

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

VICTOR HARRISON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 DEPARTMENT OF BUSINESS AND ) Case No. 08-0319F  
 PROFESSIONAL REGULATION, )  
 DIVISION OF REAL ESTATE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

FINAL ORDER

On January 16, 2008, Petitioner, Victor Harrison, made application for attorney's fees and costs in Petitioner's Florida Statutes 57.111 Motion for Attorney Fees/Costs, pursuant to Section 57.111 (4), Florida Statutes (2003). This request was in relation to the outcome in Florida Department of Business and Professional Regulation, Division of Real Estate, Petitioner, v. Victor Harrison, Respondent, DOAH Case No. 06-3387PL/DBPR, Case No. 2001-80524. Petitioner in this case claims to be a "prevailing small business party," as defined in Subsection 57.111(3)(c) and (d), Florida Statutes (2003), thus entitled to an award of attorney's fees and costs, absent substantial justification for the present Respondent, Department of Business and Professional Regulation, Division of Real Estate (DBPR), in its actions against Victor Harrison (Harrison) in the prior case

or lacking special circumstances that would cause the award of attorney's fees and costs to be unjust. § 57.111(4)(a), Fla. Stat. (2003).

On April 7, 2008, a hearing was conducted by video-teleconference between sites in Tallahassee, Florida, and Pensacola, Florida, to allow evidence to be presented addressing the application for attorney's fees and costs. § 57.111, Fla. Stat. (2003). The hearing was held by Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Thomas M. Brady, Esquire  
3250 Navy Boulevard, Suite 204  
Post Office Box 12584  
Pensacola, Florida 32591-2584

For Respondent: Robert Minarcin, Esquire  
Department of Business and  
Professional Regulation  
Hurston Building, North Tower  
400 West Robinson Street, Suite N 801  
Orlando, Florida 32801-1772

PRELIMINARY STATEMENT

After the application for attorney's fees and costs had been filed, DBPR filed a Motion to Dismiss on February 6, 2008. On that same date Harrison responded to the motion. On February 11, 2008, Harrison filed a supplemental response to the motion.

The motion and responses were addressed at hearing, with the understanding that the arguments offered by the respective parties would be considered in preparing the Final Order.

On February 26, 2008, the Notice of Hearing to be held by video teleconference was provided, setting April 7, 2008, as the hearing date.

On March 25, 2008, Harrison filed a Motion in Limine asking that Daniel Villazon, Esquire, be prohibited from testifying as an expert witness for DBPR, on the subject of the reasonableness of Harrison's request for attorney's fees and costs and prohibiting introduction of any evidence by DBPR pertaining to the probable cause proceedings associated with the disciplinary case against Harrison. On March 31, 2008, Harrison filed an amendment to that motion. Daniel Villazon was not called to testify as an expert making the issue moot concerning any prohibition against his testimony. The question of introduction of evidence concerning probable cause proceedings was addressed when DBPR moved to admit the August 4, 2003, transcript excerpts of the Florida Real Estate Appraisal Board, Division of Real Estate (probable cause) meeting considering the investigation of Harrison, as Respondent's Exhibit numbered 1 in the present case. That exhibit was admitted over Harrison's objection.

On March 31, 2008, DBPR filed a Notice of Official Recognition pertaining to what became Respondent's Exhibit numbered 1 and two other exhibits. On April 1, 2008, a Corrected Notice of Official Recognition pertaining to those exhibits was filed by DBPR.

On April 1, 2008, Harrison filed an objection to and Demand for Opportunity to Examine and Contest a Matter Sought by Respondent to be Officially Recognized. This objection addressed the third item in the Notice of Official Recognition. Eventually that third item became Respondent's Exhibit numbered 3 admitted at hearing. (The second item requested for official recognition to be made was not offered as an exhibit at hearing.) However, for fact-finding purposes concerning the Final Order in DBPR Case No. 2001-80524 and its reference to the Recommended Order in association with DOAH Case No. 06-3378PL, DBPR's request for official recognition in accordance with Section 120.569(2)(i), Florida Statutes (2007), (Respondent's Exhibit numbered 2) is granted.

On April 3, 2008, Harrison filed an objection to what became Respondent's Exhibits numbered 1 and 3, that was overcome when the decision was made to admit the exhibits at hearing.

