

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MANATEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-5307F

LINCOLN MEMORIAL ACADEMY, INC.,

Respondent.

FINAL ORDER ON REMAND

On April 30, 2020, Respondent, Lincoln Memorial Academy, Inc. (“LMA”), filed a Motion for Appellate Attorney’s Fees with the First District Court of Appeal (“First DCA”) in Case No. 1D19-3859, the appeal from the underlying charter school case concerning LMA, DOAH Case No. 19-4155. On December 30, 2020, the First DCA issued its decision in the appeal brought by LMA, denied Respondent’s Motion for Attorney’s Fees, granted Petitioner’s Motion for Attorney’s Fees, and remanded the issues of attorney’s fees and costs to the Division of Administrative Hearings (“DOAH”). *Lincoln Mem’l Acad., Inc. v. Manatee Cty. Sch. Bd.*, 309 So. 3d 710 (Fla. 1st DCA 2020). This is the Final Order on Remand awarding additional attorney’s fees.

APPEARANCES

For Petitioner: Erin G. Jackson, Esquire
Ashley Tinsley Gallagher, Esquire
Johnson Jackson PLLC
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For Respondent: Christopher Norwood, J.D.
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The Methodist Law Centre
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STATEMENT OF THE ISSUE

The issue for determination here is whether the additional attorney's fees sought by Petitioner are reasonable.

PRELIMINARY STATEMENT

On January 6, 2021, the undersigned issued a Notice of Remand and Order, confirming that the amount of \$297,987.82, awarded pursuant to this tribunal's February 24, 2020, Final Order on Petitioner's Motion for Attorney's Fees and Costs, is due and owing. On February 1, 2021, Petitioner filed a Memorandum of Law in Support of Petitioner's Motion for Additional Attorney's Fees and Costs, along with counsels' declarations, affidavits, and relevant time and billing records.

As of the date of this Order, Respondent has filed no response, rebuttal, or affidavit challenging the reasonableness of Petitioner's request for additional attorney's fees. Further, Respondent has not requested a hearing concerning the reasonableness of the additional attorney's fees.

FINDINGS OF FACT

1. Through its submission of briefs and accompanying motions, Petitioner has demonstrated that the attorney's fees sought are reasonable based upon the reasonable rate charged and the reasonable hours expended in this matter.

2. The hours expended in this matter are reasonable given the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skills required to perform the legal services properly.

3. Johnson Jackson PLLC maintained detailed records of all services rendered as evidence of the extensive time and effort dedicated to this matter. These records demonstrate that Johnson Jackson PLLC attorneys and staff dedicated 173 hours between January 22, 2020, and January 6, 2021, to this matter.

4. Respondent made no effort to rebut the claim for additional attorney's fees and costs since the issuance of the Notice of Remand and Order by the undersigned on January 6, 2021.

5. The rates charged by the two attorneys working on the appeal, Erin G. Jackson, Esquire, and Ashley Tinsley Gallagher, Esquire, at \$165.00 an hour, are most reasonable. In consideration of the market value and the factors set forth in Rule Regulating The Florida Bar 4-1.5, Johnson Jackson PLLC charged Petitioner \$165.00 per hour for the two experienced attorneys who handled the appeal, and \$90.00 per hour for paralegals and law clerks. The total amount claimed for the appellate fees is \$28,425.00. Johnson Jackson PLLC's hourly rate is extremely reasonable given the experience and expertise of its attorneys and staff, as evidenced by their *curricula vitae*, affidavits, and the agreement for fees between Petitioner and Johnson Jackson PLLC. Further, the total amount of hours expended by counsel and staff on the appeal is reasonable. According to the supporting documents submitted by counsel for Petitioner, no additional costs are being claimed at this time.

6. To provide an independent review of the reasonableness of Petitioner's legal fees, Ms. Jackson retained the expertise of Attorney Katherine Earle Yanes. Ms. Yanes has been practicing law for approximately 22 years and has participated in the litigation of numerous civil and criminal appeals before the Florida District Courts of Appeal and Eleventh Circuit Court of Appeals. Based on her expertise and a review of the filings in the appellate proceeding, including but not limited to Respondent's Motion to Relinquish Jurisdiction, Respondent's Initial Brief, Petitioner's responses to both, and Johnson Jackson PLLC's billing records, in conjunction with the eight factors set forth in rule 4-1.5, including but not limited to the novelty and difficulty of the questions involved, Ms. Yanes opined in an affidavit that the hours expended in this matter by Johnson Jackson PLLC, totaling 173 hours, were reasonable.

7. Ms. Yanes was also retained for the purpose of determining the reasonableness of the hourly rates charged by Petitioner's counsel for the appeal. Based upon her experience and qualifications, Ms. Yanes generally charges clients \$450.00 per hour in her practice. In her declaration appended to Petitioner's motion, and based upon the rate of fees customarily charged in the legal locality and the experience and reputation of the attorneys performing the service, Ms. Yanes opined that the hourly rates charged by the Johnson Jackson PLLC attorneys (\$165.00) and staff (\$90.00) were reasonable.

CONCLUSIONS OF LAW

8. DOAH has jurisdiction over the parties to this proceeding and the subject matter of this proceeding pursuant to sections 120.569, 120.57, and 1002.33(8), Florida Statutes (2020).

9. The administrative law judge has final authority to resolve this dispute pursuant to section 1002.33(8)(b) and (c), which provides, in pertinent part, that "[t]he administrative law judge shall award the prevailing party

reasonable attorney fees and costs incurred during the administrative proceeding and any appeals.” § 1002.33(8)(b), Fla. Stat.

10. As noted by Petitioner, an Order awarding prevailing party attorney’s fees and costs in the above-styled case in the amount of \$297,987.82 was entered on February 24, 2020. The Order being issued here is to supplement the February 24, 2020, Order and is for fees associated with the appeal by Respondent of the Final Order in Case No. 19-4155, which resulted in an affirmance of that Final Order and an award of attorney’s fees for the appeal, to be determined by the undersigned.

11. The Florida Supreme Court has accepted the lodestar approach as a suitable foundation for an objective structure in setting reasonable attorney’s fees. *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985). The lodestar approach requires the court to: (1) determine the number of hours reasonably expended on the litigation; (2) determine a reasonable hourly rate for the services of the prevailing party’s attorney; and (3) once determined, multiply the reasonable hourly rate by the reasonable number of hours expended. *Id.* at 1150-51.

12. The eight factors set forth in The Florida Bar Code of Professional Responsibility (*See Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 830 (Fla. 1990)) are set forth in rule 4-1.5(b)(1) and include:

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

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

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

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

(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;

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

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

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

13. As set forth above, based upon the skill and experience of counsel for Petitioner in this matter; the expert opinion of Ms. Yanes, an experienced attorney practicing in the locale of counsel for Petitioner; and the application of the eight lodestar factors, the total amount of fees sought by counsel for Petitioner are hereby approved in full.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the total fee amount of \$28,425.00 for the appeal is based upon reasonable hours expended and a reasonable hourly rate and, therefore, is awarded in full. This amount shall be added to the previously determined amount of attorney's fees and costs of \$297,987.82, for a total amount of attorney's fees and costs that is now due and owing from Respondent to Petitioner in the amount of \$326,412.82.

The undersigned will retain jurisdiction to award any additional fees and costs incurred by Petitioner pursuant to the filing of its Motion for Appellate Attorney's Fees, as well as the previous Motion for Attorney's Fees and Costs in the underlying matter, DOAH Case No. 19-4155.

DONE AND ORDERED this 12th day of May, 2021, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of May, 2021.

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.