STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WHITE ROCK QUARRIES,

Petitioner,

vs. Case No. 16-5719F

DOROTHY BROWN-ALFARO AND
AMILCAR ALFARO,

Respondents.
_______________________________/

FINAL ORDER

This matter came before Administrative Law Judge Darren A. Schwartz of the Florida Division of Administrative Hearings for final hearing by video teleconference on April 13, 2017, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

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For Respondents: Brian A. Newman, Esquire
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STATEMENT OF THE ISSUES

Whether Petitioner, White Rock Quarries ("White Rock"), is entitled to an award of attorney's fees to be paid by Respondents, Dorothy Brown-Alfaro and Amilcar Alfaro

("Respondents" or "Ms. Alfaro"), pursuant to section 57.105, Florida Statutes, and an award of attorney's fees and taxable costs to be paid by Respondents pursuant to section 552.40(9), Florida Statutes; and, if so, the amount of attorney's fees and taxable costs to which White Rock is entitled.

PRELIMINARY STATEMENT

On August 16, 2016, the undersigned issued a Final Order in Case No. 15-6014CM, concluding that Respondents failed to prove that White Rock's blasting activities caused damages to their home. On September 29, 2016, White Rock filed its motion for attorney's fees and taxable costs. On September 30, 2016, the Division of Administrative Hearings ("DOAH") opened a new case (Case No. 16-5719F), regarding White Rock's request for attorney's fees and taxable costs.

On November 15, 2016, the undersigned set this matter for final hearing on December 14, 2016. On November 17, 2016, Respondents requested a continuance of the final hearing. On November 22, 2016, the undersigned entered an Order granting the motion, and reset the final hearing for February 23, 2017.

On February 15, 2017, Respondents requested a continuance of the final hearing. On February 17, 2017, the undersigned entered an Order denying the motion. On February 21, 2017, counsel for Respondents appeared in the matter and filed an unopposed and amended motion to continue the final hearing. On

February 21, 2017, the undersigned entered an Order granting the motion, and reset the final hearing for April 13, 2017.

The final hearing commenced as scheduled on April 13, 2017. At the hearing, the parties stipulated that no witness testimony would be presented and limited their presentations to argument. White Rock's Exhibits 1 through 12 were received into evidence. Respondents' Exhibits 1 through 6 and 8 through 11 were received into evidence.

At the hearing, the parties agreed to file their proposed final orders within 10 days after the filing of the final hearing transcript at DOAH. The one-volume final hearing Transcript was filed on June 20, 2017. On June 28, 2017, White Rock filed a motion to extend the time until July 7, 2017, for the parties to file their proposed final orders. On June 28, 2017, the undersigned entered an Order granting the motion. The parties timely filed their proposed final orders, which have been considered in the preparation of this Final Order. Unless otherwise stated, all statutory and rule references are to the statutes and rules in effect at the time of the alleged violations.

FINDINGS OF FACT

1. White Rock engages in construction materials mining activities in Miami-Dade County, Florida. Specifically, White Rock utilizes explosives to procure construction materials

(i.e., limestone) from quarries that are located in northwest Miami-Dade County, Florida.

2. Respondents reside in a single-family, one-story home located at 14699 Southwest 47th Street, Miramar, Broward County, Florida 33027. Respondents are the third owners of the home, which was built in 1981. Respondents have resided in the home since 1998. The home is approximately 3,000 square feet "under air," and is composed of concrete block with stucco finishes, a shallow slab-on-grade foundation system, wood-framed interior walls, and ceramic tile flooring.

3. The subject quarries are located within various geographic areas identified by different sections in close proximity to Respondents' home. Of particular relevance to the instant matter are sections 7, 6, and 4/5. Section 7 is approximately 2.6 or 2.7 miles from Respondents' home. Section 6 is approximately 2.3 or 2.4 miles from Respondents' home. Section 4/5 is approximately 1.6 miles from Respondents' home.[1/]

4. In the underlying case, Respondents asserted that White Rock's quarrying activities caused damages to their home. Respondents alleged damages centered on "cracks" that exist throughout the home--specifically, cracks throughout the tile flooring inside the home; cracks on the cement flooring of the garage; cracks in the interior and exterior walls and ceilings;

cracks in the semi-circular, stamp-concrete driveway and patio; and cracks around the surface of the windows.