On April 1, 2008, Harrison filed a request for official recognition of certain materials referred to as an evidentiary exhibit binder. That binder contained Harrison's exhibits which became a series of exhibits admitted as Petitioner's Exhibits numbered 1 through 31 at hearing. Within that group Petitioner's Exhibits numbered 13-15 were admitted on a limited basis as explained in the hearing transcript. In accordance with Harrison's request, he was allowed to file supplements to

Petitioner's Exhibits numbered 1, 5 and 13 post-hearing. Those supplemental exhibits were filed on April 7, 2008, becoming part of Petitioner's earlier exhibits.

By agreement of the parties the matters in dispute needing resolution were limited to the question of whether: (1) Harrison is a "small business party" as defined in Subsection 57.111(3)(d), Florida Statutes (2003) and (2) whether DBPR was "substantially justified" when it filed the Administrative Complaint in the underlying case, Florida Department of Business and Professional Regulation, Division of Real Estate, Petitioner v. Victor Harrison, Respondent, DOAH Case No. 06-3387PL/DBPR 2001-80524. § 57.111(3)(e), Fla. Stat. (2003)

On April 25, 2008, the hearing transcript was filed with DOAH. On May 5, 2008, the parties filed proposed orders which have been considered in preparing the Final Order.

#### FINDINGS OF FACT

§ 57.111(3)(f) Fla. Stat. (2003)  
"state agency"

1. DBPR meets the definition found within Section 120.52(1)(b)1, Florida Statutes (2003), as an "agency."

§ 57.111(3)(b)2. and 3., Fla. Stat. (2003)  
"initiated by a state agency"

2. As reflected in the file related to DOAH Case No. 06-3387PL, on August 6, 2003, the Florida Real Estate Appraisal Board in Florida Department of Business and Professional

Regulation, Division of Real Estate, Petitioner vs. Victor Harrison, Respondent, FDBPR Case No. 2001-80524, charged Victor Harrison with violations of Chapter 475, Part II, Florida Statutes (2005), in his capacity as a certified real estate appraiser. This was action "initiated by a state agency." The Administrative Complaint was directed to Victor Harrison who held Certificate No. RH-119 issued by DBPR on November 18, 1996. On December 10, 2003, Harrison responded to the Administrative Complaint concerning his position on factual allegations alleging violations found in Counts I through V to the Administrative Complaint. This was treated as a request for formal hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2005). On September 11, 2006, DOAH received the case from DBPR.

3. On March 20, 2007, a formal hearing was held to consider the Administrative Complaint. On May 30, 2007, a Recommended Order was entered recommending that the case be dismissed.

§ 57.111(3)(c)1., Fla. Stat. (2003)  
"prevailing small business party"

4. On October 18, 2007, the Division of Real Estate on behalf of the Real Estate Appraisal Board, in the case before DBPR, Florida Department of Business and Professional Regulation, Division of Real Estate, Petitioner, vs. Victor Harrison, Respondent, DBPR Case No. 2001-80524, by Final Order dismissed the Administrative Complaint.

§ 57.111(3)(d), Fla. Stat. (2003)  
"small business party"

5. Harrison conducts his appraisal business as Gulf Coast Appraisals, a sole proprietorship.

6. On August 6, 2003, when the Administrative Complaint was signed accusing him, Harrison operated as Gulf Coast Appraisals. At times relevant, he had no other employees and his net worth did not exceed two (2) million dollars.

§ 57.111(4)(b), Fla. Stat. (2003)  
"itemized affidavit"

7. An itemized affidavit was submitted, as amended, to DOAH revealing the nature and extent of the services rendered by Harrison's attorney. In all respects concerning the proceeding, the parties agree that the total amount of attorney's fees and costs was \$31,919.23. DBPR accepts the amount as reasonable and just, should Harrison prevail in his overall claims, that is should Harrison be found to be a "prevailing small business party," in a setting where it was decided that DBPR was not "substantially justified" in its actions pursuant to the Administrative Complaint in the underlying case.

§ 57.111(4)(b)2., Fla. Stat. (2003)  
"filing of the application"

8. The application for attorney's fees and costs was filed on January 16, 2008.

§ 57.111(4)(d)1., Fla. Stat. (2003)  
"nominal party"

9. When DBPR undertook its prosecution directed to Harrison, it was not acting as a nominal party.

§ 57.111(3)(e), Fla. Stat. (2003)  
"substantially justified"

10. On January 9, 1997, Harrison rendered a Uniform Residential Appraisal Report on property at 693 Broad Street, Pensacola, Florida.

