

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLO-RONKE, INC.,

Petitioner,

vs.

Case No. 15-0982

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

FINAL ORDER DENYING FEES AND COSTS UNDER
SECTION 57.105, FLORIDA STATUTES

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings conducted the final hearing on the Motion for Attorney's Fees and Costs and the Renewed Motion for Attorney's Fees and Costs in this matter on March 21, 2016, by video teleconference, at locations in Tampa and Tallahassee, Florida.

APPEARANCES

For Petitioner: Raws Williams, Esquire
Raws Williams Law Group
Suite 2000
333 Southeast 2nd Avenue
Miami, Florida 33131

For Respondent: Lindsay Worsham Granger, Esquire
Agency for Health Care Administration
Mail Stop 3
2727 Mahan Drive
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

Is the Respondent, Agency for Health Care Administration (Agency), entitled to an award of attorney's fees and costs from Petitioner, Flo-Ronke, Inc. (Flo-Ronke), and its counsel, under section 57.105, Florida Statutes (2015)?^{1/}

PRELIMINARY STATEMENT

In this matter the Agency proposed to deny renewal of the assisted living facility license of Flo-Ronke. Flo-Ronke challenged that action and requested a formal administrative hearing under sections 120.569 and 120.57, Florida Statutes. After a hearing and consideration of proposed recommended orders from both parties, the undersigned rendered a Recommended Order recommending that the Agency deny renewal of Flo-Ronke's assisted living facility license. The Recommended Order retained jurisdiction over the Agency's Motion for Attorney's Fees and Costs.

On January 13, 2016, the Agency rendered its Final Order denying renewal. Flo-Ronke did not appeal that Order.

On February 10, 2016, the Agency filed its Renewed Motion for Attorney's Fees and Costs. Both motions sought fees and costs under sections 57.105 and 120.595. The order entered on a fees motion under section 57.105 is a final order. The order entered on a fees motion under section 120.595 is a recommended order. Because of this, two orders on the motions are rendered.

This order resolves the issue of fees and costs under section 57.105.

At the hearing on fees and costs the Agency presented the testimony of Carlton Enfinger, Esquire, and Lindsay Worsham Granger, Esquire. Agency Exhibits 1 and 2 were admitted into evidence. Flo-Ronke presented the testimony of its counsel Rawsi Williams, Esq. Flo-Ronke offered no exhibits. Neither party ordered a transcript. Both parties filed proposed orders. They have been considered in the preparation of this Order.

FINDINGS OF FACT

1. The Agency served its Motion for Award of Attorney's Fees and Costs on August 28, 2015, and filed it the same day. The motion relies upon sections 57.105 and 120.95. The motion states that Flo-Ronke opposes the motion. It does not say if or when the motion was provided to Flo-Ronke.

2. On February 10, 2016, after the Final Order was rendered, the Agency filed a Renewed Motion for Attorney's Fees and Costs. It too relies upon sections 57.105 and 120.595. The renewed motion makes no representations about a copy of the motion being served at any time before it was filed.

3. The record does not contain evidence that would support a finding that the Agency served either of its motions at least 21 days before filing them.

CONCLUSIONS OF LAW

4. Sections 120.569 and 120.57(1) grant the Division of Administrative Hearings jurisdiction.

5. The Agency seeks fees under section 57.105. Section 57.105(4) requires the party seeking fees to serve the motion for award of fees at least 21 days before filing the motion. This requirement is absolute. Global Xtreme, Inc. v. Advanced Aircraft Ctr., Inc., 122 So. 3d 487,490 (Fla. 3d DCA 2013); Anchor Towing, Inc. v. Fla. DOT, 10 So. 3d 670 (Fla. 3d DCA 2009).

6. The Agency did not comply with the advance notice requirement of section 57.105(4). It may not recover fees under that section's authority.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Agency's Renewed Motion for Award of Fees and Costs under section 57.105, Florida Statutes, is DENIED.

DONE AND ORDERED this 6th day of May, 2016, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of May, 2016.

ENDNOTE

^{1/} All citations to Florida Statutes are to the 2015 edition.

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.