

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES L. BROWN,)
)
 Petitioner,)
)
 vs.) Case No. 01-1331F
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,)
 BUILDING CODE ADMINISTRATORS)
 AND INSPECTORS,)
)
 Respondent.)
 _____)

FINAL ORDER OF DISMISSAL

Pursuant to notice, a telephone conference hearing was conducted on May 21, 2001. All parties participated by telephone and presented argument to J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael A. Rodriguez, Esquire
Grazi & Gianino
217 East Ocean Boulevard
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Stuart, Florida 34995-2486

For Respondent: Robert A. Crabill, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
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STATEMENT OF THE ISSUE

Whether the Division of Administrative Hearings has jurisdiction to enter an award of costs and attorney's fees pursuant to Subsection 468.619(7), Florida Statutes, as set forth in the Petitioner's motion to award same.

PRELIMINARY STATEMENT

On April 10, 2001, the Petitioner, James L. Brown, filed a Motion to Award Costs and Attorney's Fees with the Division of Administrative Hearings (DOAH). An Initial Order was entered and the matter was assigned to an Administrative Law Judge. On April 30, 2001, the Respondent, Department of Business and Professional Regulation, Building Code Administrators and Inspectors (Department), filed a Response to Initial Order that challenged the statutory basis for the claim, and disputed the jurisdiction of DOAH to determine the claim. As the issue of DOAH's jurisdiction in the matter is central to whether an evidentiary hearing is required, the cause was scheduled for a telephone conference call to allow the parties to address that issue.

At the noticed time, both parties were afforded an opportunity to present argument. This order is entered to memorialize the conclusions of law reached in this cause. The findings of fact upon which all conclusions are reached are not disputed.

FINDINGS OF FACT

1. The Petitioner was the subject of an administrative action wherein the Department sought to discipline the Petitioner for alleged violations of Chapter 468, Florida Statutes. The Administrative Complaint in the underlying administrative action was filed on November 2, 1998. Procedurally, the probable cause panel would have met to approve the proposed complaint prior to that date. Since the claim was disputed by the Petitioner, the disciplinary case was forwarded to DOAH for formal proceedings on December 23, 1998.

2. That disciplinary proceeding, DOAH Case No. 98-5629, was concluded with the entry of a Final Order that adopted the Recommended Order and dismissed the Administrative Complaint. Thus no disciplinary penalty was imposed against the Petitioner.

3. The Petitioner's Motion to Award Costs and Attorney's Fees predicated the claim on Section 468.619(7), Florida Statutes. The claim represented that the underlying administrative action "resulted in a judgment for the enforcement official."

4. The sole basis for the Petitioner's claim in this case is Section 468.619(7), Florida Statutes. Such statute took effect on July 1, 2000.

5. The formal hearing in the underlying administrative case was conducted on August 8, 2000. The Recommended Order was entered on October 23, 2000.

6. The Final Order was entered by the Building Code Administrators and Inspectors Board on December 27, 2000.

7. The Petitioner maintains that this case must be distinguished from its companion case, DOAH Case No. 99-4892, because in this instance the underlying administrative case was placed in abeyance to allow a Stipulated Settlement Agreement to be presented to the Building Code Administrators and Inspectors Board (Board). Only when the Board rejected the agreement did the matter eventually proceed to an evidentiary hearing. Presumably, had the matter been amicably resolved, the Petitioner would not have incurred the costs and fees now claimed.

CONCLUSIONS OF LAW

8. Section 468.619(7), Florida Statutes, provides:

(7) If any action taken against the enforcement official by the department or the board is found to be without merit by a court of competent jurisdiction, or if judgment in such an action is awarded to the enforcement official, the department or the board, or the assignee of the department or board, shall reimburse the enforcement official or his or her employer, as appropriate, for reasonable legal costs and reasonable attorney's fees incurred. The amount awarded shall not exceed the limit provided in s. 120.595. (Emphasis added.)

9. The Respondent's opposition to the Petitioner's request for attorneys fees and costs is well founded. Section 468.619(7), Florida Statutes, only applies if the action taken by the department or board is found to be without merit by a court. The Division of Administrative Hearings is not a court. It must be presumed that the legislature in enacting the section contemplated the difference between the courts (an instrument of the judicial branch) and DOAH (a quasi-judicial division of the executive branch). Indeed, courts enter judgments (as indicated in the cited section), and DOAH enters recommended or final orders (depending on the nature of its jurisdiction). The Division of Administrative Hearings does not enter judgments as that term is used by the judicial branch. Accordingly, the Division of Administrative Hearings does not have jurisdiction over the subject matter of these proceedings.

10. Secondly, statutes are not retroactively applied unless the legislature contemplates such applicability and makes provision for same in the language of the statute. In this instance, it has not. Since all acts that initiated and placed the underlying disciplinary case at issue occurred prior to the effective date of the statute, it cannot be concluded the statute should be retroactively enforced. Accordingly, the statute is inapplicable to this cause.

11. The Petitioner argues that if the statute is not applied as claimed, it is rendered meaningless. Since courts should avoid readings of a statute that render it meaningless, Petitioner argues the legislature must have envisioned the process whereby the proposed award sought by this successful licensee would be approved. To support this conclusion, the Petitioner cites Golf Channel v. Jenkins, 752 So. 2d 561 (Fla. 2000). Such argument is rejected.

12. In rejecting Petitioner's argument, the unambiguous language of the statute must be reviewed. The legislature did not state that the Department's failure to meet its burden of proof in an administrative action would automatically result in fees and costs for the successful licensee. To the contrary, an award is appropriate only where the action is found to be without merit by a court. Had a recommended order found the administrative action to be without merit, had the Board rejected such conclusion, and had the licensee appealed the matter to a court that entered a judgment concurring with the recommended order's finding, then, in that circumstance, the successful licensee may be awarded fees and costs. In this case a court has not entered judgment making any finding as to the merit of the underlying administrative complaint. Therefore, under the plain unambiguous language of the statute, an award of fees and costs may not be entered. Nor

has it been determined that the Respondent's case was without merit merely because it failed to meet its burden of proof.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Motion to Award Costs and Attorney's Fees is denied and this case is hereby dismissed, as the Division of Administrative Hearings does not have jurisdiction over the subject matter of this request.

DONE AND ORDERED this 24th day of May, 2001, in Tallahassee, Leon County, Florida.

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of May, 2001.

COPIES FURNISHED:

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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.