

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CAROLYN CLEVELAND,

Petitioner,

vs.

Case No. 13-1453FC

WESTGATE HOME SALES, INC.,

Respondent.

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FINAL ORDER ON ATTORNEY'S FEES AND COSTS

PRELIMINARY STATEMENT

On March 27, 2013, the First District Court of Appeal provisionally granted Appellee Cleveland's Motion for Attorney's Fees and Costs in DCA Case No. 1D12-3557, and remanded the case to the Florida Commission on Human Relations (Commission) to assess the amount of fees. On April 18, 2013, the Commission transmitted the case to the Division of Administrative Hearings (the Division) to conduct all necessary proceedings and submit recommended findings to the Commission.<sup>1/</sup>

FINDINGS OF FACT

1. On April 23, 2013, the undersigned entered an Order on Remand requiring Petitioner to submit any documentation, including supporting affidavits, within 20 days of said Order setting forth the amount of attorney's fees Petitioner seeks in DCA Case No. 1D12-3557.

2. Petitioner filed two Motions for Extension of Time in which to comply with the Order on Remand. The Motions were granted and on June 12, 2013, Petitioner filed Petitioner's Request for Appellate Attorney's Fees and Costs with the Division.

3. The Order on Remand required Respondent to file its response to Petitioner's Request for Attorney's Fees and Costs within 20 days of Petitioner's filing. To date, Respondent has not filed any response and has not requested an extension of time in which to file a response.

4. The parties were further ordered to state whether or not either party believed that an evidentiary hearing was necessary. Petitioner requested an evidentiary hearing only in the event that the undersigned was inclined to reduce or deny Petitioner's request for attorney's fees or costs. Accordingly, no evidentiary hearing is necessary.

Attorney's Fees and Costs

5. Petitioner/Appellee requests attorney's fees in the total amount of \$47,170. This total includes attorney's fees in the amount of \$42,760 attributable to Proctor Appellate Law, PA, and attorney's fees in the amount of \$4,410 attributable to Avera & Smith, LLP.

6. The hourly rate for Sharon H. Proctor of Proctor Appellate Law, PA, is \$400 per hour; the hourly rate for

Jennifer C. Biewend of Avera & Smith, LLP, is \$350 per hour. Detailed billing records are attached to the attorneys' affidavits as exhibits to the Motion for Attorney's Fees and Costs. Ms. Proctor, who was retained to represent Petitioner/Appellee in the appeal of this case, served as primary counsel in all matters pertaining to the appeal and incurred 106.9 attorney hours. Ms. Biewend served as counsel of record in the underlying merits case and as co-counsel of record before the First District Court of Appeal and incurred 12.6 attorney hours on the appeal.

7. Petitioner submitted the affidavit of attorney Paul Donnelly, Esquire, as an expert in support of Petitioner's request for attorney's fees and costs. The undersigned has read Mr. Donnelly's affidavit and finds that it supports the number of hours expended and hourly rates charged.

8. The undersigned reviewed the affidavits of the attorneys of record and the billing records, and finds Petitioner/Appellee's requests for attorney's fees to be reasonable.

9. Petitioner requests appellate costs in the amount of \$764.36.

10. The undersigned reviewed the cost ledger submitted by Petitioner's counsel. The appellate costs reflect travel

expenses of counsel to attend the oral argument. The amount of costs is reasonable.

#### CONCLUSIONS OF LAW

11. This matter is before the Division pursuant to the Order of the Court dated March 27, 2013, which provisionally granted Petitioner/Appellee's Motion for Appellate Attorney's Fees and Costs filed in DCA Case No. 1D12-3557, and remanded the case solely for the determination of the amount of attorney's fees and costs.<sup>2/</sup>

12. The starting point in determining reasonable attorney's fees is the lodestar, which is "properly calculated by multiplying the number of hours reasonably expended on litigation times a reasonable hourly rate." Blum v. Stenson, 465 U.S. 886, 888, 104 S. Ct. 1541 (1984). A reasonable hourly rate is based upon "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, expertise, and reputation." Duckworth v. Whisenant, 97 F. 3d 1393, 1396 (11th Cir. 1996) (quoting Norman v. Hous. Auth. of City of Montgomery, 836 F.2d 1292, 1303 (11th Cir. 1988)).

13. In his affidavit, Mr. Donnelly considered each of the factors for an award of attorney's fees as set forth in Fla. Patient's Comp. Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985), and found that the number of hours expended by counsel of record was

reasonable and necessary and that there was no duplication of effort.

14. The undersigned concludes that the appropriate amount of appellate attorney's fees to be awarded to Petitioner/Appellee is \$47,170.

15. The appropriate amount of appellate costs to be awarded to Petitioner/Appellee is \$764.36.

CONCLUSION

Upon the consideration of the facts found and conclusions of law reached, it is

ORDERED:

That Petitioner/Appellant should be awarded attorney's fees in the amount of \$47,170, and costs in the amount of \$764.36.

DONE AND ORDERED this 23rd day of July, 2013, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of July, 2013.

ENDNOTES

<sup>1/</sup> The background proceedings leading up to the First District's order provisionally granting Appellee's Motion for Appellate Attorney's Fees and Costs in Case No. 1D-12-3557 are Carolyn Cleveland v. Westgate Home Sales, Case. No. 08-4552 (Fla. DOAH May 5, 2011), rejected in part, Case No. 2008-01170, Order Finding that Unlawful Employment Practice Occurred and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Recommending Relief (Fla. FCHR Aug. 2, 2011); and on remand Recommended Order as to Relief from Unlawful Employment Practice (Fla. DOAH April 6, 2012), Agency Final Order Awarding Affirmative Relief from an Unlawful Employment Practice (Fla. FCHR June 27, 2012).

<sup>2/</sup> The Court's Order provisionally granting Petitioner/Appellee's Motion for Appellate Attorney's Fees and Costs dated March 27, 2013, remanded the case "to the trial court" to assess the amount of fees. The Order and Mandate were issued to the Florida Commission on Human Relations, which then transmitted the court's Order to the Division to conduct all necessary proceedings and submit "recommended findings" to the Commission. However, while the Recommended Order as to Relief From Unlawful Employment Practice entered on April 6, 2012, in the underlying merits case contemplated final agency action by the Commission pursuant to section 760.11(6), Florida Statutes, this Final Order is written pursuant to the remand from the appellate court, which has already provisionally granted the Motion for Appellate Attorney's Fees and Costs. The remand was limited to the assessment of the amount of same. Therefore, no final agency action by the Commission is contemplated.

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.