

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TRACIE INMAN,)
)
 Petitioner,)
)
 vs.) Case No. 12-1796F
)
 JIAN DENG BAO, d/b/a CHINA)
 GARDENS RESTAURANT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on September 26, 2012, via video teleconference from sites in Jacksonville and Tallahassee, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sharon Caserta, Esquire
Jacksonville Area Legal Aid,
Deaf/Hard of Hearing Legal
Advocacy Program
126 West Adams Street
Jacksonville, Florida 32202

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue is the amount of attorney's fees and costs owed to Petitioner by Respondent, Jian Deng Bao, d/b/a China Gardens Restaurant ("China Gardens").

PRELIMINARY STATEMENT

On April 23, 2012, the Florida Commission on Human Relations ("FCHR") entered its FCHR Order No. 12-019, styled "Interlocutory Order Awarding Affirmative Relief from an Unlawful Public Accommodations Practice and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Regarding Amount of Attorney's Fees and Costs Owed Petitioner" in DOAH Case No. 11-5602. The FCHR referred the case to the Division of Administrative Hearings on April 23, 2012. On May 16, 2012, the case was given DOAH Case No. 12-1796F.

The case was scheduled for hearing on September 26, 2012, at 9:30 a.m. As in DOAH Case No. 11-5602, no representative of China Gardens appeared at the final hearing in the instant proceeding. The hearing proceeded in order to allow Petitioner to present evidence of her entitlement to attorney's fees and costs. The hearing adjourned at approximately 9:45 a.m.

On September 26, 2012, the undersigned entered an order to show cause directing China Gardens to provide, within 10 days, reasons why the record in the case should not be closed and the Recommended Order entered based on the current record. China Gardens did not respond to the order to show cause.

At the hearing, counsel for Petitioner appeared and offered into evidence her own affidavit and the affidavit of Stephen F.

Albee, a partner/shareholder in the Jacksonville firm of Espenship, Schlax & Albee LLC. Both affidavits were accepted into evidence.

FINDINGS OF FACT

1. Petitioner initially filed a Statement for Attorney's Fees on May 16, 2012, requesting fees in the amount of \$14,162.50 and costs of \$252.21.

2. On the same date, Sharon Caserta, counsel for Petitioner, filed an affidavit attesting that the total time for which reimbursement is sought for fees in this case is 56.65 hours. These hours commenced on March 22, 2011, when Ms. Caserta drafted the initial complaint that Petitioner filed with the FCHR, and ended on April 25, 2012, when Ms. Caserta briefly reviewed the FCHR Order No. 12-019 on behalf of her client.

3. Ms. Caserta attested that she is the unit manager for the Deaf/Hard of Hearing Advocacy Program of Jacksonville Area Legal Aid, Inc. and that her caseload consists solely of disability discrimination cases for deaf, hard of hearing, and deaf/blind clients.

4. Ms. Caserta is fluent in American Sign Language and is certified by the National Registry of Interpreters for the Deaf. She has published scholarly articles and conducted training sessions on legal representation of deaf and blind clients.

Ms. Caserta's skills and expertise were directly related to her representation of Petitioner, who is deaf and blind.

5. Ms. Caserta attested that her hourly fee is \$250.00, which is commensurate for an attorney with her skill and ability in the Jacksonville area. She therefore requested an attorney's fee of \$14,162.50, which is the product of her hourly fee and the 56.65 hours she spent in representing Petitioner. She also requested \$252.21 in costs inclusive of certified mail costs, subpoena service, and witness fees.

6. Ms. Caserta also submitted the affidavit of Stephen F. Albee, a practicing lawyer with 19 years of experience. Mr. Albee is a partner/shareholder in the Jacksonville firm of Espenship, Schlax & Albee LLC. Mr. Albee previously worked in the predatory lending department of Jacksonville Area Legal Aid, Inc. He has also served as in-house attorney for OSI Portfolio Services Inc., n/k/a NCO Group, Inc.

7. Mr. Albee attested that he inspected the files of Ms. Caserta and considered all of the factors in Rule 4-1.5(b) of the Rules Regulating The Florida Bar. Mr. Albee concluded that 56.65 hours is a reasonable number of hours for the work required in this action. Of that amount, Mr. Albee concluded that 47.85 hours of attorney time at \$250.00 per hour is reasonable and that 8.8 hours of paralegal time at \$90.00 per

hour is reasonable. Therefore, Mr. Albee concluded that \$12,754.50 is a reasonable fee for Petitioner's attorney's fees in this case.

8. At the hearing, Ms. Caserta stated that she would defer to Mr. Albee's opinion and would accept the amount of \$12,754.50 in attorney's fees. Ms. Caserta also corrected her request for costs to \$212.21.

9. China Gardens has not challenged the reasonableness of the attorney's fees and costs claimed by Petitioner.

10. The undersigned finds that an attorney's fee of \$12,754.50 and costs of \$212.21 are reasonable under all of the circumstances presented in this case.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject and the parties to this proceeding pursuant to sections 120.569, 120.57(1), and 760.11, Florida Statutes (2011), and FCHR Order No. 12-019/DOAH Case No. 11-5602.

12. Petitioner seeks attorney's fees pursuant to section 760.11(6), Florida Statutes (2009), which provides as follows in relevant part:

In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature

that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving Title VII action.

13. Petitioner was the prevailing party in FCHR Order No. 12-019/DOAH Case No. 11-5602. China Gardens did not appear to contest the claim that Petitioner has incurred attorney's fees in the amount of \$12,754.50 and costs in the amount of \$212.21.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations issue a final order awarding Petitioner attorney's fees in the amount of \$12,754.50 and costs in the amount of \$212.21.

DONE AND ENTERED this 26th day of October, 2012, in Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of October, 2012.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.