

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEO AND SARAH BEAULIEU,)
)
 Petitioners,)
)
 vs.) Case No. 10-1696
)
 WAYNE JONES, MANAGER, AND SUN)
 KEY VILLAGE,)
)
 Respondents.)
 _____)

FINAL ORDER

Pursuant to notice, a final hearing was held in this case on January 14, 2011, in Bradenton, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: Kenneth A. Wiggins, Esquire
Law Offices of Kenneth A. Wiggins
1001 Third Avenue West, Suite 430
Bradenton, Florida 34205

For Respondents: David D. Eastman, Esquire
Carol S. Grondzik, Esquire
Lutz, Bobo, Telfair, Eastman,
Gabel & Lee
2155 Delta Boulevard, Suite 210-B
Tallahassee, Florida 32303

STATEMENT OF THE ISSUES

Whether Respondents, Wayne Jones, manager (Mr. Jones), and Sun Key Village (Sun Key), are entitled to an award of

attorney's fees and costs pursuant to sections 57.105(5) and 120.595, Florida Statutes (2010),^{1/} and ,if entitled to an award, then the determination of a reasonable amount.

PRELIMINARY STATEMENT

On November 10, 2009, Petitioners, Leo and Sarah Beaulieu (Beaulieus), filed a complaint with the United States Department of Housing and Urban Development (HUD), alleging that Mr. Jones and David O'Malley (Mr. O'Malley) had committed a discriminatory housing practice at Sun Key, a mobile home park located in Palmetto, Florida. Mr. Jones was alleged to be the manager of the mobile home park, and Mr. O'Malley was alleged to be the owner of the mobile home park. As for the claim of retaliation, the Beaulieus alleged that Ms. Beaulieu's sister, who is also a resident of Sun Key, had filed a housing discrimination claim against Mr. Jones and Sun Key. The Beaulieus alleged that Mr. Jones had retaliated against them based on this prior complaint. The alleged retaliation concerned Mr. Jones threatening Ms. Beaulieu by informing her that she was violating a mobile home park rule that limited the size of dogs at the mobile home park to less than 20 pounds at maturity. At the time, Ms. Beaulieu had been walking her son's dog, Rambo, a pit bull dog weighing over 60 pounds.

On November 12, 2009, HUD forwarded the Beaulieus' complaint to the Florida Commission on Human Relations (Commission) for an investigation.

On November 19, 2009, the Beaulieus amended their complaint to include a retaliation allegation against Bert Blanchard (Mr. Blanchard), president of the Sun Key Village Homeowners Association. Specifically, the Beaulieus alleged that Mr. Blanchard had made statements at a coffee social concerning the Beaulieus' complaint and that he had soured their relationship with other residents. On December 5, 2009, the Beaulieus returned a signed amended complaint to the Commission.

On February 18, 2010, the Commission found no reasonable cause "to believe that a discriminatory housing practice had occurred."

On March 25, 2010, the Beaulieus filed a Petition for Relief with the Commission, requesting an administrative hearing. The Commission transferred the Beaulieus' petition to DOAH, and a final hearing was set for August 3, 2010.

On July 19, 2010, the Beaulieus filed a Notice of Voluntary Dismissal of the DOAH proceeding. On July 21, 2010, Respondents filed a Motion for Attorney's Fees and Costs based on section 57.105. In support of their motion, Respondents filed the affidavit of their attorney, setting out the attorney's hours spent in defense of the case and the hourly rate.

On January 14, 2011, the undersigned conducted a hearing on the Motion for Attorney's Fees and Costs. Respondents presented the testimony of Mr. Jones, Sarah Beaulieu (Ms. Beaulieu), and Carl Peterson, Jr., Esquire (Mr. Peterson). The parties introduced into evidence three joint exhibits. Ms. Beaulieu testified on her own behalf during Respondents' case.

The one-volume Transcript of the hearing was filed on February 7, 2011, and Respondents submitted a proposed order on February 28, 2011. The Beaulieus requested an extension to file a proposed order, which was granted. The Beaulieus filed their proposed order on April 7, 2011.

FINDINGS OF FACT

1. The Beaulieus are residents of Sun Key, a mobile home park located at 8607 26th Avenue, East, Palmetto, Florida.
2. Mr. Jones is the manager of Sun Key.
3. Sun Key is a mobile home park as defined by section 723.003(6), Florida Statutes.
4. On March 25, 2010, the Beaulieus filed a Petition for Relief with the Commission stating:

I still feel this is discrimination--
Mr. Jones states I am violating park rules by having a dog over 20 lbs this dog is a Visitor not a resident pet. It is my sons' dog--visits on occasion. There are many dogs over 20lbs & living in Sun Key. This is selective enforcement!!!

5. Ms. Beaulieu attached to her Petition for Relief a lengthy hand-written document, alleging that other residents were violating Sun Key park rules concerning the size and number of permissible dogs.

