

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WASTE MANAGEMENT, INC., OF)
FLORIDA,)
)
Petitioner,)
)
vs.) Case No. 09-3151F
)
SHERRY ALLAN BUCAR and WILLIAM)
PAUL FISH,)
)
Respondents.)
_____)

SUPPLEMENT TO
FINAL ORDER OF DISMISSAL

A Final Order of Dismissal of the Motion for Attorney's Fees and Supplemental Motion for Attorney's Fees filed by Waste Management, Inc., of Florida (WMIF) against Respondents was entered on August 7, 2009.

On August 26, 2009, while WMIF's Motion for Reconsideration of the Final Order of Dismissal was pending, Respondents filed a Motion for Attorney's Fees Against [WMIF] for filing its Motion for Attorney's Fees and Supplemental Motion for Attorney's Fees against Respondents.

On September 2, 2009, WMIF filed a Motion to Dismiss Respondents' Motion for Attorney's Fees Against [WMIF]. On September 8, 2009, Respondents filed an Opposed Request for Extension of Time to File Opposition to Petitioner's Motion to Dismiss, which stated WMIF's agreement to an extension until September 11 and its opposition to the requested extension until September 16, 2009. On September 14, 2009, Respondents filed their Response to WMIF's Motion to Dismiss.


WMIF seeks dismissal of Respondents' claims under Section 120.595(1), Florida Statutes (2009)¹, on two grounds: (1) WMIF's not being a "non-prevailing adverse party" under paragraph (e)3 of the statute; and (2) WMIF not having had an "improper purpose" under paragraph (e)1 of the statute.

WMIF's first ground has merit. It is apparent from the wording of Section 120.595(1), Florida Statutes, that WMIF's Motion for Attorney's Fees and Supplemental Motion for Attorney's

Fees against Respondents did not initiate "a proceeding pursuant to s. 120.57(1)." § 120.595(1)(b), Fla. Stat. Rather, they attempted to initiate proceedings under Sections 120.569(2)(e) and 120.595(1), Florida Statutes. See also § 120.595(1)(e)1, Fla. Stat. (defining "nonprevailing adverse party" in terms that have no application to WMIF's Motion for Attorney's Fees and Supplemental Motion for Attorney's Fees against Respondents).

For this reason, WMIF's Motion to Dismiss is granted; and Respondents' Motion for Attorney's Fees Against [WMIF] is dismissed.

DONE AND ORDERED this 16th day of September, 2009, in Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of September, 2009.

ENDNOTE

1/ Unless otherwise noted, all statutory references are to the 2009 version of the Florida Statutes.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Supplement to Final Order of Dismissal 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.