

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PREMIER GROUP)
INSURANCE COMPANY,)
)
Petitioner,)
)
vs.) Case No. 12-2938F
)
OFFICE OF INSURANCE)
REGULATION AND THE)
FINANCIAL SERVICES COMMISSION,)
)
Respondents.)
_____)

FINAL ORDER

This cause has come before the undersigned on the parties' stipulation with respect to the resolution of the amount of attorneys' fees to be awarded to Petitioner. Based upon the stipulation of the parties, no hearing of the matter is necessary.

APPEARANCES

For Petitioner: James McKee, Esquire
Foley & Lardner, LLP
Suite 900
106 East College Avenue
Tallahassee, Florida 32301

For Respondent: Kenneth Tinkham, Esquire
Office of Insurance Regulation
200 West Gaines Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue to be determined is the amount of attorneys' fees and costs to be awarded to Petitioner pursuant to section 120.595(4), Florida Statutes (2011).

PRELIMINARY STATEMENT

This is an action for attorneys' fees and costs following a successful challenge by Petitioner to a statement defined as a rule but not adopted as such, in violation of section 120.54, Florida Statutes. In Case No. 12-1201RU, a Final Order was issued on July 5, 2012, holding that the statement of the Office of Insurance Regulation challenged by Premier constituted an unadopted rule. The Final Order retained jurisdiction to determine the amount of attorneys' fees and costs to be awarded to Petitioner, and directed that any motion seeking fees and costs must be filed within 60 days.

On September 4, 2012, Petitioner filed a Motion for the Determination of Amount of Attorney's Fees and Costs. On September 11, 2012, a new case number, Case No. 12-2938F, was assigned to address the amount of the attorneys' fees.

On September 13, 2012, an Order was entered directing Petitioner to file an itemized statement listing the fees and costs for which it seeks reimbursement no later than October 3, 2012, and providing a timeline for responses thereto and for providing dates for hearing.

On October 2, 2012, the parties filed a Stipulation as to Attorney's Fees, along with a Stipulated Final Order. Based on the stipulation of the parties, the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Petitioner, Premier Group Insurance Company ("Premier"), filed a challenge to an agency statement that had not been adopted as a rule in Premier Group Insurance Company v. Office of Insurance Regulation and Financial Services Commission, DOAH Case No. 12-1201RU (Fla. DOAH July 5, 2012).

2. A Final Order was entered finding that the statement of the Office with respect to the allowance of federal income taxes as an expense for excess profits reporting was an unadopted rule.

3. Premier was the prevailing party in Case No. 12-1201RU.

4. As detailed more thoroughly in the Final Order in Case No. 12-1201RU, the Office was on notice that the agency statement may constitute an unadopted rule for substantially more than 30 days preceding the filing of the Petition in that case.

5. Premier incurred attorneys' fees and costs in its challenge to the Office's agency statement in excess of \$50,000.

6. The parties have agreed that \$50,000.00 in attorneys' fees shall be awarded to Premier.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2012).

8. Section 120.595(4), Florida Statutes, provides in pertinent part:

(4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.56(4).--

(a) If the appellate court or administrative law judge determines that all or part of any agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to section 120.56(4)(e), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) . . . The administrative law judge shall award reasonable costs and reasonable attorney's fees accrued by the petitioner prior to the date the notice was published, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorney's fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under section 120.56(4) was filed and that

the agency failed to publish the required notice of rulemaking pursuant to section 120.54(3) that addresses the statement within that 30-day period. . . . An award of attorney's fees as provided by this paragraph may not exceed \$50,000.

9. Premier is entitled to attorney's fees and costs pursuant to section 120.595(4).

10. The parties have stipulated that Premier is entitled to an award of \$50,000.00, the maximum amount allowed pursuant to section 120.595(4). The undersigned concludes that the amount of the award is reasonable.

Accordingly, it is

ORDERED that Petitioner, Premier Group Insurance Company, is hereby awarded the sum of \$50,000.00 in attorney's fees and costs. The above sum is to be paid by Respondent, as provided in the parties' stipulation, on or before the 60th day following the entry of this Final Order.

DONE AND ORDERED this 4th day of October, 2012, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of October, 2012.

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 administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.