6. On March 30, 2010, the Commission forwarded the Beaulieus' petition to DOAH. An Initial Order was issued, requiring the parties to respond concerning, in part, the amount of time required for the hearing and the date and location for the hearing. On April 6, 2010, Carol S. Grondzik, Esquire (Ms. Grondzik), of Lutz, Bobo, Telfair, Eastman, Gabel & Lee, filed a response for Respondents. On April 8, 2010, the Beaulieus, acting as their own attorneys, filed a response. Based on the responses, the Administrative Law Judge set the case for final hearing on August 3, 2010.

7. On April 12, 2010, Respondents filed a Motion to Dismiss. In the Motion to Dismiss, Respondents argued that the Beaulieus "have not alleged they are members of a protected class under fair housing law." Further, the motion referenced Ms. Beaulieu's letter dated March 8, 2010, requesting an appeal of the Commission's no cause determination. Specifically, the Motion to Dismiss stated that the Beaulieus' complaint was for "selective enforcement" and not tied to retaliation based on the prior housing complaint filed by Ms. Beaulieu's sister. Thus, the Motion to Dismiss concluded that:

[B]ecause Petitioners do not assert that they are members of a protected class under fair housing law, because they do not pursue a claim of retaliation against Respondents Wayne Jones and Sun Key, and because Bert Blanchard and the Sun Key Village Homeowners Association, Inc., are not providers of housing subject to fair housing laws, this Petition should be dismissed as a matter of law.

8. On April 12, 2010, Ms. Grondzik served, by U.S. mail, a copy of the Motion for Attorney's Fees and Costs, pursuant to section 57.105, with a letter to the Beaulieus. Specifically, Ms. Grondzik's letter states:

A Motion for Attorney's Fees and Costs is also enclosed for your review. I will hold this motion for at least 21 days before filing with the Division as required by Florida law. This allows you time to analyze the relevant facts and law, to seek advice as necessary, and to take action.

9. On April 19, 2010, DOAH issued a Notice of Ex-parte Communication after it had received a copy of a letter that had been sent by Kenneth Wiggins (Mr. Wiggins), an attorney for the Beaulieus, to Ms. Grondzik. The terms of the letter sought to settle the dispute between the Beaulieus and Respondents. Mr. Wiggins, however, did not make an appearance for the Beaulieus before DOAH, and it was unclear who mailed the letter to DOAH. In any event, the Beaulieus continued to represent themselves in the proceedings before DOAH.

10. On July 7, 2010, the Beaulieus filed a motion for continuance of the August 3, 2010, hearing date. The Administrative Law Judge denied the motion.

11. On July 19, 2010, the Beaulieus filed a Notice of Voluntary Dismissal of their petition. On July 21, 2010, Respondents filed the Motion for Attorney's Fees and Costs and Notice of Filing Affidavit of Carol S. Grondzik. Ms. Grondzik's affidavit set out the hourly rate and the scope of work performed to date in the case. On July 29, 2010, Respondents filed a Memorandum of Law in Support of Respondent's [sic] Motion for Attorney's Fees and Costs.

12. At the January 14, 2011, hearing, Ms. Beaulieu testified about instances where the mobile home park failed to enforce its rules and regulations concerning the pet size for residents. Further, she testified that she had brought the DOAH proceeding to address the unfair and selective enforcement of the mobile home park's rules.

13. Sun Key Village Mobile Home Park, Park Rules and Regulations provides, in pertinent part, that:

9. Pets: A maximum of two small pets are permitted, which at maturity must not weigh greater than 20 pounds each. Pets must be confined to the interior of the home when the resident is not present and must be on a leash at all times when outside of tenant's home. They must be transported to areas outside of residence or common areas for exercise.

14. The record shows that the Beaulieus were provided a copy of the rule when moving into Sun Key.

15. Mr. Wayne Jones testified that there were instances when exceptions had been made for residents to have dogs larger than 20 pounds. For example, he identified that residents, who had large, elderly dogs when they moved into Sun Key, were allowed to keep their pets.

16. Mr. Peterson, an attorney who has extensive experience in representing mobile home park owners, testified concerning the reasonableness of the attorney's fees and costs. Mr. Peterson testified that he considered the factors outlined in Florida's Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985), and reviewed the legal file in this case. Based on his review, Mr. Peterson found that 57.2 hours were reasonable in defense of this case and that the blended hourly rate of \$235.92 was reasonable. Therefore, Mr. Peterson testified the reasonable attorney's fees to be \$13,494.40 and the amount of taxable costs to be \$575.00. Mr. Peterson also testified that Respondents would be entitled to attorney's fees for having to litigate the issue of fee entitlement. Mr. Peterson testified that 14 hours would not be an unreasonable amount of time for preparing and attending a hearing concerning the entitlement to fees, for a total of \$3,302.88 using the blended hourly rate of \$235.92.

17. Based on a review of the record and testimony offered at trial, 71.2 hours is a reasonable amount of time spent on the defense of the instant case and litigating the issue of entitlement to attorney's fees. A review of the record and testimony shows that \$235.92 an hour is a reasonable prevailing blended hourly rate.

18. The parties stipulated that the Beaulieus are not members of a protected class under the fair housing law.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 57.105(5), 120.569, and 120.57(1).