5. It is undisputed that cracks exist throughout Respondents' home and that Respondents' home is damaged because of the cracks. However, the issues to be determined in the underlying proceeding were whether the cracks were caused by White Rock's blasting activities, and, if so, the amount Respondents should be compensated for the damages.

6. Section 552.40(1) provides, in pertinent part, that:

> (1) A person may initiate an administrative proceeding to recover damages resulting from the use of explosives in connection with construction mining materials mining activities by filing a petition with the Division of Administrative Hearings by electronic means through the division's website on a form provided by it . . . .

7. Pursuant to section 552.40(2)(c) and (d), the petition must include:

> (c) The approximate time, date, and place of the use of explosives which is alleged to have resulted in damage to the petitioner; and
>
> (d) A description of the damage caused and the amount sought for recovery.

8. On December 14, 2015, Respondents' former counsel filed an Amended Petition Under the Florida Construction Materials Mining Activities Administrative Recovery Act. In the amended petition prepared and filed by Respondents' former counsel

pursuant to sections 552.40(1) and (2), Respondents claimed they were entitled to the following items of damages caused by White Rock's blasting activities:

Floor ($24,000)
Foundation ($100,000)
Walls ($50,000)
Ceiling ($20,000)
Patio ($50,000)
Driveway ($75,000)
Windows ($45,000)[2/]

9. The final hearing in the underlying proceeding lasted two days.

10. At that hearing, Respondent Dorothy Brown-Alfaro (who appeared pro se at the final hearing), presented photographs and a home inspection report showing cracks throughout the home. She described new, worsening, and expanding cracks throughout the home resulting from White Rock's blasting activities.

11. In addition, Ms. Alfaro submitted into evidence a blasting log, which documented the date, time, and intensity of White Rock's ongoing blasting activities since 1999 Respondents claimed they felt at their home. The blasting log was also an exhibit to Respondents' amended petition.

12. At the hearing, Ms. Alfaro testified to White Rock's frequent blasting and the effects on her home from the blasts. According to Ms. Alfaro, when White Rock's blasting activities occur, the house "sways," "everything shakes," and "the entire structure of my house moves." According to Ms. Alfaro, "when it

shakes, my ceiling, my roof, my walls, my floor, everything shakes." She testified that items fall off the shelves and she described the feeling from the blasts as a "vibration similar to an earthquake."

13. Ms. Alfaro presented the additional testimony of Barbara Hagan, Paul Ingelmo, and Ismailia Rashid. Mr. Ingelmo is a structural engineer who performed a visual inspection of Respondents' residence. Ms. Rashid is a general and roofing contractor. Neither Mr. Ingelmo, Ms. Rashid, nor Ms. Hagan could opine that the damages to Respondents' home were caused by White Rock's blasting activities.

14. Ms. Alfaro is an electrical contractor. She is not a licensed general contractor or structural engineer. At hearing, Ms. Alfaro conceded that she does not have experience as a general contractor or seismologist. She has not had any training in seismology or blasting activities. The undersigned found Ms. Alfaro's testimony regarding the purported cause of the cracks not to be credited or persuasive.

15. Ms. Alfaro regularly provides construction estimates in her business. Ms. Alfaro testified that the damages she requested in the amended petition were based upon her estimate of the repair costs she would incur to correct the damages caused by White Rock's blasting activities. She testified, without objection, that she obtained material costs and

calculated the amount of materials needed (i.e. per cubic yard of concrete and drywall) and labor to complete the repairs.

