

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AMERICAN PRO DIVING CENTER,
INC.,

Petitioner,

vs.

Case Nos. 14-6147F
16-0379F

DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF WORKERS'
COMPENSATION,

Respondent.

_____ /

FINAL ORDER OF DISMISSAL

Pursuant to notice, this cause was scheduled for hearing before James H. Peterson, III, Administrative Law Judge of the Division of Administrative Hearings. The hearing was noticed by that Notice of Hearing dated February 24, 2016, to be heard on May 9 and 10, 2016, at 9:00 a.m., at the Division of Administrative Hearings, the DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida. The Notice of Hearing was entered following a telephonic hearing in which counsel for the parties were advised of the hearing dates and times. The Notice of Hearing was not returned as undeliverable. Neither Petitioner nor its counsel appeared at the scheduled time of 9:00 a.m. on the day of the hearing. Three counsel for Respondent were

present with witnesses ready to proceed on May 9, 2016. A court reporter was also present and recorded the proceedings.

APPEARANCES

For Petitioner: Kristian Eiler Dunn, Esquire
Bennett M. Miller, Esquire
Dunn and Miller, P.A.
215 East Tharpe Avenue
Tallahassee, Florida 32303

For Respondent: Thomas Nemecek, Esquire
Trevor S. Sutor, Esquire
Jonathan Martin, Esquire
Department of Financial Services
Division of Workers' Compensation
200 East Gaines Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to attorneys' fees under 57.111, Florida Statutes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After waiting for approximately 15 minutes after 9:00 a.m. on May 9, 2016, at the undersigned's directions, the undersigned's assistant contacted Petitioner's counsel by telephone. During that conference call, Petitioner's counsel advised that he had received the Notice of Hearing scheduling this case, but that he had erroneously failed to properly calendar the hearing. Petitioner's counsel was advised that the parties should assemble as scheduled on May 10, 2016.

2. Following the phone call, Petitioner's counsel filed Petitioner's Counsel's Apology to the Court & Opposing Party, in

which Petitioner's counsel took responsibility for failing to appear.

3. Thereafter, on May 10, 2016, at 8:00 a.m., Respondent's counsel filed Respondent's Motion to Dismiss for Failure to Prosecute.

4. When the final hearing was reconvened at 9:00 a.m., May 10, 2016, Petitioner's counsel appeared with co-counsel, his client's representative, and witnesses. The undersigned heard argument on Respondent's Motion to Dismiss for Failure to Prosecute. As noted in the Motion to Dismiss for Failure to Prosecute, "Petitioner has continually confounded these proceedings by failing to timely file affidavits to initiate these [consolidated] cases [and] failing to timely respond to discovery."

5. It is further found that Petitioner's failure to appear as properly noticed on May 9, 2016, was without good cause, and Petitioner failed to prosecute the case as scheduled.

6. As the proponent of its claim for attorney's fees and costs under section 57.111, Florida Statutes, Petitioner had the initial burden of proof to demonstrate by a preponderance of the evidence that it qualifies for relief under section 57.111. By failing to appear for the May 9, 2016, hearing, Petitioner failed to meet its burden.

7. Upon consideration of Respondent's Motion to Dismiss for Failure to Prosecute, as well as Petitioner's Counsel's Apology to the Court & Opposing Party, and further considering the pleadings, motions, and procedural posture of this case and the underlying proceedings, Respondent's Motion to Dismiss for Failure to Prosecute was GRANTED.

ORDER

Based upon the forgoing, the above-styled action for fees under section 57.111, Florida Statutes, is DISMISSED. The file of the Division of Administrative Hearings is closed.

DONE AND ORDERED this 11th day of May, 2016, in Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
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 May, 2016.

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.