

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROOKLYN LUNCHEONETTE, LLC,)
d/b/a DEL TURA PUB AND)
RESTAURANT,)
)
 Petitioner,)
)
vs.) Case No. 09-6206F
)
DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF ALCOHOLIC BEVERAGES)
AND TOBACCO,)
)
 Respondent.)
_____)

FINAL ORDER

A formal hearing being unnecessary in this case, this cause came before Daniel M. Kilbride, a duly-designated Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH) for determination of reasonable costs and attorney's fees, on January 7, 2010, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Harold F. X. Purnell, Esquire
Rutledge, Ecenia & Purnell, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301

For Respondent: Michael Golden, Assistant General Counsel
Department of Business and
Professional Regulation
Northwood Centre, Suite 40
1940 North Monroe Street
Tallahassee, Florida 32399-0792

STATEMENT OF THE ISSUE

The issue before DOAH is a determination of the amount of attorney's fees and costs to be awarded for the administrative proceedings in Brooklyn Luncheonette, LLC v. Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, Case No. 09-1973 (DOAH October 23, 2009).

PRELIMINARY STATEMENT

Subsequent to the issuance of a Summary Final Order, dated October 23, 2009, by the undersigned ALJ, Petitioner filed a Motion for Attorney's Fees, pursuant to Subsection 120.595(3), Florida Statutes. Harold F.X. Purnell, Esquire, counsel for Petitioner, filed a Motion for Attorney's Fees with DOAH on November 10, 2009, together with his own affidavit and time sheets, and the affidavit and time sheets of his co-counsel, Maggie M. Schultz, Esquire.

The Motion was treated as a petition for attorney's fees and costs, and this file was initiated. Subsequently, Respondent executed a Joint Stipulation Regarding Attorney's Fees, which was filed on December 16, 2009. Therefore, a hearing on the amount of attorney's fees and costs is determined to be unnecessary. In addition, Respondent has waived its right to demonstrate that its actions were substantially justified or special circumstances exist which would make the award unjust.

FINDINGS OF FACT

1. On October 23, 2009, the undersigned ALJ of DOAH issued a Summary Final Order in the case of Brooklyn Luncheonette, LLC v. Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, Case No. 09-1973 (DOAH October 23, 2009), in which it was held that Florida Administrative Code Rule 61A-3.0141(2)(a)2., "promulgated by the Department of Business and Professional Regulation, and its directive that the square footage making up the licensed premises of an SRX license be "contiguous," constitutes an invalid exercise of delegated legislative authority "that cannot be relied upon by Respondent to deny the issuance of an SRX license to Petitioner."

2. No appeal was taken of said Order and the license was issued.

3. In the Joint Stipulation Regarding Attorney's Fees, Respondent waived its right to demonstrate that its actions were justified or that special circumstances exist which would make the award unjust.

4. Based on a review of the underlying file, the affidavits of the attorneys filed with the petition, the Stipulation filed herein, and the procedure for calculating the lodestar figure set forth in Rowe, Harold F. X. Purnell and Maggie M. Schultz's attorney's fees totaled \$16,301.25. These

fees are determined to be reasonable, and no adjustment is warranted.

5. Based on the affidavits and Stipulation filed herein, Petitioner has established that the costs of pursuing the administrative proceeding disputing the validity of the rule challenged totaled \$408.47.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction of the subject matter of this proceeding and of the parties thereto, pursuant to Section 120.595, Florida Statutes (2009).

7. Subsection 120.595(3), Florida Statutes, provides in pertinent part:

* * *

CHALLENGES . . . If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed \$50,000.

Attorney's fees

8. The method for determining reasonable attorney's fees, which is founded on the federal "lodestar approach," is well established in Florida. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1151-1152 (Fla. 1985), the Florida Supreme Court summarized the steps to be followed in computing attorney's fees:

In summary, in computing an attorney fee, the trial judge should (1) determine the number of hours reasonably expended on the litigation; (2) determine the reasonable hourly rate for this type of litigation; (3) multiply the result of (1) and (2); and, when appropriate, (4) adjust the fee on the basis of the contingent nature of the litigation or the failure to prevail on a claim or claims.

9. Based on the findings of fact above, and the procedure for calculating the lodestar figure set forth in Rowe, an attorney's fee of \$16,301.25 is determined to be reasonable.

10. The costs of pursuing the administrative proceeding totaled \$408.47.

CONCLUSION

Based on the foregoing Stipulation and Conclusions of Law, it is ORDERED that:

1. Petitioner is awarded reasonable attorney's fees for the administrative proceeding in DOAH Case No. 09-1973RX, in the amount of \$16,301.25;

2. Reasonable costs are awarded for the administrative proceeding in DOAH Case No. 09-1973RX in the amount of \$408.47; and,

3. These sums are to be paid to Petitioner by the Department of Business and Professional Regulation, with interest accruing at the statutory rate from October 23, 2009.

DONE AND ORDERED this 11th day of January, 2010, in Tallahassee, Leon County, Florida.



DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of January, 2010.

COPIES FURNISHED:

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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.