16. In response to the evidence presented by Ms. Alfaro at the hearing, White Rock presented the testimony of Jeffrey A. Straw, a seismologist; David L. Teasdale, a civil structural engineer; and Michael Schraeger, a general contractor and building inspector.

17. As a seismologist, Mr. Straw was responsible for monitoring the impacts and vibration from White Rock's blasting activities and analyzing their effects on structures. At the hearing, he described the concept of peak particle velocity ("PPV"), the speed at which a particle of ground oscillates as the vibration wave moves through the ground following a blast. Mr. Straw testified that according to seismographs located within the vicinity of Respondents' home, at no time have any of White Rock's blasting activities reached or exceeded the PPV limit of 0.5 inch per second established by the state of Florida.

18. Mr. Straw also visited Respondents' home twice: in April 2006 and January 2016. On both occasions, Mr. Straw brought a camera and notepad with him to catalog the defects identified by Respondents. Mr. Straw took extensive and comprehensive photographs detailing the cracks throughout Respondents' home and driveway. Mr. Straw also testified that

90 percent of the alleged defects he observed in 2016 were items that he also observed in some format in 2006.[3/]

19. While at Respondents' home in January 2016, Mr. Straw experienced the effects of a blast. He described it as "[r]elatively minor based on blasts that I felt," and indicated the blast lasted about three to five seconds at most. However, Mr. Straw further testified that he could feel the impact of the blast under his feet, and he could hear it, "there was some general vibration of the structure," and some "dish rattling."

20. Mr. Teasdale is extensively familiar with seismographs and has extensive experience installing and using them. At the hearing, he was accepted by the undersigned as an expert in structural behavior from ground motion and normal service loads, the influence of construction practices and environmental conditions on building features, soils and hardscape, the causes and conditions documented at Respondents' residence, and lot features including the suitability of existing safe blasting standards in the state of Florida.

21. Mr. Teasdale explained the substantial differences between an earthquake and quarry blasting. Mr. Teasdale testified that for blasting to cause damage to a structure, distortion must occur. According to Mr. Teasdale, distortion occurs where the foundation of a structure is accelerated laterally and causes the under part of the building to lag in

response, which causes the building to shift back and forth and mimic a parallelogram shape. He explained that when distortion occurs, cracks will emanate from the corner of the walls and that those cracks will be mirrored on the opposite walls (inside and outside the structure).

22. Mr. Teasdale testified there was no damage to the foundation of Respondents' home, and the foundation and floor of a home would not experience distortion at 0.5 PPV or below because those limits are too low to produce the energy necessary to cause a structure to become mobilized.

23. According to Mr. Teasdale, Respondents' home exhibited a variety of horizontal and vertical cracks and separations in the finishes, which are typical of environmental stresses in those materials. Mr. Teasdale also testified that distortion causes diagonal cracks, while thermal environmental stresses cause cracks vertically and horizontally. He explained that cracks caused by environmental conditions do not correlate on the inside and outside, while cracks caused by distortion do correlate on the inside and outside. He emphasized that the absence of corresponding cracks on the inside and outside of the structure generally precludes blasting as the cause of damages.

24. Mr. Teasdale explained that from the moment the concrete is cast, it begins to shrink and develop cracks. Mr. Teasdale further explained that stucco, which is essentially

the same material as concrete, is also prone to cracks due to normal environmental conditions.

25. Based on his review and analysis of Respondents' home, Mr. Teasdale concluded that he would exclude blasting to a reasonable degree of scientific certainty as the cause of damages to Respondents' home.

26. Mr. Schraeger has been licensed as a general contractor for 22 years and specializes in repairs, remodeling, and renovations of commercial and residential structures. He has 20 years of experience performing inspections of buildings relating to determination of material, construction failure, and defects.

27. At the hearing, Mr. Schraeger was accepted by the undersigned as an expert in construction practices and environmental effects on materials and structures.

28. Mr. Schraeger inspected Respondents' home in 2006 and 2016. He testified that 90 to 95 percent of the alleged defects he observed in the home in 2016 existed when he inspected the home in 2006.

