

DATE FILED

SEP 16 2009

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

COMMISSION ON ETHICS

In re CHARLES OSBORNE,)
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 Respondent.)
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Complaint No. 03-094
DOAH Nos. 04-4110EE
07-3045FE
Final Order No. 09-2442

FILED
2009 SEP 17 A 10:29
DIVISION OF
ADMINISTRATIVE
SERVICES

FINAL ORDER (CONSOLIDATED) ON ATTORNEY FEES AND COSTS

This matter came before the State of Florida Commission on Ethics (Commission), meeting in public session on September 11, 2009, on the Motion For Entry Of A Consolidated Final Order filed by Charles Osborne [respondent in the underlying ethics complaint and petitioner regarding requests for attorney fees and costs (Osborne)] on July 10, 2009.

Background

This matter began with the filing of an ethics complaint by Alexander J. Milanick [complainant in the original ethics complaint proceeding and respondent in the attorney fees/costs proceedings before the Commission and before DOAH (Milanick)] against Osborne, alleging that Osborne (as Mayor of the Town of Beverly Beach, Florida) violated the Code of Ethics. Thereafter, the Commission investigated the matter and dismissed the ethics complaint based upon a finding of no probable cause.

Subsequently, Osborne petitioned the Commission for attorney fees and costs against Milanick, the Commission referred the petition to the Division of Administrative Hearings (DOAH), and DOAH's Administrative Law Judge (ALJ) held a hearing on the petition and issued a Recommended Order (RO) recommending that the Commission enter a final order awarding attorney fees and costs to Osborne and against Milanick in the amount of \$4,976.00. Thereafter, Milanick filed exceptions to the RO, Osborne responded to the exceptions, Milanick and Osborne made argument before the Commission, and the Commission entered a Final Order Denying Attorney Fees And Costs [order rendered October 19, 2005 (FO)]. Osborne then appealed the FO to the Fifth District Court of Appeal and the Court reversed the Commission's denial of fees and costs and remanded the matter to the Commission. Osborne v. Commission on Ethics, 951 So. 2d 25 (Fla. 5th DCA 2007). Also, by separate order (dated February 16, 2007), the Court awarded appellate attorney fees in favor of Osborne and against Milanick, but did not determine the amount of the appellate fees, instead remanding this determination to the Commission.

Thereafter, Osborne filed with the Commission a Motion For Award Of Attorney's Fees And Costs, a Motion For Petitioner's Attorney's Fees And Costs Incurred In Proving Entitlement To

Attorney's Fees And Costs, and a Motion For Petitioner's Appellate Attorney's Fees And Costs; and Milanick filed with the Commission three Objections, one to each of the three Motions filed by Osborne. Then, in view of the posture of the matter following the decision and mandate of the District Court, the Commission sent the matter back to DOAH (via referral letter dated July 6, 2007) for further hearing and issuance of a second RO.¹ Subsequently, the ALJ entered a second RO, recognizing the original award to Osborne which was endorsed by the District Court of Appeal and recommending that the Commission award additional fees and costs. Thereafter, both Milanick and Osborne filed with the Commission exceptions to the second RO, and Osborne filed a response to Milanick's exceptions. Both Milanick and Osborne were notified of the date, time, and place of our final consideration of the second RO, and both were given the opportunity to make argument during the Commission's consideration. Then, the Commission entered a second FO, which rejected Osborne's exceptions and Milanick's exceptions and which awarded fees and costs to Osborne in the total amount of

¹ Like most State administrative agencies, the Commission utilizes the services of DOAH and its ALJs to conduct hearings, take evidence, and make recommendations on disputed issues. Because Osborne and Milanick did not agree on the payment of costs and attorney fees or the amounts thereof after the Court's decision and mandate, it was necessary for the matter to be sent a second time to DOAH.

\$77,234.43 (\$4,976.00, the original award, amount incurred by Osborne in defense of the ethics complaint filed by Milanick + \$56,772.73, amount incurred by Osborne in proving entitlement to and the amount of fees and costs incurred in defense of the ethics complaint filed by Milanick + \$15,485.70, amount incurred by Osborne in appeal of the Commission's first FO to the District Court of Appeal); and the second FO rejected yet additional fees and costs sought by Osborne. Following, Milanick appealed the second FO to the District Court, Osborne cross appealed, the Court rejected the relief sought by Milanick (affirming the Commission's second FO in part), the Court granted some of the additional fees and costs sought by Osborne (reversing the Commission's second FO in part), and the Court remanded the matter to the Commission to determine the amount of the additional fees and costs to which Osborne is entitled. Milanick v. Osborne, 6 So. 3d 729 (Fla. 5th DCA 2009). Thereafter, Osborne filed the instant Motion For Entry Of A Consolidated Final Order, Milanick was given the opportunity to respond to the Motion, both Osborne and Milanick were notified of the date, time, and place of the Commission on Ethics' hearing of the Motion, and both were given the opportunity to make argument regarding the Motion.

Disposition

Having considered the Motion, the record history of the matter, and any responses or argument of Osborne and Milanick, the Commission on Ethics grants the Motion.

Pursuant to the District Court of Appeal's decision in the second case, the matter is postured to be sent a third time to DOAH for an ALJ's recommendation as to fees and costs, inasmuch as Osborne and Milanick have not agreed as to payment of or the amount of the additional fees and costs remanded by the Court for determination. However, Osborne's instant Motion makes unnecessary and improper a third referral to DOAH because Osborne, via the Motion, waives and gives up the additional fees and costs which would be at issue on a third referral to DOAH. Further, because the total amount of fees and costs which Osborne is content with being awarded (\$77,234.43) has already been determined by both the ALJ and the Commission, and has been affirmed by the District Court of Appeal, as a matter of law Osborne need show nothing more to be entitled to this amount.

Accordingly, the Commission on Ethics awards and recognizes Osborne's entitlement to attorney fees and costs against Milanick, payable by Milanick as provided in Section 112.317(7), Florida Statutes, in the already proven and judicially-determined total amount of \$77,234.43, as set forth particularly

in the administrative and judicial rulings already decided in the matter.

ORDERED by the State of Florida Commission on Ethics meeting in public session on September 11, 2009.

September 16, 2009
Date Rendered

Cheryl Forchilli
Cheryl Forchilli
Chair

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, FLORIDA STATUTES, BY FILING A NOTICE OF ADMINISTRATIVE APPEAL PURSUANT TO RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE CLERK OF THE COMMISSION ON ETHICS, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709 (PHYSICAL ADDRESS AT 3600 MACLAY BLVD., SOUTH, SUITE 201, TALLAHASSEE, FLORIDA); AND BY FILING A COPY OF THE NOTICE OF APPEAL ATTACHED TO WHICH IS A CONFORMED COPY OF THE ORDER DESIGNATED IN THE NOTICE OF APPEAL ACCOMPANIED BY THE APPLICABLE FILING FEES WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF ADMINISTRATIVE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

cc: Mr. Robert J. Riggio, Attorney for Charles Osborne
Dr. Alexander J. Milanick
The Honorable Harry L. Hooper,
Division of Administrative Hearings