing in this cause on March 19, 1991, should not preclude him from recovering attorney's fees for the services that he provided. Mr. DeVault's opinion was based upon his understanding of the case law as well as the Florida Bar Rules on professional conduct, particularly Rule 4-3.7. However, it was Mr. DeVault's opinion that the time expended by Mr. Fisher in the preparation and filing of the original logo program application was not compensable.

22. Mr. DeVault's opinion that Mr. Fisher's time conferring with Mr. Ball, reviewing Mr. Ball's work, and attending the appellate argument is rejected as contrary to the more credible testimony of the Department's expert, Mr. Bruce A. Minnick. The remainder of Mr. DeVault's testimony was very credible.

23. The Department called as its expert witness attorney Bruce A. Minnick, who was present throughout the taking of testimony. Mr. Minnick testified that it was his opinion that no fees should be awarded to Mr. Fisher for two reasons. First, he testified that no fees should be awarded if Fisher was a material witness in the case and testified on critical issues when he could have reasonably anticipated his having to testify. Mr. Minnick also opined that, Mr. Fisher's time was cumulative and redundant to that expended by Mr. Ball and should not be compensated. At a rate of \$150.00 per hour, a rate found reasonable by Mr. Minnick, this would translate into total attorney's fees in the amount of \$20,325.00 for the firm of Fisher, Tousey, Leas & Ball through July 13, 1992.

24. Mr. Minnick stated that he did not have a problem with the hours expended on the fee case, but he felt Petitioner had started seeking enforcement of the mandate prematurely. Given the delays, the Petitioner's actions are understandable.

25. Mr. Minnick was further of the opinion regarding the number of hours billed by Mr. Ball through July 14, 1992, that the hours billed was excessive. Mr. Minnick opined that Mr. Ball should not have reasonably spent more than 135.5 hours on the case. It is noted that the services involved included preparation and presentation of a long and involved administrative hearing, preparation of a post hearing brief, appeal, record on appeal, appellate brief, appellate argument, motions for rehearing and attorneys fees with their related briefs. The time spent does not appear excessive.

26. Mr. Minnick opined that Mr. Fisher's stock ownership in Flamingo Lake should not disqualify Mr. Fisher from receiving compensation inasmuch as he was only a minority shareholder and was not an officer or director.

CONCLUSIONS OF LAW

26. The Division has jurisdiction over the parties pursuant to the Court's mandate. The Court's mandate cites Section 120.57(1)(b)10., Florida Statutes, for authority for its motion for attorney's fees and costs. This statute provides in pertinent part as follows:

When there is an appeal, the court in its discretion may award reasonable attorney's fees and costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion.

27. Although the court determined that the agency's action was a gross abuse of discretion, it is unclear whether the abuse of discretion was the initial denial of the application, or the agency's denial after review of the recommended order. In the latter case, attorney's fees and costs could encompass the administrative hearing; while in the former, the award would be limited to the appellate case. Because there is uncertainty as to how the mandate should be construed, the findings include all fees charged by the attorneys from application to the attorney's fees proceedings and enforcement of the court's mandate.

28. DOT contested all the claimed hours because a written contract did not exist between the Petitioner and the law firm in what appeared to be a case undertaken on a contingency fee basis. However, the law firm had a long history of performing legal services for the Petitioner and principle shareholders in the Petitioner. The law firm regularly billed the Petitioner for its services and received a standard hourly rate for professional services provided. The agreement by the Petitioner to pay the amount it was paying for commercial signage on the attorney fees is not a contingency contract. The DOT's argument is rejected.

29. The primary issue is the reasonableness of the costs and fees. The fees were the product of the hourly charges and the billing rate for the various attorneys. Mr. Fisher's rate for the services performed was \$195 per hour; Mr. Ball's rate was \$155 per hour a portion of the services he performed and \$165 per hour for his latter work; and Mr. Lawlor's rate was at the rate of \$160 per hour. The firm billed these rates in its tax and business law practice. These rates did include office overhead for copying and phone calls, and are not excessive given the experience and background of counsel. The hourly rates for the expert witnesses are also reasonable. The hours for which charges for legal services were made to Petitioner are detailed in Petitioner's Exhibit 2.

