

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GOLDEN HORN CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

vs.

Case No. 18-5526F

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF FLORIDA
CONDOMINIUMS, TIMESHARES AND
MOBILE HOMES,

Respondent.

_____ /

FINAL ORDER

This matter came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing on November 30, 2018, by video teleconference with sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Joseph Pustizzi, Esquire
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For Respondent: Megan S. Silver, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioner, Golden Horn Condominium Association ("Golden Horn" or "Association"), was the prevailing party in DOAH Case No. 18-2739 and is entitled to an award of attorneys' fees and costs to be paid by Respondent, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes ("Division"), pursuant to section 57.105, Florida Statutes (2018).^{1/}

PRELIMINARY STATEMENT

On August 24, 2018, the Association filed its Motion for Sanctions during the pendency of the underlying case, DOAH Case No. 18-2739. The Association alleges that the Division's Second Amended Notice to Show Cause, filed in DOAH Case No. 18-2739 on July 13, 2018, was not supported by the material facts necessary to establish the claims, or the application of the law to the facts alleged in the claims. On August 30, 2018, the Division filed a response to the motion.

On October 4, 2018, the undersigned granted the Division's motion to relinquish jurisdiction, DOAH Case No. 18-2739 was closed, and jurisdiction was relinquished to the Division to

conduct an informal proceeding pursuant to section 120.57(2), Florida Statutes.

On October 19, 2018, this attorneys' fees case was opened. On October 22, 2018, the undersigned entered an Order setting this matter for final hearing on November 30, 2018. On November 2, 2018, the Division filed an Amended Motion to Stay and Hold Case in Abeyance because an informal hearing before the Division was scheduled for November 29, 2018. On November 6, 2018, the Association filed a response in opposition to the motion. On November 13, 2018, the undersigned entered an Order denying the motion.

The final hearing in the instant case was held on November 30, 2018. At the hearing, the Association's Exhibits A through D and the Division's Exhibits 1 through 8 were received in evidence based on the stipulation of the parties. Moreover, the undersigned took official recognition of the filings in DOAH Case No. 18-2739 based on the stipulation of the parties.

The one-volume final hearing Transcript was filed at DOAH on December 17, 2018. The parties timely filed proposed final orders, which were considered in the preparation of this Final Order.

FINDINGS OF FACT

1. The Division is the state agency charged with enforcing chapter 718, Florida Statutes.

2. Golden Horn is a residential condominium association as defined by section 718.103.

3. In Count I of the Second Amended Notice to Show Cause, the Division alleged that between July and November 2016, unit owners Donna Rubin, Manuel Pack, John Riglesberger, and Charles Volpe, III, made various deposits to the Association's bank account and that the Association failed to post the payments to the unit owners' respective account ledgers until December 31, 2016. As a result, the Division alleged the Association failed to maintain detailed and accurate accounting records in violation of Florida Administrative Code Rule 61B-22.002.

4. In Count II of the Second Amended Notice to Show Cause, the Division alleged that at least 40 days prior to the 2017 Association election, unit owners Donna Rubin and Manuel Pack each submitted written notices of intent to run for a seat on the board, that they were each current in their monetary obligations to the Association and were otherwise eligible for candidacy, but that the Association excluded them from the ballot in violation of Florida Administrative Code Rule 61B-23.0021(9)(a).

5. On October 4, 2018, during a telephonic hearing on Golden Horn's Motion for Summary Final Order and the Division's motion to relinquish jurisdiction in DOAH Case No. 18-2739, counsel for the parties stipulated that there was no genuine

issue as to any material fact; that the undersigned should relinquish jurisdiction to the Division; and that upon relinquishment, the Division would conduct an informal proceeding pursuant to section 120.57(2) to resolve disputed issues of law. Accordingly, on October 4, 2018, the undersigned granted the Division's motion to relinquish jurisdiction, DOAH Case No. 18-2739 was closed, and jurisdiction was relinquished to the Division to conduct an informal proceeding pursuant to section 120.57(2).

6. As of the date of this Final Order, the Division has not entered a final order resulting from the informal proceeding.

CONCLUSIONS OF LAW

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

8. 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; or

(b) Would not be supported by the application of then-existing law to those material facts.

9. Section 57.105 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).

10. As indicated above, the Association must be a "prevailing party" in order to obtain attorneys' fees pursuant to section 57.105. Prevailing party refers to the party who defeats any claim or defense. Bridgestone/Firestone, Inc. v. Herron, 828 So. 2d 414, 418 (Fla. 1st DCA 2002).

11. In the instant case, the Association has not demonstrated that it is the prevailing party on Counts I and II of the Second Amended Notice to Show Cause. The issues of law in DOAH Case No. 18-2739 are before a Hearing Officer of the Department of Business and Professional Regulation, and a final order has not been entered on either of the two counts. Accordingly, it is undetermined at this time whether the Association or the Division is the prevailing party.

12. Even if the Association was a prevailing party, however, the Association failed to demonstrate that the Second Amended Notice to Show Cause was not supported by the material

facts necessary to establish the claims, or that the claims would not be supported by the application of then-existing law to those material facts.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Association's Motion for Sanctions is DENIED.

DONE AND ORDERED this 15th day of January, 2019, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of January, 2019.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida Statutes and administrative rules are to the 2018 codifications.

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.