11. Daniel A. Ryland, another real estate appraiser doing business in Pensacola, Florida, made a complaint against Harrison in relation to the appraisal report prepared by Harrison. On November 21, 2001, he was interviewed by Benjamin F. Clanton, an investigator with DBPR concerning the nature of his complaint. During the course of the interview, Ryland provided Clanton a completed Uniform Complaint Form outlining the concerns expressed by Ryland about the aforementioned appraisal at 693 Broad Street in Pensacola, Florida, performed by Harrison. In his remarks, Ryland, in great detail, explained why he thought the earlier appraisal by Harrison was questionable.

12. In carrying out an investigation of the Ryland complaint, Clanton interviewed Harrison, Fred R. Catchpole, and Rhonda Guy, all persons involved with the January 9, 1997, appraisal, and all persons performing various functions as appraisers. Clanton interviewed others as well. He collected a



number of exhibits concerning specific information about the appraisal and related data. All of this information was made part of an investigative report completed by Clanton on December 26, 2001, and approved by a supervisor, Sydney B. Miller, two days later.

13. The predicate for the investigative report by Clanton came from Ryland's complaint, in which there was some allusion to a violation of Section 475.624(14), (15) and (17), Florida Statutes, on Harrison's part. In summary, the complaint addressed the contention that the January 9, 1997, appraisal on property at 693 Broad Street, Pensacola, Florida, overvalued the property in comparison with other properties thought to be superior in their value.

14. As the table of contents associated with the Clanton investigative report describes, Respondent's Exhibit numbered 3, materials in association with the investigation numbered over 320 pages.

15. On August 4, 2003, the Florida Real Estate Appraisal Probable Board meeting on probable cause was held. In the course of that meeting, the matter of Victor Harrison, referred to as item number 200180524 was considered by panel members, with Cynthia A. Wright, sitting as the chairperson, Clay Ketcham, and Mary Calloway, serving as the additional members. At the same

time the cases involving Rhonda E. Guy and Fred R. Catchpole were under consideration.

16. In the panel discussion, it was noted that Catchpole and Harrison were licensed real estate appraisers and Guy was a registered trainee appraiser. Discussion was made of the January 9, 1997, appraisal of the aforementioned residential property. Information was imparted concerning the method or approach in performing the appraisal and perceived failings in the process.

17. In the discussion, generally stated, Respondent was charged " . . . with failure to exercise reasonable diligence in developing an appraisal, violating a standard for the development or communication of an appraisal, breach of trust in any business transaction."

18. There was additional discussion that Harrison " . . . failed to produce or provide the data that he (Harrison) and Guy both relied upon in communicating and developing the appraisal." Further there was a discussion to the effect " . . . that Respondent Guy completed an inspection of the property without the assistance of Respondent Harrison. Respondent Harrison did not inspect the comparables until after the report was submitted." As a result, the discussion at the meeting went on to say ". . . we charge Respondent Harrison with failure to

obtain records for at least five years, guilty of obstructing or hindering the enforcement of [sic] license law."

19. Then the presenter stated, "We asked that you find probable cause and issue the filing of an Administrative Complaint in Case . . . 200180524, regarding Victor Harrison . . . .".

20. Following the presentation concerning Harrison, the August 4, 2003, excerpt of the meeting indicates:

CHAIRPERSON WRIGHT: Mr. Ketcham?

MR. KETCHAM: Do you want to take up the first one, the Victor Harrison case first; is that the one we want to deal with.

MS. WATKINS: Yes, sir, that's fine.

MR. KETCHAM: Okay. I did not really have any questions and I wanted to make sure also we're charging them with failure to maintain records and that's because they didn't deliver a copy of the requested report.

MR. SMITH: Yes. If that question is -- I'm sorry for misspeaking. But if that question is designed for me, yes, that's one of the reasons.

MR. KETCHAM: Okay. Then I don't have any other questions. And after a complete review of the file, I would find probable cause and recommend the opening of an administrative complaint.

CHAIRPERSON WRIGHT: Thank you, Mr. Ketcham.

Ms. Calloway?

Ms. CALLOWAY: Calloway here. After a complete review of the record I find probable cause recommend the filing of an administrative complaint on Victor Harrison.

CHAIRPERSON WRIGHT: And after a complete review of the record I find probable cause and recommend an administrative complaint be filed on Mr. Harrison.

