

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLO-RONKE, INC.,

Petitioner,

vs.

Case No. 15-0982

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

RECOMMENDED ORDER ON MOTION FOR AWARD
OF FEES AND COSTS UNDER SECTION 120.595, 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
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333 Southeast 2nd Avenue
Miami, Florida 33131

For Respondent: Lindsay Worsham Granger, Esquire
Agency for Health Care Administration
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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), under section 120.595, Florida Statutes (2015)?^{1/}

PRELIMINARY STATEMENT

In this matter, the Agency sought 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 an 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. The motion sought fees 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 fees motions are rendered.

This order resolves the issue of fees and costs under section 120.595.

The undersigned held a hearing on the Agency's motions on March 21, 2016, by video teleconference at locations in Tampa and Tallahassee, Florida. 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, Esquire. 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 Findings of Fact in the Recommended Order rendered on October 30, 2015, are adopted and incorporated by reference.

2. In this case, the Agency sought by Second Amended Notice of Intent to Deny, dated March 27, 2015, to deny renewal of Flo-Ronke's assisted living facility license for two reasons. One was that Flo-Ronke employed someone who was not eligible for employment at an assisted living facility because he had not passed a statutorily required background screening for criminal convictions. The other was that Flo-Ronke had not paid fines imposed by Final Order in AHCA Case Nos. 2014002513 and 2014002514.

Background Screening

3. Findings 16 through 23 detail the clear and convincing evidence proving that the employee, F.M., had not passed required background screening for a criminal history.

4. Flo-Ronke offered excuses and justifications for employing F.M. despite the fact that he had not passed background screening. The excuses include Flo-Ronke's owner, Florence Akintola, thinking background screening was not needed because of F.M.'s length of employment. Even if the excuses were credible, which they were not, they do not even apply to the charge in this case.

5. The charge that was the basis for denying renewal was keeping F.M. as an employee on the grounds after Agency surveyor, Laura Manville, told Ms. Akintola that F.M. had not passed background screening. At that point, Ms. Akintola could no longer claim ignorance or misunderstanding. Yet Flo-Ronke persisted in maintaining the defense.

6. Flo-Ronke's opposition to the charge that it employed F.M. in 2014 when he was not eligible for employment had no factual support and was frivolous.

Unpaid Fines

7. Findings of Fact 4 through 15 address the unpaid fines.

8. The history of this case establishes a pattern of Flo-Ronke asserting frivolous positions for the sole purpose of delay.

9. AHCA levied fines totaling \$13,500 in AHCA Cases 2014002513 and 2014002514 in 2014. Flo-Ronke reacted with a series of measures serving no purpose other than delay. It requested an administrative hearing. Then, as the hearing approached, it withdrew the request. The Agency then scheduled an informal hearing. Flo-Ronke did not attend. The Agency entered its Final order assessing the fines. Flo-Ronke appealed that Final Order. The First District Court of Appeal dismissed the appeal because Flo-Ronke did not have counsel. Four months later, with the same counsel as in this case, Flo-Ronke moved to re-open the appeal. The court denied the motion.

10. Throughout the entire process, up to the date of the final hearing in this cause, Flo-Ronke did not pay the fines or offer to pay them.

11. In this proceeding, Flo-Ronke argued that it had tried to pay the fine and that the Agency refused to accept payment. The Agency sent Flo-Ronke a letter providing an opportunity to demonstrate the sincerity of that claim.

12. On July 24, 2015, the Agency filed a copy of its unequivocal letter of the same date to Flo-Ronke's counsel stating:

The purpose of this letter is to dispel any misunderstanding as to the Agency's policy about accepting payments toward administrative fines it is owed.

The Agency stands ready to accept full payment of the \$13,500 in administrative fines in AHCA Case Nos. 2014002513 and 2014002514. Please tender immediate, full and complete payment of said administrative fine within 48 hours to the Agency or note that your client will be subject to additional litigation based on non-payment of the fine.

If said fine has been paid, please notify me and include a copy of the payment made to the Agency.

Flo-Ronke did not pay the fine or provide proof of payment.

13. In this proceeding, Flo-Ronke was given every chance to insure that it had evidence to support its claim that the Agency rejected payment or to withdraw it.

14. The undersigned rendered an Order Requiring Clear Statement of Defense. Flo-Ronke's statement was evasive, but ultimately continued to maintain that the Agency had refused payment.

15. Flo-Ronke had no evidence to support that argument.

16. In summary, Flo-Ronke pursued this case from February 13, 2015, through November 16, 2015, when it filed its

Exceptions to the Recommended Order, with no evidence to support its arguments. Flo-Ronke's defenses were frivolous.

17. This continued the pattern demonstrated in AHCA Cases 2014002513 and 2014002514 resulting in dismissal of the appeal by the First District Court of Appeal. Nothing except seeking unnecessary delay explains Flo-Ronke's pattern of behavior, which included advancing frivolous and unfounded defenses.

Hours of Attorney Time

18. The Agency's counsel spent 24.5 hours on this case.

19. This case did not present novel or complex issues of fact or law.

20. The unduly contentious nature of this case caused this case to be more time consuming than it should have been.

21. Expending 24.5 hours representing the Agency in this matter was reasonable.

22. Ms. Lindsay W. Granger, Esquire, represented the Agency in this matter. She is an employee of the Agency. Consequently, the representation did not preclude her taking other matters. For the same reason, this is not a contingent fee case.