29. Mr. Schraeger testified that the cracks that he observed on the tile floor inside Respondents' home are very typical in a South Florida home because concrete typically cracks within all concrete structures. These types of cracks can be caused by poor installation of the tile or shrinkage of

the monolithic slab over time. He opined there was no evidence of foundation damage.

30. Mr. Schraeger further testified that in his professional opinion, some of the cracks in Respondents' home are the result of poor construction practices. For example, he explained that most of the cracks in the interior of the home are due to poor construction practices because of the use of an inappropriate method for finishing the joints in the drywall. During his 2016 inspection, Mr. Schraeger observed tape on some of the joints, which either had no joint compound under them, or the tape was applied after the compound started to dry, causing a bond failure. Some of the cracks generating from the corners of openings appeared to be from improperly secured corner bead.

31. During his 2016 inspection, Mr. Schraeger also observed a crack in the master bedroom approximately eight feet in length, which appeared to be a joint in the drywall. This was apparent to Mr. Schraeger because the crack was visible on both sides of the joint tape, which had failed. According to Mr. Schraeger, the cause of this failure was moisture from a roof leak. Staining due to moisture on the ceiling in the area and a repair of the roof above this area indicated a previous leak. Notably, other areas of the home indicated roof leaks, including stains on the ceiling of the office area and staining around the skylight in the hallway.

32. Mr. Schraeger further testified that the patio tile and driveway lack sufficient control joints, thereby making the stamped-concrete driveway and patio prone to crack.

33. Mr. Schraeger also identified issues of poor maintenance by Respondents. For example, he noted that the caulking around the windows was brittle and almost nonexistent. At the hearing, Mrs. Alfaro acknowledged that in the 17 years she has owned the home, the windows have never been re-caulked.

34. According to Mr. Schraeger, several cracks were observed on the stucco exterior walls of the home. With the exception of a severe crack on the wing wall on the rear of the patio, he opined that all of the cracks in the exterior walls of the home were attributed to common aesthetic cracks caused by the lack of control joints, dissimilar materials, bond failure, and improper maintenance. According to Mr. Schraeger, the crack on the wing wall of the patio, which ran along the bottom of a large tie beam, was attributable to poor construction methods.

35. At the hearing, Mr. Schraeger disputed Ms. Alfaro's cost of repair testimony. However, Mr. Schraeger was not asked to give an expert opinion regarding the amount of damages, and he provided only "ballpark" or "rough" estimates of the cost of repair.

36. For example, Mr. Schraeger testified that the cost to repair the flooring would be "approximately $11,000."[4/] As to

the foundation, he estimated the cost to be $0.00 because he found no damage. As to the walls, Mr. Schraeger estimated a figure of $16,000. As to the ceiling, Mr. Schraeger estimated a figure of $5,000. As to the patio, Mr. Schraeger estimated a figure "well within the high end of six thousand." As to the driveway, Mr. Schraeger estimated a range between "roughly" $17,000 and $20,000--the high end of the range resulting from "material fluctuation" construction costs. As to the windows, Mr. Schraeger estimated $12,000.

37. Clearly, Mr. Schraeger acknowledged there are actual damages throughout much of the home, and there are actual costs associated with the repair of the damages. That the parties disagreed as to the amount of damages as to each item of alleged damages does not mean that the amount of damages claimed was unsupported by the material facts necessary to establish the claim.

38. In sum, based on the evidence adduced at the hearing, the undersigned found that Respondents failed to prove by a preponderance of the evidence that the damages to their home were caused by White Rock's blasting activities. Rather, the preponderance of the evidence presented at hearing established that the damages to Respondents' home were not caused by White Rock's blasting activities.

39. In reaching this conclusion, the undersigned credited and found persuasive the testimony of Mr. Straw, Mr. Teasdale, and Mr. Schraeger.

