

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MB DORAL, LLC, D/B/A MARTINI BAR,

Petitioner,

vs.

Case No. 20-2515F

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, DIVISION OF
ALCOHOLIC BEVERAGES AND TOBACCO,

Respondent.

_____ /

FINAL ORDER

This cause arises from Petitioner MB Doral, LLC, d/b/a MartiniBar's (MB Doral) Motion for Attorneys' Fees and Costs, filed May 22, 2020, concerning the bifurcated existing rule challenge, and appeal, in DOAH Case No. 18-6768RX, and First District Court of Appeal Case No. 1D19-0820. This proceeding, to determine entitlement, and if necessary, amount, of attorneys' fees and costs to be paid by Respondent to Petitioner in the existing rule challenge and subsequent appeal, has not been set for hearing. However, no hearing is necessary, because the parties have agreed to the amount of attorneys' fees and costs to be assessed, pursuant to a Joint Stipulation for Attorneys' Fees and Costs, filed June 3, 2020.

APPEARANCES

For Petitioner: Michael Martinez, Esquire
Greenspoon Marder
215 South Monroe Street, Suite 530
Tallahassee, Florida 32399

For Respondent: Megan Kachur, Esquire
Department of Business and Professional Regulation,
2601 Blair Stone Road
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUES

Whether Petitioner, MB Doral is entitled to attorneys' fees and costs pursuant to section 120.595(3), Florida Statutes (2019), and Florida Rule of Appellate Procedure 9.400; and if so, the amount.

PRELIMINARY STATEMENT

On December 21, 2018, MB Doral filed a Petition Challenging Validity of Existing Rule 61A-4.020 and Determination Regarding Unadopted Rule. With respect to the unadopted rule challenge, MB Doral contended that the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco's (Department) "ABT Form 6017 Application and Inspection Report for Off-Premises Storage Permit" (ABT Form 6017) constituted an unpromulgated rule. On January 23, 2019, the Department filed a Motion to Bifurcate and Stay Proceedings, in which it stated that the Department had commenced the rulemaking process to revise Florida Administrative Code Rule 61A-4.020 (which was the subject of the existing rule challenge) to, *inter alia*, promulgate ABT Form 6017. On January 25, 2019, the undersigned entered an Order Granting Respondent's Motion to Bifurcate and Stay Proceedings, which: (1) stayed MB Doral's unadopted rule challenge pending the proposed rulemaking, pursuant to section 120.56(4)(b); (2) bifurcated DOAH Case No. 18-6768RX, so that the parties could proceed

on MB Doral's existing rule challenge; and (3) ordered the Department to provide the undersigned with a status report within 30 days.¹

The undersigned conducted a final hearing on MB Doral's existing rule challenge, and issued a Final Order on February 21, 2019, which concluded that rule 61A-4.020 was a valid exercise of delegated legislative authority. MB Doral appealed the Final Order to the First District Court of Appeal, Case No. 1D19-0820. On April 27, 2020, the First District Court of Appeal issued an opinion that reversed the Final Order and concluded that rule 61A-4.020 was an invalid exercise of delegated legislative authority. *MB Doral, LLC, d/b/a Martinibar v. Dep't of Bus. & Prof'l Reg., Div. of Alcoholic Bev. & Tobacco*, 2020 WL 1987120 (Fla. 1st DCA April 27, 2020).

MB Doral then filed a Motion for Award of Attorneys' Fees and Costs on May 22, 2020, seeking an award of attorneys' fees and costs in the existing rule challenge and subsequent appeal, pursuant to section 120.595(3) and Florida Rule of Appellate Procedure 9.400. On June 4, 2020, the Department filed a Notice of Filing of Joint Stipulation for Attorneys' Fees and Costs (Joint Stipulation). The Joint Stipulation includes the following: "The parties jointly request entry of an order directing Respondent to pay Petitioner the sum of \$24,000.00 (TWENTY-FOUR THOUSAND AND 00/100 DOLLARS) in attorneys' fees and costs[.]"

