

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DOUG WILLIAMS AND SHERRY WILLIAMS,

Petitioners,

vs.

Case No. 20-2557FC

CITY OF CORAL SPRINGS POLICE OFFICERS'
PENSION FUND,

Respondent.

_____ /

RECOMMENDED ORDER

On November 30, 2020, a duly-noticed hearing was held by Zoom video conference at locations in Coral Gables, Coral Springs, and Tallahassee, Florida, before Robert S. Cohen, an Administrative Law Judge (“ALJ”) assigned by the Division of Administrative Hearings (“DOAH”).

APPEARANCES

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STATEMENT OF THE ISSUE

The issue to be determined is whether Petitioners are entitled to an award of reasonable prevailing party attorney's fees and costs stemming from a prior consolidated action before ALJ F. Scott Boyd, DOAH Case Nos. 16-3298 and 16-3302, pursuant to section 185.05, Florida Statutes. Before the final hearing, the parties stipulated to an amount of reasonable prevailing party attorney's fees and costs if the undersigned determines that Petitioners are entitled to an award of reasonable prevailing party attorney's fees and costs stemming from that prior action before ALJ Boyd.

PRELIMINARY STATEMENT

The parties jointly offered 14 exhibits that were admitted into evidence, without objection. No witnesses were called to testify by the parties. The underlying factual history of this dispute is set forth in the Recommended Order by ALJ Boyd in DOAH Case Nos. 16-3298 and 16-3302. This dispute comes for determination after a series of writs of certiorari were granted in favor of Petitioners, Doug and Sherry Williams ("Petitioners" or "Williamses"), the orders having been admitted into evidence as Exhibits 11 through 14. After a continuance, the final hearing was conducted on November 30, 2020, by Zoom video conference. The one-volume Transcript of the final hearing was electronically filed on January 7, 2021. Both parties timely filed proposed recommended orders that were duly considered in the preparation of this Recommended Order.

References to the Florida Statutes are to the 2020 codification.

FINDINGS OF FACT

1. The City of Coral Springs is a municipality in Broward County, Florida. It exercises broad power pursuant to article VIII, section 2 of the Florida

Constitution, and the Municipal Home Rule Powers Act, chapter 166, Florida Statutes.

2. The City Commission of the City of Coral Springs (“Commission”) may create other offices, boards, or commissions to administer the affairs of the city and may grant them powers and duties.

3. The Commission has adopted the Coral Springs Police Officers’ Pension Plan (“the Plan”), which is amended from time to time by ordinance and is set forth in sections 13-5 through 13-17 of the Code of Ordinances of the City of Coral Springs.

4. The Plan is administered by the City of Coral Springs Police Officers’ Pension Fund Board of Trustees (“Board”), the powers of which are set forth in sections 13-13 through 13-15 of the Code of Ordinances of the City of Coral Springs.

5. The Plan is a local-law defined pension plan created pursuant to chapter 185.

6. In February 2016, the Board adopted a policy to allow for the suspension of pension benefits of members who were charged with crimes specified at section 112.3173, Florida Statutes, and whose benefit payments had equaled or exceeded their contributions to the Plan.

7. The Williamses are retired police officers whose pension benefits had fully vested at the time of the enactment of the aforementioned suspension policy.

8. In February 2016, the Board sought to suspend Petitioners’ benefits under the newly-adopted policy because Petitioners had been charged with crimes specified in section 112.3173 and the benefit payments made to them had exceeded their contributions to the plan.

9. Petitioners requested a formal hearing to challenge the authority of the Board to adopt the suspension policy.

10. Petitioners’ benefits were never suspended at any time during the pendency of this suspension matter.

11. The Board contracted with DOAH to conduct the formal hearing under the authority of section 120.65(6), Florida Statutes.

12. DOAH assigned ALJ Boyd to the prior consolidated action, who issued pre-hearing instructions requiring a statement of all issues. The issue of attorney's fees was not included by the parties.

13. ALJ Boyd conducted the formal hearing on September 30, 2016, and October 10, 2016.

14. On November 18, 2016, ALJ Boyd issued a Recommended Order finding that the Board did not have the authority to adopt the policy nor apply it to Petitioners.