23. Ms. Granger has been a member of the Florida Bar since 2010 and practices in the field of administrative law.

24. The Agency presented the testimony of Carlton Enfinger, Esquire, to establish a reasonable hourly charge for

Ms. Granger's services. Mr. Enfinger has been a practicing lawyer in Leon County, in private and government service, since 1989. He joined the Agency as an attorney in 2008 or 2009. Before then Mr. Enfinger was in private practice. Mr. Enfinger's practice included administrative law.

25. Mr. Enfinger has billed clients during his career. That gave him familiarity with hourly rates for lawyers in the community. He also spoke with practicing attorneys to determine if the rates he was familiar with remained common. Those, or higher rates, were. Mr. Enfinger is accepted as an expert on the issues of attorney's fees. Flo-Ronke did not offer evidence to rebut Mr. Enfinger's opinion.

26. A reasonable fee for Ms. Granger's services is \$200.00 per hour.

27. The reasonable fee for representation of the Agency in this matter is \$4,900.00.

28. The Agency spent \$1,316.50 for court reporter fees and transcripts. Ordering a transcript is customary in administrative proceedings. The transcript costs are reasonable and not disputed.

CONCLUSIONS OF LAW

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

Improper Purpose

30. The Agency seeks fees under the authority of section 120.595(1), Florida Statutes. Section 120.595(1) requires an administrative law judge to "award reasonable costs and a reasonable attorney's fee to the prevailing party only where the non-prevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose."

31. The Agency is the prevailing party in this dispute.

32. Improper purpose: "means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity." § 120.595(1)(e), Fla. Stat.

33. A frivolous action is one readily recognizable as meritless, one without support in the facts or the law. Wood v. Price, 546 So. 2d 88, 90 (Fla. 2d DCA 1989). This action was frivolous. Flo-Ronke had no evidence to support its claim that in 2014 F.M. had passed background screening. There was never any question that Flo-Ronke had not paid the fines. Flo-Ronke

had no evidence to support its claim that the Agency refused full and complete payment.

34. As established in the findings of fact, the only purpose for Flo-Ronke to maintain this frivolous action was delay. Flo-Ronke participated in this matter for an improper purpose.

Fee and Cost Amounts

35. Deciding the amount of an appropriate fee requires the party seeking fees to offer expert testimony about the necessity for a lawyer to provide the services, the reasonableness of the time claimed, and the reasonable value of the time considered compensable. The opponent of the fee bears the burden of pointing out which hours should be deducted. Centex-Rooney Constr. Co. v. Martin Cnty., 725 So. 2d 1255 (Fla. 4th DCA 1999). The Agency met its burden. Flo-Ronke did not.

36. Setting a reasonable attorney's fees requires first determining a lodestar or guiding figure by multiplying a reasonable hourly rate by the number of hours reasonably spent on the litigation. Fashion Tile & Marble v. Alpha One Constr. & Assocs., 532 So. 2d 1306 (Fla. 2d DCA 1988). Reasonably expended time is the time that lawyers in the community would ordinarily spend to resolve a similar dispute. Centex-Rooney Constr. Co. v. Martin Cnty. supra. A party must present evidence showing exactly what services were provided and how

much time was spent providing them. Braswell v. Braswell, 4 So. 3d 4 (Fla. 2d DCA 2009).

37. In determining reasonable attorney's fees and costs, courts consider the factors in Rule 4-1.5 of the Rules Regulating the Florida Bar, Code of Professional Conduct. Denney, Scarola, Barnhart & Shipley, P.A. v. Poletz, 652 So. 2d 366, 369 (Fla. 1995); Mason v. Reiter, 564 So. 2d 142, 146 (Fla. 3d DCA 1990).

38. The factors listed in rule 4-1.5(b) (1) are addressed sequentially below:

(A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly . . . ;

The time and labor expended were reasonable. The questions involved were not difficult. The case was not complex. But the unduly contentious course of the case required time that would not have otherwise been needed. No unusual skills and expertise were required to perform the legal services.

(B) the likelihood that the acceptance of the particular employment would preclude other employment by the lawyer . . . ;

This is not a factor since the Agency's lawyer was its employee.

(C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature . . . ;

The reasonable hourly rate customarily charged in the locality for comparable legal services is at least \$200.00.

(D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained . . . ;

The issues and the law applied were not unusual. The subject matter was routine litigation for the Agency. The Agency prevailed on all issues,

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client . . . ;

There were no special time limits, pressures, demands, or requests.

(F) the nature and length of the professional relationship with the client . . . ;

This factor is not relevant in this proceeding.

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services . . . ;

The lawyer involved had six years of experience. She was diligent and provided services efficiently. Performing the legal services did not require unusual skills. The result was complete success for her client.

(H) whether the fee is fixed or contingent, and if fixed as to amount and rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

This factor is not relevant.

39. The Agency proved the legal services provided and the time spent providing them. It proved that spending 24.5 hours on this matter was reasonable. It also proved that an hourly rate of \$200.00 per hour was reasonable.

40. The requested fees of \$4,900.00 are reasonable.


41. The Agency seeks only court reporter per diem and transcript costs. The Statewide Uniform Guidelines for Taxation of Costs in Civil Actions identify court reporting costs as litigation costs that should be taxed. See Fla. R. Civ. P., app. II § I(E)(1); Field Club, Inc. v. Alario, 180 So. 2d 1138 (Fla. 2d DCA 2015). There is no argument that the costs of \$1,316.50 are not reasonable.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a final order granting the Renewed Motion for Attorney's Fees and Costs and awarding the Agency for Health

Care Administration \$4,900.00 in attorney's fees and \$1,316.50 in costs, for a total of \$6,216.50 to be paid by Flo-Ronke, Inc.

DONE AND ENTERED 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.

ENDNOTES

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

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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.