40. Although the undersigned was not persuaded in the underlying case by the evidence presented by Respondents, this does not mean that Respondents' claims were not supported by the material facts necessary to establish the claims.

41. There was competent, substantial evidence introduced by Respondents at hearing showing that: (1) Respondents' home was in close proximity to White Rock's frequent blasting activities; (2) when the blasting occurs, the house "sways," "everything shakes," "the entire structure of [the] house moves," items fall off the shelf, and Ms. Alfaro feels a vibration similar to an earthquake; and (3) there are cracks throughout the home--some of the cracks are new, worsening, and have expanded as a result of White Rock's frequent blasting activities.

42. White Rock is the prevailing party in Dorothy Brown-Alfaro and Amilcar Alfaro v. White Rock Quarries, DOAH Case No. 15-6014CM. However, White Rock has failed to establish it is entitled to an award of attorneys' fees pursuant to sections 57.105 and 552.40(9).

43. On page 16 of its proposed final order, White Rock also claims it is entitled to recover taxable costs under

section 552.40(9), totaling $9,287, as the prevailing party in the underlying case. The amount of taxable costs claimed is based on Exhibits 12A through 12G.

44. In Respondents' Proposed Final Order, Respondents do not dispute that White Rock is entitled to "recover costs totaling $9,287.15 (all the costs claimed except for the cost of lunches totaling $62.65) as costs reasonably necessary to defend the claims asserted in the underlying case." The undersigned has examined White Rock's Exhibits 12A through 12G, which constitute the universe of taxable costs sought, and the total of the costs is $9,287. There is no cost of lunches included within Exhibits 12A through 12G. All of the costs identified in Exhibits 12A through 12G are taxable costs or incidental administrative costs directly associated with the case, and therefore, are recoverable under section 552.40.

CONCLUSIONS OF LAW

45. DOAH has jurisdiction over the subject matter and parties pursuant to sections 120.569, 120.57(1), 57.105(5), and 552.40, Florida Statutes.

46. Section 57.105(1) provides in pertinent part:

> (1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a

> civil proceeding or action 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;

47. Similarly, section 552.40(9) provides in pertinent part:

> (9) The prevailing party is entitled to recover taxable costs, including reasonable expert witness fees and any incidental administrative costs directly associated with the case. The prevailing party is entitled to an award of reasonable attorney’s fees if the administrative law judge determines that the claim or defense of the nonprevailing party:
>
> (a) Was not supported by the material facts necessary to establish the claim or defense; . . . .

48. The statutes upon which White Rock relies to support entitlement to attorneys' fees must be strictly construed because statutes providing for attorneys' fees are in abrogation of the common law. Johnson v. Dep't of Corr., 191 So. 3d 965, 968 (Fla. 1st DCA 2016).

49. The phrase “supported by the material facts” was defined in Albritton v. Ferrera, 913 So. 2d 5, 7 n.1 (Fla. 1st DCA 2005), to mean that the “party possesses admissible evidence sufficient to establish the fact if accepted by the finder of fact.” If the losing party “presents competent, substantial

evidence in support of the claim . . . and the trial court determines the issue of fact adversely to the losing party based on conflicting evidence," fees are not warranted. Siegel v. Rowe, 71 So. 3d 205, 212 (Fla. 2d DCA 2011). As stated in Siegel:

> 57.105 does not penalize losing parties and their attorneys when they present competent substantial evidence in support of the losing parties' claims or defenses simply because the trier of fact resolves conflicting testimony against the loser. A contrary conclusion would make engaging in litigation a very risky proposition for both lawyers and their clients.

Siegel, 71 So. 3d at 213.

50. As detailed above, there was competent, substantial evidence introduced by Respondents at hearing in support of their claims.

51. Although the undersigned was not persuaded in the underlying case by the evidence presented by Respondents, their claims were nevertheless supported by the material facts necessary to establish the claims. In other words, had the undersigned accepted the evidence presented by Respondents as more persuasive and credible than the responsive evidence presented by White Rock, a final order in favor of Respondents would have been supported by competent, substantial evidence.

