

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JUDE ALCEGUEIRE,)
)
 Petitioner,)
)
 vs.) Case No. 03-2153F
)
 EMC MORTGAGE CORPORATION,)
)
 Respondent.)
 _____)

FINAL ORDER

Pursuant to notice a formal hearing was held in this case on March 26, 2004, by video teleconference with the Respondent appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Norman Davis, Esquire
Steele, Hector, & Davis, LLP
200 South Biscayne Boulevard
Miami, Florida 33131-2398

STATEMENT OF THE ISSUE

The amount of attorneys' fees and costs the Respondent is entitled to recover pursuant to the Recommended Order entered in the underlying case.

PRELIMINARY STATEMENT

This case evolved from the unfinished business of an underlying matter wherein the Petitioner, Jude Alceguire, unsuccessfully claimed that the Respondent, EMC Mortgage Corporation, had violated the Fair Housing Act, Sections 760.20-760.37, Florida Statutes, and had thereby committed an act of discrimination based upon the Petitioner's race. The Recommended Order entered in that matter concluded that the Petitioner had failed in almost every aspect to prove his case. The Final Order entered by the Florida Commission on Human Relations affirmed the Recommended Order and dismissed the Petitioner's claim with prejudice. The Final Order was entered on February 27, 2004.

In reaching the conclusions set forth in the Recommended Order, Judge Meale tracked the Petitioner's allegations and concluded that he "was obviously using the administrative process merely for leverage to strike a deal, not to vindicate his good-faith claims of racial discrimination in housing." Further, the Recommended Order retained jurisdiction in this cause to enter attorneys' fees and costs pursuant to Section 57.105(5), Florida Statutes.

After attempting to resolve the issue of attorneys' fees and costs (subsequent to the entry of the Recommended Order),

the Respondent filed the instant motion and the case was set for hearing. All parties were provided notice of the hearing.

At the hearing, the Respondent presented testimony from two attorneys: Richard Celler and Robert Turk. The Respondent's exhibits in support of the requests were received in evidence. The Petitioner did not appear for the hearing, did not object to the presentation of the witnesses or exhibits, and did not timely file any evidence to dispute the reasonableness of the attorneys' fees and costs sought by the Respondent.

The transcript of the proceeding was filed on April 2, 2004. The Respondent's Proposed Order was filed on April 5, 2004. The Petitioner did not timely file any post-hearing proposal.

FINDINGS OF FACT

1. The Respondent, EMC Mortgage Corporation, was the prevailing party in the underlying case.

2. The Recommended Order entered in this cause was affirmed by the Florida Commission on Human Relations and delineated numerous failures of the Petitioner's case: a single alleged (and discredited) racial epithet; the failure to establish that the parties' business relationship was within the corners of a protected business activity; the failure to establish that the Respondent had failed to meet some legal obligation it owed to the Petitioner; and the failure to

demonstrate that the Respondent was somehow obligated to take the harassing and irrational telephone calls purportedly made under the guise of an oral obligation imputed to the Respondent. In short, the Petitioner's essential allegations were not established.

3. Additionally, the Recommended Order provided, in pertinent part:

24. Unable to obtain Respondent's agreement to Petitioner's post-release claim to another adjustment almost three and one-half years after the closing of the mortgage with an unrelated party, Petitioner decided to transform his claim to one of racial discrimination, even though he was missing key elements to such a claim, including the racial epithet that Petitioner manufactured.

25. Petitioner's repeated, unprecedented attempts to disrupt the administrative process preclude any inference of good faith on his part. To the contrary, Petitioner was obviously using the administrative process merely for leverage to strike a deal, not to vindicate his good-faith claims of racial discrimination in housing.

4. In conclusion, the Recommended Order ordered that:

...pursuant to Section 57.105(5), Florida Statutes, Petitioner shall pay Respondent its reasonable attorneys' fees and damages in the form of recoverage costs in connection with the defense of this case.