(Whereupon, this concludes this portion of Florida Real Estate Appraisal Board Meeting, In Re: Victor Harrison.)

21. The action by the probable cause panel led to the Administrative Complaint in Case No. 200180524 in relation to the January 9, 1997, appraisal report for the property at 693 Broad Street, Pensacola, Florida, for alleged misconduct referred to in the Administrative Complaint. Harrison was alleged to have violated Sections 475.624(2), (4), (14), and (15), and 475.626(1)(f), Florida Statutes, as follows:

#### COUNT I

Based upon the foregoing, Respondent is guilty of failure to retain records for at least five years of any contracts engaging the appraiser's services, appraisal reports, and supporting data assembled and formulated by the appraiser in preparing appraisal reports in violation of Section 475.629, Florida Statutes, and, therefore, in violation of Section 475.624(4), Florida Statutes.

#### COUNT II

Based upon the foregoing, Respondent is guilty of having failed to exercise reasonable diligence in developing an

appraisal report in violation of Section 475.624(15), Florida Statutes.

COUNT III

Based upon the foregoing, Respondent has violated a standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice in violation of Section 475.624(14), Florida Statutes.

COUNT IV

Based upon the foregoing, Respondent is guilty of misrepresentation, culpable negligence, or breach of trust in any business transaction in violation of Section 475.624(2), Florida Statutes.

COUNT V

Based upon the foregoing, Respondent is guilty of having obstructed or hindered in any manner the enforcement of Chapter 475, Florida Statutes or the performance of any lawful duty by any person acting under the authority of Chapter 475, Florida Statutes in violation of Section 475.626(1)(f), Florida Statutes.

§ 57.111(4)(a), Fla. Stat. (2003)  
"special circumstances"

22. DBPR has made no argument and no evidence was presented by DBPR in this case, to show that special circumstances exist that would make the award of attorney's fees and costs unjust.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the subject matter and the parties in this case in accordance with Section 57.111, Florida

Statutes (2003), and Sections 120.569 and 120.57(1), Florida Statutes (2007).

24. DBPR initiated action following an investigation in DBPR Case No. 2001-80524, when the probable cause panel decided to proceed against Harrison based upon material provided through the investigation. On August 4, 2003, this decision was reached. On August 6, 2003 the Administrative Complaint was signed and was issued and notice provided arising from the determination of probable cause to Harrison concerning his right to dispute matters in the Administrative Complaint. Section 57.111, Florida Statutes (2003), was in effect on those dates.

25. On January 16, 2008, Harrison applied for an award of attorney's fees and costs. Section 57.111, Florida Statutes (2007), was the law in place at that time. It differed from Section 57.111, Florida Statutes (2003), in that Section 57.111, Florida Statutes (2007), recognized an additional class of "small business party," wherein at Section 57.111(3)(d)(1).c., Florida Statutes (2007), it defines "small business party" to include:

An individual whose net worth did not exceed \$2 million at the time the action is initiated by a state agency when the action is brought against that individual's license to engage in the practice or operation of a business, profession, or trade.

26. Before preceding with the legal analysis it must be determined whether Section 57.111, Florida Statutes (2003), or

Section 57.111, Florida Statutes (2007), pertains. Section 57.111, Florida Statutes (2003), controls the case.

27. The right to attorney's fees granted by statute are substantive in nature rather than procedural. Moser v. Barron Chase Sec. Inc., 783 So. 2d 231 (Fla. 2001) Recognizing the substantive nature of Section 57.111, Florida Statutes, dealing with attorney's fees and costs, changes to this statute are to be applied prospectively, not retroactively, unless the Legislature has specifically stated that the amendment to this statute should be applied retroactively. Timmons v. Combs, 608 So. 2d 1 (Fla. 1992); Hampton v. Cale of Ft. Myers, Inc., 964 So. 2d 822 (Fla. 4th DCA 2007). Section 57.111, Florida Statutes (2007), does not contain a provision establishing retroactive application. Walker v. Cash Register Auto Insurance of Leon County, Inc., 946 So. 2d 66 (Fla. 1st DCA 2006) and Environmental Confederation of Southwest Florida, Inc., v. Department of Environmental Protection, 886 So. 2d 1013 (Fla. 1st DCA 2004).

