

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Swuantee Street
Tallahassee, Florida

07 JUL 30 AM 11:03
FILED
DIVISION OF
ADMINISTRATIVE
HEARINGS

MARTHA S. BOFILL and
PEDRO BOFILL,

Petitioner,

vs.

DOT CASE NO.: 06-096
DOAH CASE NO.: 06-3302

DEPARTMENT OF TRANSPORTATION,

Respondent.

FINAL ORDER

This proceeding was initiated by the filing of a request for a formal administrative hearing on July 14, 2006, by **Petitioners, MARTHA BOFILL and PEDRO BOFILL** (hereinafter the **BOFILLS**), pursuant to Section 120.569, Florida Statutes, in response to a letter denying them replacement housing payments, sent on June 27, 2006, by the **Respondent, DEPARTMENT OF TRANSPORTATION** (hereinafter **DEPARTMENT**). An Order of Dismissal was entered on August 1, 2006, for insufficient pleading. On August 21, 2006, the **BOFILLS** submitted amended petitions and the matter was referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge and a formal hearing.

A formal administrative hearing was held in this case in Miami, Florida, on March 21, 2007, before Robert E. Meale, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

For Petitioner: Martha Bofill, Pro Se
Pedro Bofill, Pro Se
540 Northwest Boulevard
Miami, Florida 33126

For Respondents: Susan Schwartz, Esquire
Assistant General Counsel
Department of Transportation
Haydon Burns Building, MS 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

At the hearing, the **BOFILLS** testified on their own behalf and presented the testimony of five (5) witnesses: Ramon Alentado, Felisa Carnero, Neysa Hoyos, Julio Suarez, and Teonila Centeno. The **BOFILLS** offered eleven (11) exhibits, of which Exhibits 1, 2, 3, 4, 10 and 11 were admitted into evidence. The **DEPARTMENT** called five (5) witnesses: Martha Villabona, Jesus Alvarez, Richard Lineberger, Diego Rivadeneira, and Robert Knight. The **DEPARTMENT** presented Exhibits 1 through 14, which were admitted into evidence. The transcript from the hearing was filed on April 30, 2007. The **DEPARTMENT** filed a Proposed Recommended Order on May 10, 2007. The **BOFILLS** did not file any post-hearing documents. On May 11, 2007, the Recommended Order was filed by Judge Meale. No exceptions to the Recommended Order were filed.

STATEMENT OF THE ISSUE

As stated by the Administrative Law Judge in his Recommended Order, the issue presented was:

[W]hether Petitioners are entitled to replacement housing payments in connection with Respondent's acquisition of their mother's home, at which both Petitioners also reside, and whether Petitioner Pedro Bofill is entitled to business moving expenses for the business that he operates from his mother's former home.

FINDINGS OF FACT

After review of the record in its entirety, it is determined that the Administrative Law Judge's Findings of Fact in paragraphs 1 through 21 of the Recommended Order are supported by competent, substantial evidence with the exception of paragraph 14. There is no record evidence suggesting that a telephone conversation took place on November 15, 2005, between a **DEPARTMENT** representative and **PEDRO BOFILL** discussing the effect of separate housing relocation payments in terms of reducing the payment to the **BOFILLS'** mother. Paragraph 14 is therefore **REJECTED** in its entirety. Paragraph 14 was considered as further justification for the denial of separate payments and the removal of this paragraph does not affect the outcome of these proceedings. Therefore, only paragraphs 1 through 13 and 15 through 21 are adopted in their entirety and incorporated as if fully set forth herein.

CONCLUSIONS OF LAW

1. The **DEPARTMENT** has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapters 120 and 337, Florida Statutes.
2. The Conclusions of Law in paragraphs 20 through 28 of the Recommended Order are fully supported in law. As such, they are adopted in their entirety and incorporated as if fully set forth herein.
3. The Conclusion of Law found in paragraph 29 suggesting that required notices were not given to the **BOFILLS** as provided in Florida Administrative Rule 14-66.007(5) is incorrect and therefore **REJECTED**. Florida Administrative Code Rule 14-66 was substantially rewritten in April of 2007, after these proceedings concluded. The rule in effect from 2000-2007 required various notices to displaced persons, however, Rule 14-66.007(1)(o) defined "person" as "any

individual, family, partnership, corporation, or association.” The **DEPARTMENT** provided all required notices to Mrs. Cabeza as owner of the property and head of the family. The **DEPARTMENT** was not required to provide individual notices of the acquisition process to each member of the family. Paragraph 29 was not essential in the disposition of this matter and is therefore **REJECTED** in its entirety.

ORDER


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

ORDERED that the **Respondent, DEPARTMENT OF TRANSPORTATION DEPARTMENT**, adopts the Recommended Order with the exception of paragraphs 14 and 29.

It is further,

ORDERED that **Petitioners', MARTHA BOFILL and PEDRO BOFILL**, requests for separate housing relocation payments and business moving expenses are **DENIED**.

DONE AND ORDERED this 30th day of July, 2007.



STEPHANIE C. KOPELOUSOS
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2007 JUL 30 AM 7:59

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, M.S. 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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