52. White Rock mistakenly contends that even if Respondents' home shook as a result of its blasting activities,

this evidence cannot constitute a material fact supporting Respondents' claims because of the state of Florida 0.5 PPV limit and the fact that White Rock did not exceed the limit.

53. Although the facts of the 0.5 PPV limit and White Rock's consistent blasting below the limit were persuasive evidence in the undersigned's resolution of the issue of causation in White Rock's favor, it was only part of the totality of evidence presented during the underlying proceeding.

54. Other evidence, as detailed above, was presented by Respondents, including, that the home was in close proximity to where White Rock's blasting occurred; the home swayed, shook, vibrated, and items inside the home fell following frequent blasting; there were cracks throughout the home; and there were new and worsening cracks following blasting. Had the undersigned found the evidence presented by Respondents to be more persuasive and credible than the evidence presented by White Rock, a final order in favor of Respondents would have been supported by competent, substantial evidence.

55. White Rock contends that because Respondents lacked expert testimony to support their claims, their claims were not supported by the material facts necessary to support their claims. Whether expert witness testimony is required to establish a claim under section 552.40 was recently addressed in Gateway Estates Park Condominium Association v. SDI Quarry, DOAH

Case No. 16-1025CM, 2017 Fla. Div. Adm. Hear. LEXIS 119 (Fla. DOAH Feb. 28, 2017). In that case, Judge Van Laningham stated:

> The Act is silent as to whether the issue of causation is provable without expert testimony. Generally speaking, "it is not always necessary to prove legal causation by expert testimony if other competent evidence demonstrates causation," such as proof of circumstances which support the reasonable inference of cause and effect. Gant v. Lucy Ho's Bamboo Garden, 460 So. 2d 499, 501 (Fla. 1st DCA 1984); see also, Alton Box Bd. Co. v. Pantya, 236 So. 2d 452, 454 (Fla. 1st DCA 1970)(Where, as in an action for damages from air pollution, the jury is at liberty to reject expert testimony and accept lay testimony as to a question of causation involving facts not within the ordinary experience of members of the jury, then such facts may be proven by lay testimony.).

56. The undersigned agrees with Judge Van Laningham's analysis and rejects White Rock's assertion that Respondents' failure to offer expert testimony renders their claims lacking in the material facts necessary to support their claims.

57. White Rock also contends that each item of damages sought by Respondents in paragraph eight above constitutes a separate and distinct claim, for which Respondents were required to present material facts in support. In furtherance of its position, White Rock relies on Folta v. Bolton, 493 So. 2d 440 (Fla. 1986), and Avatar Development Corp. v. DePani Construction, Inc., 883 So. 2d 344 (Fla. 4th DCA 2004).

58. These cases are distinguishable from the instant case. Folta involved a multicount medical malpractice action against a hospital and several of its employees, including a radiologist. In that case, there were different claims, brought against different parties, involving different injuries. The plaintiff prevailed on a claim against the radiologist and the hospital prevailed on many of the claims against it. The issue in that case centered on who was the prevailing party for purposes of awarding attorneys' fees under section 768.56. The Supreme Court held:

> that in a multicount medical malpractice action, where each claim is separate and distinct and would support an independent action, as opposed to being an alternative theory of liability for the same wrong, the prevailing party on each distinct claim is entitled to an award of attorney's fees for those fees generated in connection with that claim.

Folta, 493 So. 2d at 441.

59. In Avatar, a stucco contractor, DePani, entered into a contract with Avatar, a development company, to perform stucco work on a residential development. Avatar terminated the contract and DePani sued for breach of contract and foreclosure of a construction lien for nonpayment of materials and services already performed. The trial court held a bench trial and ruled in favor of DePani on the breach of contract claim. Subsequently, the parties settled the construction lien count,

including the attorneys' fees awardable to DePani under that count. The appellate court reversed the judgement in favor of DePani on the breach of contract claim. The question on appeal, as in Folta, was who is the prevailing party? The appellate court concluded that the construction lien claim was separate and distinct from the contractual claim for loss of future profits. Accordingly, pursuant to Folta, DePani was entitled to attorneys' fees on the construction lien foreclosure claim and Avatar was entitled to attorney's fees on the contractual claim for future lost profits. Id. at 345-346.