28. The change to Section 57.111, Florida Statutes, that created a new class of "small business party" entitled to receive an award of attorney's fees and costs was an expansion of the law. That expansion was substantive in nature. FDBPR's actions that formed the basis for proceeding, the determination of probable cause, followed by the administrative complaint, fall within the purview of Section 57.111, Florida Statutes (2003).

Only those persons entitled to pursue an application for an attorney's fees and costs under that statute can be heard. The amendment to Section 57.111, Florida Statutes, in place in Section 57.111(3)(d)1.c., Florida Statutes (2007), is unavailable as a means to recover attorney's fees and costs. Mullins v. John Kennelly and Patricia Kennelly, 847 So. 2d 1151 (Fla. 5th DCA 2003).

29. Therefore, this case arises under the "Florida Equal Access to Justice Act," Section 57.111(1), Florida Statutes (2003). By the action, Harrison seeks to recover "attorney's fees and costs" as defined in Section 57.111(3)(a), Florida Statutes (2003), which states:

(3) As used in this section:

(a) The term "attorney's fees and costs" means the reasonable and necessary attorney's fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

30. To begin this case Harrison had to comply with the procedural expectations in Section 57.111(4)(b)1. and 2., Florida Statutes (2003), where it states:

1. To apply for an award under this section, the attorney for the prevailing small business party must submit an itemized affidavit to the court which first conducted the adversarial proceeding in the underlying action, or to the Division of Administrative Hearings which shall assign an administrative law judge, in the case of a proceeding pursuant to chapter 120, which affidavit



shall reveal the nature and extent of the services rendered by the attorney as well as the costs incurred in preparations, motions, hearings, and appeals in the proceeding.

2. The application for an award of attorney's fees must be made within 60 days after the date that the small business party becomes a prevailing small business party.

31. The right to recover "attorney's fees and costs" is premised upon the outcome of a case "initiated by a state agency," according to Section 57.111(3)(b), Florida Statutes, which states:

(3) As used in this section:

\* \* \*

(b) The term "initiated by a state agency" means that the state agency:

1. Filed the first pleading in any state or federal court in this state;
2. Filed a request for an administrative hearing pursuant to chapter 120; or
3. Was required by law or rule to advise a small business party of a clear point of entry after some recognizable event in the investigatory or other free-form proceeding of the agency;

32. The term "state agency" in Section 57.111(3)(f), Florida Statutes (2003), relies on the definitional statement in Section 120.52(1), Florida Statutes (2003), for the term "agency." The term "agency" found at Section 120.52(1)(b)1. and 2., Florida Statutes (2003), states:

(1) Agency "means:"

(b) Each:

1. . . . state department and each departmental unit described in s. 20.04.

\* \* \*

3. Board.

33. A "prevailing small business party" is the only entity that would be entitled to collect "attorney's fees and costs," under the Florida Equal Access to Justice Act. A small business party prevails, according to Section 57.111(3)(c), Florida Statutes (2003):

(c) . . . when:

1. A final judgment or order has been entered in favor of the small business party and such judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired;

2. A settlement has been obtained by the small business party which is favorable to the small business party on the majority of issues which such party raised during the course of the proceeding; or

3. The state agency has sought a voluntary dismissal of its complaint.

34. As stated in Section 57.111(3)(d), Florida Statutes (2003):

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, nor more than 25 full-time employees or a net worth of not more than \$2 million, including both personal and business investments; or

b. A partnership or corporation, including a professional practice, which has its principal office in this state and has at the time the action is initiated by a state agency not more than 25 full-time employees or a net worth of not more than \$2 million; or . . .

35. The "attorney's fees and costs" incurred by Harrison were reasonable and necessary. The form in which Harrison sought the attorney's fees and costs was in order. The application was timely. Any recovery is in relation to action "initiated by a state agency," DBPR. A Final Order was entered in Harrison's favor but Harrison is not a "small business party." § 57.111(3)(d), Fla. Stat. (2003).

36. To prove his entitlement to attorney's fees and costs Harrison through a preponderance of the evidence must prove that he prevailed, which he has done and that he is a "small business party," which he has not proven. Dept. of Professional Regulation, Division of Real Estate v. Toledo Realty, Inc., et al., 549 So. 2d 715 (Fla. 1st DCA 1989).