¹ The Department engaged in rulemaking that ultimately resulted, in October 2019, in amendments to rule 61A-4.020 that promulgated ABT Form 6017. On November 6, 2019, the undersigned entered an Order Dismissing Unadopted Rule Challenge and Retaining Jurisdiction, which dismissed MB Doral's remaining unadopted rule challenge and retained jurisdiction to consider a request for attorneys' fees and costs pursuant to section 120.595(4). On December 3, 2019, MB Doral filed a Motion for Attorneys' Fees and Costs, seeking an award of attorneys' fees and costs incurred in the unadopted rule challenge pursuant to section 120.595(4)(b). On February 26, 2020, the undersigned, in DOAH Case No. 19-6579F, entered a Final Order that approved a joint stipulation between the parties concerning attorneys' fees and costs in that unadopted rule challenge.

The Division of Administrative Hearings (Division) opened this separate “fee” case for the purpose of addressing attorneys’ fees and costs. The undersigned issues this Final Order based on the Joint Stipulation, which renders a hearing unnecessary.

FINDINGS OF FACT

1. On December 21, 2018, MB Doral filed a Petition Challenging Validity of Existing Rule 61A-4.020 and Determination Regarding Unadopted Rule, in DOAH Case No. 18-6768RX.

2. The undersigned bifurcated the unadopted rule challenge and conducted a final hearing on the existing rule challenge on January 24, 2019. On February 21, 2019, the undersigned entered a final order that concluded that rule 61A-4.020 was a valid exercise of delegated legislative authority.

3. MB Doral appealed the final order to the First District Court of Appeal. On April 27, 2020, the First District Court of Appeal issued an Opinion that reversed the Final Order and concluded that rule 61A-4.020 was an invalid exercise of delegated legislative authority. *MB Doral, LLC, d/b/a Martinibar v. Dep’t of Bus. & Prof’l Reg., Div. of Alcoholic Bev. & Tobacco*, 2020 WL 1987120 (Fla. 1st DCA April 27, 2020).

4. On May 22, 2020, MB Doral filed a Motion for Attorneys’ Fees and Costs (Motion), seeking an award of attorneys’ fees and costs incurred in the existing rule challenge and subsequent appeal, pursuant to section 120.595(3), Florida Statutes, and Florida Rule of Appellate Procedure 9.400.

5. On June 4, 2020, the Department filed a Notice of Filing Joint Stipulation for Attorneys’ Fees and Costs, which included the Joint Stipulation for Attorneys’ Fees and Costs.

6. The Joint Stipulation states that the Department agrees to the entry of a final order assessing the sum of \$24,000.00 for attorneys’ fees and costs in the existing rule challenge and subsequent appeal, which the undersigned bifurcated from the unadopted rule challenge in DOAH Case No. 18-6768RX.

7. The Joint Stipulation further states that the parties agree that the Final Order direct the Department to seek immediate approval for payment within 30 days of the Final Order, and that the undersigned retain jurisdiction to enforce the terms of the Final Order.

CONCLUSIONS OF LAW

8. The Division has jurisdiction over the parties and subject matter pursuant to section 120.595.

9. MB Doral seeks attorneys' fees and costs in the existing rule challenge pursuant to section 120.595(3), which provides:

If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed \$50,000.

10. MB Doral also seeks costs incurred in its successful appeal, pursuant to Florida Rule of Appellate Procedure 4.000(a).²

² The undersigned notes that it does not appear that Petitioner seeks attorneys' fees incurred for its successful appeal. The undersigned also notes that it does not appear that Petitioner filed a motion for attorneys' fees on appeal, pursuant to Florida Rule of Appellate Procedure 9.400(b).

11. Based on the Joint Stipulation, MB Doral and the Department have agreed to resolve the issue of entitlement and amount of attorneys' fees and costs as alleged in the Motion.

12. Based on the findings above, and the Joint Stipulation, the undersigned assesses the sum of \$24,000.00 in attorneys' fees and costs in the existing rule challenge and appeal, against the Department to be paid to MB Doral within 30 days of the date of this Final Order, in accordance with the Joint Stipulation.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

A. Respondent, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, shall pay Petitioner, MB Doral, LLC, d/b/a MartiniBar, the sum of \$24,000.00, made payable directly to MB Doral, LLC, and provided to MB Doral, LLC, in care of Greenspoon Marder, P.A.

B. Respondent, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, shall seek immediate approval of payment, and shall render payment within 30 days of the date of this Final Order.

DONE AND ORDERED this 12th day of June, 2020, in Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
Division of Administrative Hearings
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1230 Apalachee Parkway
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of June, 2020.

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.