

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

REBECCA COLEMAN CURTIS,

Petitioner,

vs.

Case No. 17-3012F

DEPARTMENT OF HEALTH, BOARD OF
PSYCHOLOGY,

Respondent.

_____ /

FINAL ORDER

This case was opened for the purpose of resolving the issue of attorney's fees and costs sought by Petitioner, as a result of the Final Order entered in Rebecca Coleman Curtis v. Department of Health, Board of Psychology, Case No. 16-6167.

APPEARANCES

For Petitioner: Edwin A. Bayó, Esquire
Paul Drake, Esquire
Grossman, Furlow & Bayó, LLC
2022-2 Raymond Diehl Road
Tallahassee, Florida 32308

For Respondent: Diane L. Guillemette, Esquire
Robert Milne, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to attorney's fees and costs pursuant to section 120.595(4), Florida Statutes (2017).

PRELIMINARY STATEMENT

On March 13, 2017, an Amended Recommended Order was entered in Case No. 16-6167, concluding that statements made by Respondent, Department of Health, Board of Psychology, "related to reconsideration or a second review of approved applications for licensure after the receipt of examination scores and before the issuance of the license meet the definition of a rule and constitute an unpromulgated rule." The Amended Recommended Order retained jurisdiction to award reasonable fees and costs upon entry of a final order, pursuant to section 120.595(4). The Board of Psychology entered a Final Order on May 11, 2017, adopting the Findings of Fact, Conclusions of Law, and recommended disposition in the Amended Recommended Order.

On May 15, 2017, Petitioner filed a Motion for Award of Attorney's Fees and Costs, which was opened as DOAH Case No. 17-3012F. A scheduling Order was issued May 23, 2017, directing the Department of Health, Board of Psychology, to identify any dispute regarding the entitlement to an award or the reasonableness of the fees sought, as well as a statement concerning whether a hearing was requested. Petitioner was also afforded an opportunity to request a hearing in light of any response by the Department.

On June 6, 2017, Respondent responded, advising that the parties were hopeful that they would settle the case, but that

any settlement would have to be approved by the Board of Psychology, a collegial body and a party to the case, and that the Board's next meeting was scheduled for July 21, 2017. The parties requested that a status conference be scheduled after the Board's July meeting. In response, an Order Requiring Status Report was issued on June 8, 2017, directing the parties to file a joint status report no later than July 28, 2017, advising whether further proceedings are necessary to resolve the motion. On July 5, 2017, the parties filed a Joint Motion to Relinquish Jurisdiction without Prejudice so that the Board of Psychology could consider the proposed settlement; and on that same day, the motion was granted, and the file of Division of Administrative Hearings was closed.

On August 16, 2017, the parties filed a Joint Motion to Reopen Case for Entry of Final Order Adopting the Board of Psychology's Order on Attorney's Fees and Cost. This Final Order is being issued as a result of the parties' motion.

FINDINGS OF FACT

1. A Final Order was issued on May 11, 2017, finding that the Board of Psychology relied on an unadopted rule when it denied Petitioner's application for licensure.

2. Petitioner timely filed a Motion for Award of Attorney's Fees and Costs under section 120.595(4), with the Division of Administrative Hearings.

3. Prior to any hearing on the motion, the parties reached a settlement in the amount of \$25,000 to be paid to Petitioner for fees and costs incurred in the underlying action. The parties agreed to have the matter forwarded to the Board of Psychology for consideration of the settlement, and for authority to have the administrative law judge re-open the file upon approval of the settlement for the purpose of having a final order entered in accordance with the terms of section 120.595(4).

4. The administrative law judge entered an Order Closing File in order to allow the parties to present the proposed settlement to the Board of Psychology, without prejudice for the case to be re-opened should the Board approve the terms of the settlement.

5. The Board of Psychology has approved the settlement at issue in this proceeding, and the parties have requested a final order approving that settlement.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over this proceeding pursuant to sections 120.569, 120.57(1), and 120.595(4).

7. Normally, when the parties to a proceeding before the Division of Administrative Hearings reach a settlement resolving their dispute, the Division does not become involved in the

settlement process. However, as the parties here have pointed out, section 120.595(4) provides in pertinent part:

(4) (a) If the appellate court or administrative law judge determines that all or part of an agency statement violates s. 120.54(1) (a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to s. 120.56(4) (f), a judgement or order shall be entered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

8. Petitioner meets the requirements specified in section 120.595(4) for an award of attorney's fees and costs. While the language of the statute could be clearer, it appears to contemplate that the award would be made by the court or the administrative law judge as opposed to the agency, because the agency is the party against whom the award is made.

9. Petitioner and the Board of Psychology have agreed to an award in the amount of \$25,000, representing both fees and costs. The amount of the award is reasonable.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Board of Psychology shall pay to Petitioner, Rebecca Coleman Curtis, Ph.D., \$25,000, as an award of attorney's fees and costs pursuant to section 120.595(4),

Florida Statutes. The check shall be made payable to the law firm of Grossman, Furlow & Bayó, consistent with the stipulation of the parties.

DONE AND ORDERED this 22nd day of August, 2017, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of August, 2017.

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.