37. The action that formed the basis for Harrison's claims addressed him in his capacity as a licensed real estate appraiser, in his individual capacity. It did not address him as a sole proprietor of Gulf Coast Appraisals. As a licensed individual he could not proceed under Section 57.111(3)(d), Florida Statutes (2003). Daniels v. Florida Department of Health, 898 So. 2d 61 (Fla. 2005); Daniels v. State Department of Health, 868 So. 2d 551 (Fla. 4th DCA 2004) and Florida Real Estate Commission v. Shealy, 647 So. 2d 151 (Fla. 1st DCA 1994).

38. Should it have been concluded that Harrison was a "prevailing small business party," which conclusion has not been reached, the burden would shift to DBPR to prove that it was "substantially justified" in its determination to proceed against Harrison's real estate appraiser's license. Toledo, supra. It would be necessary for DBPR to prove that it had " . . . a reasonable basis in law and fact at the time it (the action) was initiated . . ." § 57.111(3)(e), Fla. Stat. (2003).

39. In determining whether DBPR was justified in finding probable cause and bringing the Administrative Complaint, the investigative file that has been described contained competent and relevant evidence to be considered by the probable cause panel in its deliberation. Toledo, supra. It is the information before the probable cause panel at the time that it found probable cause and directed the filing of the Administrative

Complaint that is meaningful in deciding whether DBPR was "substantially justified" in proceeding. Department of Health, Board of Physical Therapy Practice v. Cralle, 852 So. 2d 930 (Fla. 1st DCA 2003). The investigator's opinions concerning the underlying complaint, and other supporting information can be used to justify the prosecution if deemed credible. Gentele v. Department of Professional Regulation, Board of Optometry, 513 So. 2d 672 (Fla. 1st DCA 1987).

40. It is the quality of the information available at the time that the action was initiated that determines whether there was a reasonable basis in law and fact to proceed. Department of Health and Rehabilitative Services v. S.G., 613 So. 2d 1380 (Fla. 1st DCA 1993).

41. As explained in Fish v. Department of Health, Board of Dentistry, 825 So. 2d 421, 423 (Fla. 4th DCA 2002), DBPR "must have a solid though not necessarily correct basis in fact and law for the position it took in the action," citing from McDonald v. Schweiker, 726 F.3d 311, 316 (7th Cir. 1983). There must be a sufficient foundation in relation to information available before DBPR would be substantially justified in proceeding with its action. Casa Febe Retirement Home v. State, 892 So. 2d 1103 (Fla. 2nd DCA 2004).

42. The information presented to the probable cause panel and considered created a solid foundation for making a decision

as to matters of fact and law, as further discussed by the legal advisor during the meeting. The process engaged in indicated that the panel had "a working knowledge of the applicable statutes under which it [was] proceeding" Helmy v. Department of Business and Professional Regulation, 707 So. 2d 366, 370 (Fla. 1st DCA 1998). DBPR was "substantially justified" in law and fact when it chose to pursue the Administrative Complaint in DBPR Case No. 2001-80524 directed to Harrison. Therefore, Harrison is not entitled to an award of attorney's fees and costs, even if he were found to be a "prevailing small business party."

43. In reaching the conclusions concerning Harrison's rights to an award of attorney's fees and costs, precise attention has not been given to the procedural expectations set out in Section 455.225, Florida Statutes (2003), by which DBPR was bound in the underlying proceeding. That quality of review is not contemplated in determining the outcome in the Section 57.111, Florida Statutes (2003), case on the subject of attorney's fees and costs, nor are the difficulties experienced by Harrison in preparing to defend the action in DOAH Case No. 06-3387PL/DBPR Case No. 200180524, in an effort at accomplishing discovery in accordance with Section 120.57(1)(f), Florida Statutes (2006), a proper subject for resolution in the present case. The experiences in the prior case concerning the conduct of discovery do not limit DBPR here in its opportunity to present

its evidence concerning the supporting materials upon which probable cause was determined, even in the instance where it could be shown that those materials were not made available in the underlying case.

44. Harrison's attempt to recover attorney's fees and costs in relation to consultation with Joseph L. Hammons, Esquire, to establish his opinion concerning the reasonableness of Harrison's attorney's fees and costs incurred by his counsel is not allowed, recognizing that Harrison has not prevailed in this action.

Based upon the facts found and the Conclusions of Law reached, it is

ORDERED: The application for attorney's fees and costs in association with DBPR Case No. 200180524 is denied.

DONE AND ORDERED this 4th day of June, 2008, in Tallahassee, Leon County, Florida.



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CHARLES C. ADAMS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
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this 4th day of June, 2008

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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.