

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HAYES GROUP HOME, INC.,)	
)	
Petitioner,)	
)	
vs.)	Case No. 99-0148F
)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On January 11, 1999, Petitioner Hayes Group Home, Inc., filed its Renewed Petition for Attorneys' Fees and Costs pursuant to Section 57.111, Florida Statutes. On February 2, 1999, Respondent Agency for Health Care Administration filed its Memorandum in Opposition to Petitioner's Renewed Petition for Attorney's Fees and Costs. Although both parties requested an evidentiary hearing on Petitioner's entitlement to be reimbursed for its costs and attorney's fees incurred in the underlying proceeding, there are material facts not in dispute which are dispositive of this proceeding without the necessity for an evidentiary hearing.

The following relevant dates are not in dispute. By letter dated November 12, 1996, the Agency advised Petitioner that its application for licensure as an assisted living facility was denied, and Petitioner timely requested an administrative hearing regarding that denial. The matter was transferred to the

Division of Administrative Hearings in January 1997 and was assigned DOAH Case No. 97-0162. The DOAH proceeding culminated in a Recommended Order on July 18, 1997, recommending that Petitioner's application be granted subject only to Petitioner providing to the Agency a certain inspection report.

The Agency's September 16, 1997, Final Order did not adopt the recommendation in the Recommended Order. Rather, the Agency concluded that Petitioner's application should be further considered by Agency staff. The Final Order did not grant Petitioner's application for licensure. Petitioner appealed that Final Order to the District Court of Appeal of Florida, Fourth District.

By letter dated April 10, 1998, the Agency forwarded to Petitioner a standard license to operate as an assisted living facility for the period of March 19, 1998, through March 18, 2000. On November 5, 1998, Petitioner filed a Notice of Voluntary Dismissal of its appeal.

The Agency's Memorandum in Opposition to Petitioner's Renewed Petition for Attorney's Fees and Costs opposes Petitioner's request for attorney's fees and costs on four bases, one of which is that the request is not timely made. The Agency's argument is both meritorious and dispositive of this proceeding.

Section 57.111(4)(b)2, Florida Statutes, requires that the application for an award of attorney's fees and costs be made

within 60 days after the date on which the small business party becomes a prevailing party. In this cause, the underlying proceeding involved Petitioner's application for licensure. According to the Renewed Petition for Attorneys' Fees and Costs, Petitioner received its license to operate an assisted living facility by transmittal letter dated April 10, 1998. That is the date upon which Petitioner obtained the relief sought by Petitioner in the underlying proceeding. Since more than 60 days elapsed between April 10, 1998, the date on which Petitioner's application for licensure was granted, and January 11, 1999, the date on which Petitioner filed its Renewed Petition for Attorneys' Fees and Costs, the Petition filed in this cause is untimely.

In its Reply Memorandum in Support of Its Renewed Petition for Attorneys' Fees and Costs, Petitioner admits that the granting of a license to Petitioner rendered moot Petitioner's appeal of the Agency's Final Order in the underlying proceeding. Petitioner argues, however, that its Petition in this cause was filed timely because it was filed within 60 days of November 5, 1998, the date on which Petitioner filed its Notice of Voluntary Dismissal of its appeal. Petitioner offers no explanation as to why it waited almost seven months from when its appeal became moot until it dismissed its appeal.

The date on which Petitioner obtained the relief it sought is the dispositive date, not the date on which Petitioner advised

the appellate court that Petitioner's appeal had been rendered moot seven months earlier. Further, Petitioner did not receive the relief it sought in the underlying proceeding as a result of the appellate court proceedings. Accordingly, the appeal does not provide the relevant dates for determining the timeliness of the Petition filed in this cause.

Petitioner's further argument that until it advised the appellate court that the appeal had been rendered moot, its time for filing its petition in this cause did not commence to run but rather was tolled because the appellate court had jurisdiction over Petitioner's dispute with the Agency is without merit. Petitioner's Reply Memorandum attaches (1) a copy of Petitioner's own request filed with the appellate court on or about January 13, 1998, requesting the appellate court to relinquish jurisdiction while Petitioner's application for licensure was further considered by the Agency and (2) a copy of the Court's Order entered February 4, 1998, granting that request.

On February 23, 1999, the Agency filed its Motion to Strike Petitioner's "Notice of Intent to File Supplemental Memorandum of Law in Support of Petition for Attorney's Fees," arguing that a reply to an agency's response to a petition for attorney's fees and costs pursuant to Section 57.111, Florida Statutes, is not an authorized pleading. Although the Agency is correct in its argument, in this cause Petitioner's Reply Memorandum has been helpful in setting forth Petitioner's arguments regarding the

issue raised by the Agency in its response to the petition as to whether the petition in this cause was timely. Further, it is appropriate to allow Petitioner to respond to the Agency's arguments where an issue is dispositive of the proceeding without the necessity for an evidentiary hearing as to facts in dispute. It is, therefore,

ORDERED THAT:

1. Respondent Agency for Health Care Administration's Motion to Strike Petitioner's "Notice of Intent to File Supplemental Memorandum of Law in Support of Petition for Attorney's Fees" be and the same is hereby denied.

2. Petitioner's Renewed Petition for Attorneys' Fees and Costs be and the same is hereby denied.

DONE AND ORDERED this 23rd day of March, 1999, in Tallahassee, Leon County, Florida.

LINDA M. RIGOT
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of March, 1999.

COPIES FURNISHED:

Jennifer Steward, Esquire
Agency for Health Care Administration
1400 West Commercial Boulevard
Fort Lauderdale, Florida 33309

E. Scott Nunley, Esquire
Boose, Casey, Ciklin, Lubitz,
Martens, McBane & O'Connell
Post Office Drawer 024626
West Palm Beach, Florida 33402-4626

Sam Power, Agency Clerk
Agency for Health Care Administration
Fort Knox Building 3
2727 Mahan Drive, Suite 3431
Tallahassee, Florida 32308

Jerome W. Hoffman, General Counsel
Agency for Health Care Administration
Fort Knox Building 3
2727 Mahan Drive, Suite 3431
Tallahassee, Florida 32308

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.