30. Petitioner's Exhibit 2 is a detailed statement of all the hours and rates claimed by Petitioner from the application phase through the fees hearing. DOT contests the hours claimed for Mr. Fisher's services because 1) he was a stockholder in the Petitioner, 2) he testified in the administrative hearing, and 3) his time was duplicative of the work done by Mr. Ball. Arguments 1 and 2, above, are rejected. Mr. Fisher's hours spent in conference and in reviewing the work of Mr. Ball in preparation for the administrative hearing are reduced because they are duplicative of Mr. Ball's work and/or were participation in the case as a client. Some of Mr. Fisher's hours in the appellate phase were rejected for the same reasons; however, those hours which Mr. Fisher spent on the file reviewing the hours charged, seeking agreement on the amount with DOT, and on enforcement were awarded as reasonable because he is the principal partner in the firm.

31. Petitioner's Exhibit 2 was received into evidence and is accepted as a factual statement of the hours expended, claimed, and billed to the Petitioner. A copy of Petitioner's Exhibit 2 is attached and made a part of this order.

The following summarizes those charges in Petitioner's Exhibit 2 which are rejected for the reasons stated above:

APPLICATION PHASE: July 1, 1990 to October 17, 1990.

Excluded completely. These were not activities undertaken by virtue of agency abuse of discretion, and would have had to have been done regardless of the department's decision.

ADMINISTRATIVE HEARING PHASE: October 29, 1990 to June 11, 1991.

Excludes TRANNO 149953 on 11-14-90 because there is no showing that it is related to this case. Excludes TRANNO 149960 on 3-12-91, 149961 on 3-14-91, 149962 on 3-15-91, 149959 on 3-16-91, 149963 on 3-18-91, 149965 on 3-19-91, 149964 on 3-22-91, 150142 on 4-11-91, 149966 on 4-12-91 as activities by Mr. Fisher as a client or in duplication of Mr. Ball's work.

Subtotal of allowable charges: \$10,499.50.

APPELLATE PHASE: June 21-91 to April 10, 92.

Excludes TRANNO 149969 on 7-19-91, 149971 on 8-26-91, 149970 on 8-27-91, 149972 on 10-23-91, 149973 on 11-1-91, 149975 on 3-4-92, 149974 on 3-19-91 as activities by Mr. Fisher as a client or in duplication of Mr. Ball's work.

Subtotal of allowable charges: \$16,118.50.

ATTORNEY'S FEES, REHEARING, AND ENFORCEMENT PHASE: April 13, 1992 to February 13, 1993.

Excludes TRANNO 143754 on 4-29-92, 149979 on 7-7-92, 149980 on 7-8-92, 153149 on 8-12-92, 153142 on 8-13-92 as activities by Mr. Fisher as a client or in duplication of Mr. Ball's work.

Subtotal of allowable charges: \$12,685.00.

32. The total value of the hours of attorney's fees allowed is \$39,303. The value of the witness fees for Mr. DeVault is \$1,520 and for Mr. Dake is \$2,100, or a total of \$3,620. The filing fee in the appellate court was \$250. The travel expenses for Mr. Ball to Tallahassee, FL to argue the appellate case was \$195.66. The travel fees for Mr. Fisher were denied as being duplicative and unreasonable. The preparation of the record on appeal was \$42. See Petitioner's Exhibit 1. The total attorney's fees and costs is awarded are \$42,923.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Flamingo Lake's petition for fees and costs be granted and that fees and costs be awarded in the amount of \$42,923.

DONE AND ENTERED this 27th day of April, 1993, in Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of April, 1993.

APPENDIX TO RECOMMENDED ORDER
CASE NO. 92-4966F

Both the parties submitted proposed findings which were read and considered. The following states which of the findings were adopted, and which were rejected and why:

Petitioner's Findings: Recommended Order:

Paragraph 1	Paragraph 2
Paragraph 2	Paragraph 5
Paragraph 3	Paragraph 3
Paragraph 4	Paragraph 5
Paragraph 5	Paragraph 4
Paragraphs 6-14	Paragraphs 6-14
Paragraph 15	Paragraph 15
Paragraph 16	Mr. Fisher's billing for his participation in administrative and appellate proceedings is largely rejected his participation if deemed to have been as a client or duplicative of Mr. Ball's work.
Paragraph 17	Paragraph 16
Paragraphs 18-19	Paragraphs 18-21
Paragraphs 20-22	Paragraphs 22-24

Respondent's Findings: Recommended Order:

Paragraph 1	Paragraph 16
Paragraph 2	Paragraph 17

Excerpts from Petitioner's Ex.2 Recapped in Conclusions of Law

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.