

1-25-04

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

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Josephine Kimball,
Petitioner,

AT

vs.

Rendition no.: DOH-05-0293 -FOF-HO
Case no.: 03-2807F

Department of Health,
Respondent.

ASH
CWS

2005 FEB 28 P 1:24
FILED

FINAL ORDER

A recommended order having been received, this matter is before Department of Health (hereinafter Department) for disposition. The issue is whether the Petitioner is entitled to an award of attorney fees from the Department under section 120.595, *Florida Statutes*.

The Administrative Law Judge (hereinafter ALJ) finds as a fact that "[c]learly, at the time the Department initiated the underlying proceeding and participated in that proceeding, there was sufficient evidence of Josephine Kimball's [the Petitioner herein] connection and involvement with the companies engaged in the illegal drug activities to bring and pursue the administrative action against her." Quote from paragraph 32 of the recommended order; see also paragraph 46 of the recommended order. The Petitioner's testimony that the Department was motivated by an improper purpose was rejected as neither credible nor persuasive. See paragraph 31 of the recommended order.

The Petitioner excepts at length to the ALJ's findings of fact, but the exceptions simply reargue the weight of the evidence. At this level of review the Department has no authority to reweigh the conflicting evidence. The findings of fact of the administrative law judge are supported by competent substantial evidence and the implication that the Department should reweigh the evidence is rejected. See section 120.57(1)(l), *Florida Statutes*; *Heifetz v. Dept. of Business Regulation*, 475 So. 2d 1277, 1281

(Fla. 1st DCA 1985). Additionally, the Petitioner maintains that the ALJ erred as a matter of law in concluding that the Department is not a "nonprevailing adverse party" within the meaning of section 120.595(1)(e)3, *Florida Statutes*. The exceptions are rejected *in toto*.

The recommended order of January 25, 2005 is incorporated by reference. The findings, conclusions, and recommendation set forth in the recommended order are adopted.

Based on the foregoing, the Petitioner, Josephine Kimball's petition for attorney fees and costs is dismissed.

DONE and **ORDERED** this 23 day of February 2005,
in Tallahassee, Leon County, Florida.

JOHN O. AGWUNOBI, M.D., M.B.A., M.P.H.
Secretary, Department of Health

By: Nancy Humbert
Nancy Humbert, M.S.N., A.R.N.P.
Deputy Secretary for Health

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. A REVIEW PROCEEDING IS GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS FINAL ORDER.

Copy furnished to each of the following:

Brandon L. Kolb, Esquire
112 East Street, suite B
Tampa, Florida 33602

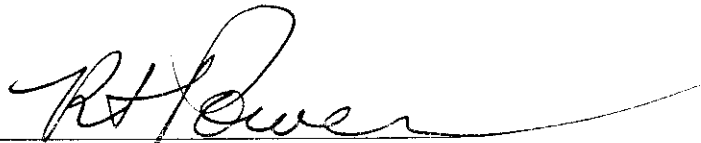
Robert P. Daniti, Esquire
Department of Health
4052 Bald Cypress Way, bin A02
Tallahassee, Florida 32399-1703

Carolyn S. Holifield, ALJ
Division of Administrative Hearings
Desoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

FALR

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing FINAL ORDER has been served by ordinary mail via the United States Postal Service, inter-office mail, or by hand delivery to each of the above-named persons this 25th day of February 2005.



R. Samuel Power
Agency Clerk
Department of Health
4052 Bald Cypress Way, bin A02
Tallahassee, Florida 32399-1703
phone: (850) 245-4005