20. Section 57.105(5) provides an Administrative Law Judge with authority to award a reasonable attorney's fee and damages upon the same basis as provided in subsections (1) through (4) of the statute. Further, subsection (5) provides that a "voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this subsection." See Hustad v. Architectural Studio, Inc., 958 So. 2d 569, 571 (Fla. 4th DCA 2007).

21. Section 57.105(1) provides, in pertinent part, for an award of reasonable attorney's fees on any claim or defense in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or

defense when initially presented to the court or at any time before trial: (a) was not supported by the material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then-existing law to those material facts. The terms "supported by the material facts" "means the party possesses admissible evidence sufficient to establish the fact if accepted by the finder of fact."

Albritton v. Ferrera, 913 So. 2d 5, 8 n. 1 (Fla. 1st DCA 2005).

22. The imposition of fees pursuant to section 57.105(1) means a claim was without legal merit when filed, or was later found to be without legal merit. See E. Indus. Inc. v. Fla. Unemployment Appeals Comm'n, 960 So. 2d 900, 901 (Fla. 1st DCA 2007). In determining whether to award attorney's fees, the court must make "an inquiry into what the losing party knew or should have known during the fact-establishment process, both before and after suit is filed." Bowen v. Brewer, 936 So. 2d 757, 763 (Fla. 2d DCA 2006), review denied, 952 So. 2d 1188 (Fla. 2007). Significantly, section 57.105 does not require a party seeking fees to show the complete absence of a justiciable issue of fact or law, but permits fees to be recovered for any claim or defense that is insufficiently supported. Gopman v. Dep't of Educ., 974 So. 2d 1208, 1210 (Fla. 1st DCA 2008). Section 57.105 "imposes a duty, or at least a penalty for failing to voluntarily dismiss a claim or defense when it

becomes clear that the claim or defense is untenable." Mullins v. Kennelly, 847 So. 2d 1151, 1155 n. 3 (Fla. 5th DCA 2003); see also Albritton, 913 So. 2d at 8.

23. Applying the rules of law to the facts here, it is clear that the Beaulieus knew or should have known that their claim was not supported by material facts necessary to establish their claim or that their claim was not supported by application of existing law. Based on the record, Respondents are entitled under section 57.105 to an award of attorney's fees for defending the instant case.

24. The record clearly shows that Respondents followed the procedure set out in section 57.105(4) by serving the Motion for Attorney's Fees and Costs on April 12, 2010, but not filing it until after the 21-day provision had lapsed.

25. Next, a review of the Motion for Attorney's Fees and Costs plainly states the basis for concluding that the Beaulieus' administrative claim was not supported by material fact or the law. The motion states that:

4. The underlying FCHR complaint states the basis for alleged discrimination is a claim of retaliation. In the Petition appealing FCHR's determination, Petitioners state they were discriminated because of selective rule enforcement and were retaliated against only by Burt Blanchard.

5. Petitioners have not alleged they are members of a protected class under fair housing law.

6. As stated in the Petition appealing the FCHR determination, the only claim of retaliatory conduct is made against Bert Blanchard, who is not a provider or operator of housing and a covered entity under fair housing law.

26. The Motion for Attorney's Fees and Costs informed the Beaulieus that they had not alleged any fact that they were members of a protected class to bring a fair housing law complaint and that their claims against Mr. Blanchard were not supported by law.

27. The record is undisputed that the Beaulieus are not members of a protected class under the housing law. Based on this undisputed fact, the Beaulieus did not have standing to bring the claim in the petition; therefore, their claim was not supported by the facts or law.

28. The record shows clearly that the Beaulieus did not withdraw their claim until filing their voluntary dismissal on July 19, 2010.

29. Even though the Beaulieus' initial complaint with the Commission raised the issue that Mr. Jones and Sun Key were retaliating against the Beaulieus based on a prior housing complaint filed by Ms. Beaulieu's sister, the Beaulieus abandoned this position in this proceeding. At the hearing determining the entitlement to attorney's fees, the Beaulieus remained consistent that the basis for their administrative claim was "selective enforcement" and not based on any claim of

retaliation by the Respondents. Even if a claim appears to be valid when initially made, once a party learns that its claim is not supported by the facts or law, the party must withdraw the unmeritorious claim, or risk imposition of section 57.105 sanctions. Albritton, 913 So. 2d at 7-8.

30. The testimony supported the reasonableness of an attorney's fee rate of \$235.92 an hour and reasonable number of hours of 71.2 hours for a total attorney's fees award of \$16,797.28. Because section 57.105 does not designate costs, the \$575.00 of taxable costs is not awarded.

ORDERED

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioners, Leo and Sarah Beaulieu, pay \$16,797.28 in attorney's fees to Respondents and their attorneys.

DONE AND ORDERED this 13th day of May, 2011, in Tallahassee, Leon County, Florida.



THOMAS P. CRAPPS
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of May, 2011.

ENDNOTE

^{1/} All references to Florida Statutes shall be the 2010 edition,
unless otherwise designated.

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.