60. The instant case does not involve a multicount complaint in a civil proceeding based on different causes of action or legal theories of recovery. Rather, the alleged damages in this case arise out of a single claim that White Rock's blasting activities caused damages, which consist of cracks throughout Respondents' home. The fact that the cracks are located in different geographic areas of Respondents' home and Respondents attributed different amounts of damages to different areas of the home does not mean that Respondents' itemized damages are separate and distinct claims.

61. White Rock also contends that Respondents' claims are time-barred under section 552.40(1), which require that a petition be filed at DOAH within 180 days of any damage caused by the blasting activity and by section 95.11(3)(f), Florida

Statutes, which requires claims based upon a statutory right to be brought within four years of accrual of the cause of action. The undersigned considered this argument in the underlying case and it was rejected. White Rock did not appeal the Final Order.

62. It is inappropriate for the undersigned to address this issue again because it was raised, rejected in the underlying proceeding, and not appealed. In any event, as indicated previously in endnote three of the Final Order in Case No. 15-6014CM, White Rock failed to meet its burden of proof of demonstrating that Respondents' claims are barred by sections 552.40(1) and 95.11(3)(f). See Snyder v. Wernecke, 813 So. 2d 213 (Fla. 4th DCA 2002)(concluding that construction defect claim involving worsening of cracks in home over many years was not barred by the four-year statute of limitations found in section 95.11(3)).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner, White Rock Quarries' motion for attorney's fees is DENIED. White Rock's claim of costs is GRANTED. Costs in the amount of $9,287.00 are hereby assessed against Respondents, Dorothy Brown-Alfaro and Amilcar Alfaro.

DONE AND ORDERED this 7th day of August, 2017, in Tallahassee, Leon County, Florida.

DARREN A. SCHWARTZ
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of August, 2017.

ENDNOTES

1/ Each of the sections have been utilized as a discrete location where blasting activities occur in order for White Rock to obtain construction materials. Section 7 was in operation from the mid-1990's through the end of 2015. Currently, no blasting activities occur in section 7. Section 6 was in operation from 2000 through 2015. Currently, no blasting activities occur in section 6. Section 4/5 began blasting operations in the first quarter of 2015 and halted in the fourth quarter while excavation was done. Blasting in section 4/5 resumed in January 2016.

2/ On May 3, 2016, Respondents' former counsel filed a motion to withdraw as counsel for Respondents based on "irreconcilable differences." On May 4, 2016, the undersigned entered an Order granting the withdrawal.

3/ Notably, in August 2006, Respondents submitted an insurance claim for damages to their home, which they alleged were caused by White Rock's blasting activities. The insurance company denied the claim. Subsequently, Respondents submitted three separate complaints to the Division of State Fire Marshall regarding alleged damages caused to their home due to White Rock's blasting activities. In response, Respondents received

three notices from the Division of State Fire Marshall in October 2007, December 2010, and February 2014. In these notices, Respondents were advised of their right to submit a petition to DOAH, which has exclusive jurisdiction over such claims for damages occurring due to the use of explosives in connection with construction materials mining activities. However, Respondents' petition was not filed with DOAH until October 23, 2015.

[4/] In June 2015, Respondents hired a company to replace some of the tile floors inside the home. At hearing, Ms. Alfaro testified that the company used quality tile, proper materials, and properly prepared the cement surface before installing the new tile, in order to properly bond the tile to the slab surface. No cracks have appeared in the new tile, which the undersigned found belied any notation that White Rock's blasting activities caused damages to the old tile.

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.