

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE MUSIC, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 02-2235F
)
 CITY OF ST. PETERSBURG,)
)
 Respondent.)
 _____)

FINAL ORDER OF DISMISSAL

On June 4, 2002, Petitioner, Seminole Music, Inc. (Seminole Music) filed a Petition for Attorney's Fees and Costs (Petition) with the Division of Administrative Hearings, seeking attorney's fees and costs pursuant to Section 57.111, Florida Statutes, against the City of St. Petersburg (City). On June 26, 2002, the City filed Respondent's Answer and Defenses, requesting the dismissal of the Petition. On July 18, 2002, an Amended Order to Show Cause was issued, requiring Seminole Music to show cause why the Petition should not be dismissed. Seminole Music filed a response on July 30, 2002. A telephonic conference was held with the parties on August 19, 2002, and the Petitioner was given leave to file a supplemental response to the Amended Order to Show Cause on or before August 23, 2002. Petitioner timely filed a supplemental response.

The underlying cause for which Seminole Music seeks attorney's fees and costs resulted from a charge of discrimination filed with the City's Community Affairs Department, Division of Human Relations, by Rebecca K. Field against Seminole Music. The complaint was filed pursuant to Chapter 70 of the Pinellas County Code. Pursuant to an agreement with the City, the complaint was handled through the Human Relations Division of the City. The Human Relations Officer found there to be reasonable cause to believe that a violation of Pinellas County Code, Chapter 70 had occurred.

On March 31, 2000, the City's Division of Human Relations filed a complaint on behalf of Ms. Field against Seminole Music alleging that Ms. Field was terminated from her employment due to her sex and seeking lost wages, benefits, reasonable attorney's fees, and provable expenses. The matter was heard by a Hearing Examiner. The matter was not referred to the Division of Administrative Hearings. The Hearing Examiner issued a Recommended Order of Adjudication on January 23, 2002, recommending that a final order be entered dismissing the claim of discrimination.

On April 5, 2002, the Human Relations Review Board issued a Final Order of Dismissal. Seminole Music filed its Petition for Attorney's Fees and Costs on the basis of the complaint filed by the City's Human Relations Officer and the Final

Order of Dismissal, alleging that it was a prevailing small business party pursuant to Section 57.111, Florida Statutes.

Section 57.111(4)(a), Florida Statutes, provides:

Unless otherwise provided by law, an award of attorney's fees and costs shall be made to the prevailing small business party in any adjudicatory proceeding or administrative proceeding pursuant to chapter 120 initiated by a state agency, unless the actions of the agency were in substantially justified or special circumstances exist which would make the award unjust.

Subsection 57.111(3)(f), Florida Statutes, states that the term "state agency" has the meaning set forth in Section 120.52(1), Florida Statutes, which provides:

(1) "Agency" means

(a) The Governor in his exercise of all executive powers other than those derived from the constitution.

(b) Each:

1. State officer and state department, and each department unit described in s. 20.04.

2. Authority, including a regional water supply authority.

3. Board.

4. Commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.

5. Regional planning agency.

6. Multicounty special district with a majority of the governing board comprised of nonelected persons.

7. Educational units.

8. Entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(c) Each other unit of government in the state including counties and

municipalities, to the extent that they are expressly made subject to this act by general or special law or existing judicial decisions.

This definition does not include any legal entity or agency created in whole or in part pursuant to chapter 361, part II, an expressway authority pursuant to chapter 348, any legal or administrative entity created by an interlocal agreement pursuant to s.163.01(7), unless any party to such an agreement is otherwise an agency as defined in this subsection, or any multicounty special district with a majority of its governing board comprised of elected persons; however this definition shall include regional water supply authority.

The definition of "agency" in Section 120.52(1), Florida Statutes, does not include municipalities unless they are made subject to the Administrative Procedure Act by general or special law or existing judicial decisions. There are no general or special laws that make the City subject to the Administrative Procedure Act. See City of Deerfield Beach, 419 So. 2d 624 (Fla. 1982); Eckert v. Board of Commissioners of North Broward Hospital District, 720 So. 2d 1151 (Fla. 4th DCA 1998); Greene v. Carson, 515 So. 2d 1007 (Fla. 1st DCA 1987); Cherokee Crushed Stone, Inc., 421 So. 2d 684 (Fla. 4th DCA 1982).

Petitioner alleges in its Petition that the City is a state agency as defined in Chapter 163, Florida Statutes. The definition of agency in Section 120.52(1), Florida Statutes, includes an entity described in Chapter 163, Florida Statutes.

Entities described in Chapter 163, Florida Statutes, include entities such as community redevelopment agencies, regional transportation authorities, the Miami River Commission, and councils of local public officials. The City of St. Petersburg, Department of Community Affairs, Division of Human Relations is not an entity described in Chapter 163, Florida Statutes. Although the City and Pinellas County have entered into an agreement by which the City will process human relations complaints arising from a violation of the Pinellas County Code, the existence of the agreement does not mean that the City is considered a state agency for purposes of Section 57.111, Florida Statutes. Even if the Division of Human Relations were set up pursuant to the agreement to administer the agreement, it should be noted that any administrative or legal entity created pursuant to Section 163.01(7), Florida Statutes, is not included in the definition of "agency."

It being determined that the City of St. Petersburg is not a state agency for purposes of Section 57.111, Florida Statutes, the Division of Administrative Hearings does not have jurisdiction to consider the Petition.

Additionally, even if the City were considered to be a state agency for the purposes of Section 57.111, Florida Statutes, the proceeding was not an administrative proceeding pursuant to Chapter 120, Florida Statutes. Section

57.111(4)(a), Florida Statutes, provides the award of attorney's fees and costs shall be made to the prevailing small business party in a Chapter 120, Florida Statutes, administrative proceeding.

The administrative hearing was not conducted pursuant to Chapter 120, Florida Statutes, but arose from an alleged violation of Chapter 70 of the Pinellas County Code, and was processed using the Pinellas County Code and Chapter 15 of the St. Petersburg Code. Thus, the Division of Administrative Hearings does not have jurisdiction to determine attorney's fees and costs pursuant to Section 57.111, Florida Statutes, for proceedings which were not pursuant to Chapter 120, Florida Statutes.

Based on the foregoing, it is

ORDERED that the Petition for Attorney's Fees and Costs is DISMISSED for lack of jurisdiction.

DONE AND ORDERED this 28th day of August, 2002, in Tallahassee, Leon County, Florida.

SUSAN B. KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of August, 2002.

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.