

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR PERSONS WITH DISABILITIES,

Petitioner,

vs.

Case No. 20-2087F

MEADOWVIEW PROGRESSIVE CARE
CORPORATION GROUP HOME, OWNED AND
OPERATED BY MEADOWVIEW PROGRESSIVE
CARE CORPORATION,

Respondent.

_____ /

FINAL ORDER

On October 26, 2020, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by Zoom.

APPEARANCES

For Petitioner: Trevor S. Suter, Esquire
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950

For Respondent: G. Barrington Lewis, Esquire
Law Office of George B. Lewis
10061 53rd Way South, Suite 1004
Boynton Beach, Florida 33437

STATEMENT OF THE ISSUE

The issue is to determine the amount of a reasonable attorney's fee to be paid by Petitioner (Agency) to Respondent (Meadowview), pursuant to section 57.105(1) and (5), Florida Statutes.

PRELIMINARY STATEMENT

By recommended order in DOAH Case 19-1812FL issued on November 26, 2019 (Recommended Order), the undersigned administrative law judge recommended that the Agency enter a final order finding Meadowview not guilty of the material allegations contained in an Administrative Complaint seeking to impose discipline on Meadowview's license to operate a group home facility. The Recommended Order retained jurisdiction to award Meadowview a reasonable attorney's fee under section 57.105(5). By final order in DOAH Case 19-1812FL issued on January 29, 2020, the Agency substantially adopted the Recommended Order, and the Agency's final order was not appealed.

DOAH subsequently assigned the fee case the case number first set forth above. On May 28, 2020, the undersigned administrative law judge conducted a hearing on the Agency's liability for a reasonable attorney's fee, but not on the amount of such fees. The administrative law judge issued a final order on June 29, 2020, and an amended final order, which corrected a reference to a court opinion, on July 6, 2020 (Partial Final Order). The Agency appealed the Partial Final Order, but dismissed the appeal because it was premature.

The Partial Final Order determines that the Agency is liable for a reasonable attorney's fee in connection with two of the three counts in the Administrative Complaint. The Partial Final Order concludes that the law did not support the claim in Count I that Meadowview's license was subject to discipline because the Department of Children and Families (DCF) had

verified that an officer and director of Meadowview was a person responsible for the exploitation of several vulnerable adults residing in Meadowview's group home facility (Verified Report). The Partial Final Order concludes that the material facts did not support the claim in Count II that the omission of any mention of the Verified Report in Meadowview's license renewal application constituted a false representation or omission of a material fact, because the Agency was aware of the Verified Report prior to the filing of the renewal application.¹

At the hearing on October 26, 2020, Meadowview called two witnesses and offered into evidence five exhibits: Meadowview Exhibits 1 through 5. The Agency called one witness and offered into evidence no exhibits. All exhibits were admitted into evidence.

The court reporter filed the transcript on November 30, 2020. The parties filed proposed final orders on December 17, 2020.

FINDINGS OF FACT

1. In representing Meadowview in DOAH Case 19-1812FL, G. Barrington Lewis (Counsel) entered into a retainer agreement with Meadowview specifying the payment of \$300 per hour for legal services plus costs. The expert witness called by each party testified to the reasonableness of this hourly rate, so it is accepted.

¹ In its proposed final order, the Agency states that its liability for a reasonable attorney's fee under Count II arises under a lack of supporting facts--section 57.105(1)(a)--and a lack of supporting law--section 57.105(1)(b). These were the issues identified in the "Preliminary Statement" of the Partial Final Order. However, the "Final Order" of the Partial Final Order predicates the Agency's liability on section 57.105(1)(b) for Count I and only section 57.105(1)(a) for Count II. *See also* Partial Final Order, para. 7. In other words, the Partial Final Order did not predicate the Agency's liability for a reasonable attorney's fee under Count II on a lack of supporting law, only a lack of supporting facts.

2. In determining the reasonable amount of time that Counsel expended in DOAH Case 19-1812FL, it is necessary to determine how much time should be allocated to Count III, for which Meadowview is not entitled to a reasonable attorney's fee. Counsel testified that he would allocate no more than 10% of his total time to Count III, on which Meadowview's officer and director and a state inspector each testified briefly. For this count, the factual issues were straightforward, and no significant legal issues were involved. Counsel devoted almost his entire opening statement in DOAH Case 19-1812FL to Counts I and II, content to allow the disposition of Count III to be based entirely on the straightforward testimony of the two witnesses, as the unscreened purported employee herself never testified. Based on Counsel's testimony, it is found that he expended 10% of the total time on Count III.

3. Meadowview Exhibit 3 is a consolidated statement of services rendered by Counsel. Each dated entry includes a brief description of the service provided, such as the drafting of a petition requesting a formal hearing; the hours broken down into quarter hours; the hourly rate of \$300; and the product of the hours times the hourly rate. Meadowview Exhibit 3 documents total billings of 80.25 hours and \$24,075, as to which Meadowview has been paid \$8300.

4. Reducing these billings by 10% for work on Count III would leave total billings of about 72.25 hours and exactly \$21,667.50. Counsel testified that he devoted about 45% of his time to Count I and 45% of his time to Count II. Subject to the findings below as to Count I, this general allocation of time between Counts I and II is reasonable. Counsel thus spent about 36 hours or \$10,800 of time on each count.

5. Both expert witnesses were extremely helpful in providing guidance, based on their substantial experience, in determining the time that Counsel could reasonably have expended in connection with Counts I and II. Both expert witnesses were thus persuasive in their presentations.

