

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CASA FEBE RTMT HOME, INC.,)
d/b/a HOME IS WHERE THE HEART)
IS,)
)
Petitioner,)
)
vs.) Case No. 03-1955F
)
AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Respondent.)
_____)

FINAL ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the administrative hearing in this proceeding on February 10, 2005, in St. Petersburg, Florida, on behalf of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Colleen O'Rourke, Esquire
The Strategic Counsel, L.C.
4805 West Laurel Street, Suite 230
Tampa, Florida 33607

For Respondent: Gerald L. Pickett, Esquire, Esquire
Agency for Health Care Administration
525 Mirror Lake Drive, North
Sebring Building, Suite 330K
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STATEMENT OF THE ISSUES

The issues for determination is whether Petitioner is entitled to attorney's fees and costs, pursuant to Section 57.111, Florida Statutes (2002), and, if so, in what amount.

PRELIMINARY STATEMENT

In a previous proceeding, the undersigned denied Petitioner's request for attorney's fees and costs. Petitioner appealed the decision, and the appellate court ordered the undersigned to grant Petitioner's request for attorney's fees and costs in the amount of \$10,889.00.

Respondent does not contest the order of the appellate court, and there are no disputed issues of fact or law concerning the appellate court's order. The disputed issues of fact and law presented in this proceeding involve additional attorney's fees and costs that Petitioner claims are due for matters ancillary to the first proceeding.

At the hearing, Petitioner presented the testimony of one witness and submitted two exhibits for admission into evidence. Respondent called no witnesses and submitted no exhibits for admission into evidence. The ALJ granted, without objection, Respondent's request for official recognition of the record in the previous proceedings.

The identity of the witnesses and exhibits and the rulings regarding each are reported in the Transcript of the hearing

filed with DOAH on February 25, 2005. Petitioner and Respondent timely filed their respective proposed final orders on March 9 and 4, 2005.

FINDINGS OF FACT

1. It is undisputed that Petitioner is entitled to \$10,889 in attorney fees and costs pursuant Casa Febe Retirement Home, Inc. v. Agency for Health Care Administration, 892 So. 2d 1103 (Fla. 2d DCa 2004). Respondent also agrees to pay \$310.00 in appellate costs.

2. Petitioner requested the foregoing attorney's fees and costs in a petition filed with DOAH on May 22, 2003. The petition included all fees and costs incurred from March 21, 2002, through May 21, 2003.

3. The original proceeding began on April 29, 2002, when Respondent, as Petitioner in the original proceeding, filed an administrative complaint. The ALJ conducted the administrative hearing, closed the evidentiary record on August 1, 2002, and entered a Recommended Order on October 21, 2002. Respondent filed its Final Order with DOAH on March 26, 2003. Agency for Health Care Administration v. Casa Febe Retirement Home, Case No. 02-1659 (DOAH October 21, 2002).

4. On November 19, 2003, the ALJ conducted an administrative hearing concerning Petitioner's request for attorney's fees and costs. During the hearing, Petitioner

submitted evidence of separate amounts of attorney's fees of \$6,890 and \$3,760, totaling \$10,650.00, and costs of \$239.00. The separate parts total \$10,889.00 (the original amount). The ALJ issued the Final Order denying fees and costs on December 12, 2003. Casa Febe Retirement Home, Inc. v. Agency for Health Care Administration, Case No. 03-1955 (DOAH December 12, 2003). The appellate court reversed the Final Order and ordered the ALJ to enter an order awarding \$10,889.00 in attorney's fees and costs to Petitioner.

5. Petitioner submitted its proposed final order in the original fee case on December 4, 2003, with a supplemental petition requesting additional attorney's fees and costs of \$7,797.75 (the additional amount). The additional amount was attributable to fees and costs incurred from May 28 through December 4, 2003.

6. The Final Order issued by the undersigned on December 4, 2003, did not address the additional amount of fees and costs, but was limited to the original amount. Petitioner did not include the additional amount in the appeal of the Final Order.

7. During the hearing conducted in the instant proceeding, Petitioner amended the additional amount by adding \$797.50. Petitioner made the amended claim by ore tenus motion entered in

the record of the hearing. The total amount of attorney's fees and costs at issue in this proceeding is \$8,595.25.

8. Judicial decisions discussed hereinafter require four "identities" to be present before a later cause of action is barred by the doctrine of res judicata. The facts show that each identity is present in this proceeding.

9. Petitioner's claim is a cause of action for attorney's fees and costs identical to that conducted in the underlying proceeding. The parties are identical. The quality or capacity of the persons for whom the claim is made are identical.

10. The thing sued for is identical to the attorney's fees and costs sued for in the underlying proceeding. The additional amount of fees and costs and the amendment are an incident to or essentially connected with the original subject matter.

CONCLUSIONS OF LAW

11. DOAH has jurisdiction over the parties and the subject matter in this proceeding. § 57.111(4)(d), Fla. Stat. (2004). DOAH provided adequate notice of the administrative hearing.

12. Petitioner is entitled to \$10,889.00 in attorney's fees for the period between March 21, 2002, and May 21, 2003, and appellate costs in the amount of \$310.00.

13. Petitioner claims it is entitled to additional and amended attorney's fees and costs in the amount of \$8,595.25 because the statutory limit on an award of attorney's fees and

costs was increased from \$15,000 to \$50,000 on June 4, 2003. Ch. 03-94, § 10, Laws of Fla. The claim for additional and amended attorney's fees is barred by the doctrine of res judicata. Tyson v. Viacom, 890 So. 2d 1205, 1208-1209 (Fla. 4th DCA 2005).

14. The right to receive and the obligation to pay attorney's fees is ancillary to and an incident of the accrual of the underlying cause of action. Therefore, the right to recover attorney's fees accrues at the time of the underlying cause of action. Bitterman v. Bitterman, 714 So. 2d 356 (Fla. 1998).

15. The increase in statutory limit for an award of attorney's fees is not procedural and does not operate retroactively. Substantive law prescribes duties and rights while procedural law prescribes means and methods for enforcing substantive rights and duties. Alamo Rent-A-Car, Inc. v. Mancusi, 632 So. 2d 1352, 1358 (1994). The right to attorney's fees is a substantive right and an increase in the burden on the party paying an award of attorney's fees and costs cannot be applied retroactively. L. Ross, Inc. v. R. W. Roberts Constuction Co., 466 So. 2d 1096 (Fla. 5th DCA 1985) approved, 481 So. 2d 484 (Fla. 1986). See also Stolzer v. Magic Tilt Trailer, 878 So. 2d 437 (Fla. 1st DCA 2004); Ship Shape v. Taylor, 397 So. 2d 1199 (Fla. 1st DCA 1981).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the claim for attorney's fees and costs in the amount of \$10,889.00 and the claim for \$310.00 in appellate costs are granted, but Petitioner's claim for additional attorney's fees and costs in the amount of \$8,595.25 is denied.

DONE AND ORDERED this 28th day of March, 2005, in Tallahassee, Leon County, Florida.



DANIEL MANRY
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 March, 2005.

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 the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a 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.