

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BAYOU SHORES SNF, LLC, d/b/a
REHABILITATION CENTER OF ST.
PETE,

Petitioner,

vs.

Case No. 16-0687F

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

FINAL ORDER

Pursuant to notice, a telephonic status conference was conducted in this case on May 4, 2016, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (DOAH). Counsel for Petitioner, Bayou Shores SNF, LLC, d/b/a Rehabilitation Center of St. Petersburg (Bayou Shores), and counsel for Respondent, Florida Agency for Health Care Administration (AHCA), were both present.

APPEARANCES

For Petitioner: Julie Gallagher, Esquire
Grossman Furlow & Bayó, LLC
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Tallahassee, Florida 32308

For Respondent: Richard Joseph Saliba, Esquire
Agency for Health Care Administration
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STATEMENT OF THE ISSUE

The issue is whether Bayou Shores should pay AHCA's attorney's fees and costs under section 57.105, Florida Statutes (2015),^{1/} for initiating DOAH Case No. 16-0687RU.

PRELIMINARY STATEMENT

On June 11, 2014, AHCA served an eight-count Administrative Complaint (AC) on Bayou Shores alleging certain deficiencies within a specific period. AHCA alleged that Bayou Shores conducted deficient practices and failed to implement its own policies and procedures regarding the care of its residents, in violation of certain statutes and rules.

On September 29, 2015, AHCA referred the AC to DOAH, and it was assigned DOAH Case No. 15-5469. Bayou Shores' Response to Initial Order and Motion to Consolidate requested that Case No. 15-5469 be consolidated with DOAH Case NO. 15-0619, as the two involved "identical parties and similar issues." On October 13, 2015, the two cases were consolidated. The final hearing was conducted on January 5 through 8, and February 22 and 23, 2016.

On February 9, 2016, Bayou Shores filed a Petition to Determine Invalidity of AHCA Statements (Petition) in DOAH Case No. 16-0687RU (the underlying proceeding). Within the Petition, Bayou Shores asserted that comments made during the consolidated hearing and statements contained in AHCA's March 4, 2008, letter

related to abuse, constituted a rule as defined by section 120.52(16).

On February 18, 2016, AHCA filed a Motion for Summary Final Order, which was granted on March 30, 2016. In the Summary Final Order, the undersigned found that statements contained in Respondent's letter, dated March 4, 2008, and comments made during the consolidated hearing did not constitute a rule as defined by section 120.52(16).

On April 7, 2016, AHCA filed a Petition for an Award of Attorney's Fees Pursuant to Section 57.105. In support of its motion, AHCA filed the affidavit of its attorney setting forth the attorney's hours spent preparing the rule challenge case. On April 19, 2016, the above listed case was reopened.

On April 29, 2016, Bayou Shores filed its Response to Respondent's Petition for an Award of Attorneys Fees Filed Pursuant to Section 57.105, Fla. Stat. On May 4, 2016, a telephone conference hearing was held with counsel for Bayou Shores and counsel for AHCA present. The parties, Bayou Shores and AHCA, stipulated that the determination of whether or not fees should or should not be awarded shall be determined by the undersigned's review of the pleadings.

As set forth in the Order following the May 4 telephone hearing, counsel for Bayou Shores' request that Attorney Peter A. Lewis be allowed to file a response to AHCA's Motion for an Award

of Attorney's Fees was granted. Attorney Peter A. Lewis submitted his response on May 20, 2016.

FINDINGS OF FACT

1. The Summary Final Order in DOAH Case No. 16-0687RU, including the Preliminary Statement, Findings of Fact, and Conclusions of Law contained therein, is incorporated herein by reference as the facts underlying this Final Order.

CONCLUSIONS OF LAW

2. DOAH has jurisdiction over the parties to and the subject matter of this proceeding pursuant to section 57.105(5), Florida Statutes.

3. Section 57.105(5) provides an Administrative Law Judge with authority to award "a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4)."

4. Section 57.105(1) provides, in pertinent part, for an award of reasonable attorney's fees on any claim or defense in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) was not supported by the material facts necessary to establish the claim or defense; or (b) would not be supported by

the application of then-existing law to those material facts. The terms "supported by the material facts" "means the party possesses admissible evidence sufficient to establish the fact if accepted by the finder of fact." Albritton v. Ferrera, 913 So. 2d 5, 8 n.1 (Fla. 1st DCA 2005).

5. The imposition of fees pursuant to section 57.105(1) means a claim was without legal merit when filed, or was later found to be without legal merit. See E. Indus. Inc. v. Fla. Unemployment Appeals Comm'n, 960 So. 2d 900, 901 (Fla. 1st DCA 2007). In determining whether to award attorney's fees, the court must make "an inquiry into what the losing party knew or should have known during the fact-establishment process, both before and after suit is filed." Bowen v. Brewer, 936 So. 2d 757, 763 (Fla. 2d DCA 2006), review denied, 952 So. 2d 1188 (Fla. 2007). Significantly, section 57.105 does not require a party seeking fees to show the complete absence of a justiciable issue of fact or law, but permits fees to be recovered for any claim or defense that is insufficiently supported. Gopman v. Dep't of Educ., 974 So. 2d 1208, 1210 (Fla. 1st DCA 2008). Section 57.105 "imposes a duty, or at least a penalty for failing to voluntarily dismiss a claim or defense when it becomes clear that the claim or defense is untenable." Mullins v. Kennelly, 847 So. 2d 1151, 1155 n.3 (Fla. 5th DCA 2003); see also Albritton, 913 So. 2d 5, 8 at n.23.

6. Applying the rules of law to the facts here, it is clear that Bayou Shores knew or should have known that its Petition was not supported by material facts necessary to establish its claim or that its Petition was not supported by application of existing law. Based on the record in this case, AHCA is entitled under section 57.105 to an award of attorney's fees.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the petition for attorney's fees and cost is granted. The undersigned shall retain jurisdiction of this matter to determine the reasonable amount should the parties be unable to do so.

DONE AND ORDERED this 13th day of June, 2016, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of June, 2016.

ENDNOTE

^{1/} All references to Florida Statutes shall be the 2015 edition, unless otherwise designated.

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.