6. Meadowview's expert witness applied the 10% factor for Count III. She further reduced Counsel's billings by about 10 hours, including 7.5 hours for June 26, 28, and 30, 2020, spent in preparing for and participating in the hearing that resulted in the Partial Final Order--in other words, seeking "fees for fees." The remainder of her reduction was for clerical work consisting of entries of 0.25 hour each. With these adjustments, Meadowview's expert witness concluded that 62 hours or about \$18,600 was reasonable for defending Counts I and II in DOAH Case 19-1812FL.

7. The Agency's expert witness testified that, at a "healthy" hourly rate of \$300, an attorney is not entitled to "minimum/mandatory" billings of 0.25 hours for tasks that require considerably less than 15 minutes. Less persuasively, the Agency's expert witness objected to the summary nature of the services described in Meadowview Exhibit 3. In general, this criticism is more applicable toward relatively large billing increments, but the two largest increments--5.0 and 4.0 hours--were for attending hearings. The Agency's expert witness concluded that a range of a reasonable attorney's fee for Counts I and II was from \$14,000 to \$16,000.

8. There is thus a difference of only \$2600 to \$3600 between the two expert witnesses, which suggests a commendable level of integrity in Counsel's billing practices.² It is found, based on the foregoing, that a reasonable attorney's fee is \$16,000.

9. As between the amounts offered by the two expert witnesses, the lower amount is further supported because Count I never stated a claim on which

² The Agency's expert witness shared this opinion as to Counsel, but aptly added that, when billing Meadowview, Counsel was unaware of the prospect of a third-party payor of his fees. The first suggestion of such a payor was made in the Recommended Order at the instance of the undersigned administrative law judge, as he is obligated to do under section 57.105(1) and (5) based on the statutory provisions' use of "shall" when describing the obligations of the administrative law judge to award a reasonable attorney's fee when the statutory conditions are met.

relief could be granted,³ nor could it have stated such a claim,⁴ and thus was susceptible to a motion for a summary relief, pursuant to section 120.57(1)(i). The more rigorous analysis of the billing by the Agency's expert witness adequately accounts for a reduction from a timely motion for summary relief. However, the more generous analysis of the billing by Meadowview's expert witness requires an adjustment for this reduction.

10. The timing of when Counsel reasonably should have filed such a motion is difficult to determine. Some delay would follow from the fact, as testified by Counsel, that, prior to the hearing in DOAH Case 19-1812FL, he found a recommended order allowing the Agency to pierce the corporate veil and impose discipline on the licensee for a determination by DCF that its officer or director was verified for the abuse, neglect, or exploitation of a vulnerable adult.⁵ Thus, Counsel testified that a timely motion for summary relief as to Count I would have saved only four or five hours of time, or \$1200 to \$1500. Partly crediting this testimony, the administrative law judge finds that the savings would have been closer to ten hours, so as to reduce the \$18,600 in fees found by Meadowview's expert witness to about \$16,000.

CONCLUSIONS OF LAW

11. DOAH has jurisdiction. §§ 120.569, 120.57(1), and 57.105(1) and (5).

12. Section 57.105(1) and (5) provides:

(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

³ Amended Final Order, paras. 10-26 and 31.

⁴ See *Bierlin v. Lucibella*, 955 So. 2d 1206, 1208 (Fla. 4th DCA 2007) (per curiam).

⁵ Such a recommended order may have been discussed in the Amended Final Order at paragraphs 27-30.

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

* * *

(5) In administrative proceedings under chapter 120, an administrative law judge shall 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). Such award shall be a final order subject to judicial review pursuant to s. 120.68. If the losing party is an agency as defined in s. 120.52(1), the award to the prevailing party shall be against and paid by the agency.

13. Meadowview bears the burden of proving the amount of its reasonable attorney's fee. *See U.S. Auto. Ass'n v. Kibbler*, 364 So. 2d 57, 59 (Fla. 3d DCA 1978). When a party is entitled to a reasonable attorney's fee for prosecuting or defending some, but not all, claims in a case, the party seeking the fee must differentiate between the claims or defenses, unless they are "inextricably intertwined." *See, e.g., Ocean Club Cmty. Ass'n, Inc. v. Curtis*, 935 So. 2d 513, 516 (Fla. 3d DCA 2006). In this case, Count III was "separate and distinct" from Counts I and II and thus Meadowview is required to prove its reasonable attorney's fee in defending these counts. *Ocean Club*, 935 So. 2d at 516. A party is not entitled to fees for which its supporting documents are inadequate, confusing, imprecise, vague, or incomprehensible. *Van Diepen, P.A. v. Brown*, 55 So. 3d 612, 614 (Fla. 5th DCA 2011) (citing *Ocean Club*, 935 So. 2d 513, and *Crown Custom Homes*,

Inc. v. Sabatino, 18 So. 3d 738 (Fla. 2d DCA 2009). However, Meadowview's documentation is adequate and supports the present award. Lastly, as Meadowview's expert witness noted, a party is not entitled to "fees for fees." *See, e.g., Wood v. Haack*, 54 So. 3d 1082, 1084 (Fla. 4th DCA 2011).

14. For the reasons set forth in the Findings of Fact, Meadowview has proved that it is entitled to a reasonable attorney's fee in defending Counts I and II in DOAH Case 19-1812FL in the amount of \$16,000.

ORDER

It is

ORDERED that the Agency for Persons with Disabilities pay Meadowview Progressive Care Corporation a reasonable attorney's fee of \$16,000, pursuant to section 57.105(1) and (5).

DONE AND ORDERED this 14th day of January, 2021, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of January, 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.