5. In connection with the defense of this case, the Respondent's attorneys expended 142 hours in service to the Respondent's cause. A paralegal worked 31.2 hours on the

matter. The hours expended and the hourly rates of compensation for the attorneys and paralegal are reasonable given the nature of the controversy. Of the approximately \$45,000 in attorneys' fees billed to the Respondent for the services rendered in this cause, the Respondent seeks recovery of \$37,653.00.

6. The amount of \$37,653.00 for attorneys' fees in this cause is reasonable and is fully supported by the evidence presented at hearing and the testimony of Robert Turk. In the absence of any evidence to the contrary, that amount is accepted as the appropriate compensation for the fees incurred by the Respondent.

7. As to the costs incurred in this matter, the Respondent has established it incurred costs exceeding \$858.25. In the absence of any evidence to the contrary, that amount is accepted as the appropriate costs that may be recovered by the Respondent.

8. Robert Turk has practiced law in Florida for 25+ years. His expertise in litigation, administrative matters, and knowledge of the legal community in South Florida has been largely credited in determining the reasonableness of the hourly rates and hours expended by the attorneys in this cause. Mr. Turk's assessment that the fees are reasonable was based on his review of the record in this case as well as his familiarity of the fees normally charged in the South Florida region.

9. Similarly, the costs associated with the case have also been deemed reasonable and are far less than those actually billed and incurred by the client.

10. Again, the Petitioner did nothing to contest the amounts of either the attorneys' fees sought or the costs incurred by the Respondent.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 57.105(5), 120.569 and 120.57(1), Fla. Stat.

12. Section 57.105(5), Florida Statutes, provides:

In administrative proceedings under chapter 120, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4). Such award shall be a final order subject to judicial review pursuant to s. 120.68. If the losing party is an agency as defined in s. 120.52(1), the award to the prevailing party shall be against and paid by the agency. A voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this subsection.

13. The Recommended Order entered in this cause made specific findings and conclusions regarding the Respondent's entitlement to attorneys' fees and costs. This Final Order therefore does not address the Respondent's entitlement to fees.

Instead, this Final Order addresses the issue of whether the amounts claimed by the Respondent are reasonable and appropriate under the evidence presented in this matter. It is concluded they are.

14. Courts have long-established that to determine an award of attorneys' fees, the reasonableness of the hourly rate as well as the number of hours expended must be considered. Centex-Rooney Construction Co. v. Martin County, 725 So. 2d 1255 (Fla. 4th DCA 1999). Additionally, a prevailing party is entitled to recover only fees that are "reasonably expended." See Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985).

15. To make these determinations the following criteria should be applied:

- (1) time and labor required, novelty and difficulty of question involved, and skill requisite to perform legal service properly,
- (2) likelihood, if apparent to client, that acceptance of particular employment will preclude other employment by lawyer,
- (3) fee customarily charged locally for similar legal services,
- (4) amount involved and result obtained,
- (5) time limitations imposed by client or circumstances,
- (6) nature and length of professional relationship with client,
- (7) experience, reputation, and ability of lawyer performing services, and
- (8) whether fee is fixed or contingent.

Martin County, supra.

16. In this case the attorneys representing the Respondent did not expend excessive amounts of time preparing for or defending the Petitioner's claims. According to Mr. Turk, based upon his review of the time records, the attorneys conservatively prepared until it was evident that the matter would proceed to formal hearing. The Petitioner has not refuted Mr. Turk's expert opinions as to the reasonableness of the times and fees charged by the attorneys for the Respondent. Similarly, the costs incurred by the Respondent are accepted as appropriate.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Respondent, as the prevailing party in this cause, recover from the Petitioner the amounts of \$37,653 representing reasonable attorneys' fees and \$858.25 in appropriate costs. Petitioner shall within 30 days of this Final Order remit to the Respondent the full amounts set forth.

DONE AND ORDERED this 28th day of April, 2004, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of April, 2004.

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.