15. The Recommended Order made no mention of awarding attorney's fees or costs.

16. Nether Petitioners nor the Board filed exceptions to the Recommended Order.

17. Petitioners raised the issue of fees in a letter to the Board dated December 2, 2016.

18. Counsel for Petitioners appeared at a hearing held before the Board in December 2016 and sought fees as set forth in the December 2, 2016, letter.

19. The Board adopted ALJ Boyd's Recommended Order in toto on January 3, 2017.

20. The Board also denied Petitioners' request for a hearing regarding an award of attorney's fees.

21. On January 13, 2017, Petitioners sought an award of attorney's fees by filing with DOAH a Verified Motion for Prevailing Party Attorney's Fees and Costs.

22. On March 1, 2017, ALJ Boyd entered an Order dismissing Petitioners' motion for fees, stating he lacked jurisdiction to hear the issue of fees. That Order was not appealed.

23. Prior to the final hearing in this matter, Petitioners successfully petitioned the Seventeenth Judicial Circuit Court to compel the Board to

grant them a hearing on entitlement to the fees and to quash the Order denying fees for violation of due process. Petitioners then successfully defended an appeal of that Order by the Board to the Fourth District Court of Appeal and a motion for rehearing thereon. Petitioners are not seeking fees for these extraordinary writ actions as these efforts do not fall under chapters 185 or 120.

24. The parties stipulated that “the Williamses prevailed in challenging the Board’s authority to create a policy suspending the benefits.”

25. The Board never applied its proposed suspension policy to Petitioners.

26. Petitioners continue to receive their benefits to this day.

27. Criminal charges against Petitioners remained pending at the time of the hearing in this matter.

28. Petitioners are only seeking entitlement here to an attorney’s fee and costs award for their successful challenge of the suspension policy.

CONCLUSIONS OF LAW

29. DOAH has jurisdiction to hear this case and render a recommended order under section 120.65(6), which provides:

The division is authorized to provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this section.

30. The contracting of DOAH with other “governmental entities” does not require that the provisions of chapter 120 necessarily apply to the proceedings. Local governments contracting with DOAH frequently have local procedures for the proceedings adjudicated by DOAH ALJs. Some of these are adopted by ordinance; others by collective bargaining agreements, where applicable; and still others by local governing boards such as code enforcement boards, and pension plan boards, to name a few.

31. ALJ Boyd's Order Granting Motion to Dismiss in DOAH Case No. 17-0599F (the fee case initiated by Petitioners) following the underlying matter, DOAH Case Nos. 16-3298 and 16-3302, held that DOAH was without jurisdiction to entertain a motion for fees since the jurisdiction of DOAH had ended with the issuance of ALJ Boyd's Recommended Order and no motion or request for fees had been filed with DOAH prior to that Order's issuance. *See Dep't of Mgmt. Servs., Div. of Ret. v. City of Wilton Manors*, Case No. 11-2224F (Fla. DOAH July 11, 2011) (*per curiam*), *aff'd sub nom., Dep't [sic] of Admin. Hrsg. v. City of Wilton Manors*, 88 So. 3d 953 (Fla. 4th DCA 2012). In DOAH Case No. 17-0599F, Petitioners emphasized that an agency has not rendered a final order until it is "filed with the agency clerk." *Hill v. Div. of Ret.*, 687 So. 2d 1376, 1377 (Fla. 1st DCA 1997). However, the jurisdiction of DOAH depends not upon the date of the final order, but upon the date of the recommended order, at which time the referring entity (here, the Board) regains jurisdiction. *Procacci Commercial Realty, Inc. v. HRS*, 690 So. 2d 603, 608-09 (Fla. 1st DCA 1997) (referring agency regains jurisdiction upon entry of recommended order). As ALJ Boyd noted in his Order Granting Motion to Dismiss in DOAH Case No. 17-0599F:

Petitioners' further argument that it had no basis to file a motion for fees prior to the Recommended Order and subsequent determination of a prevailing party by Respondent is also rejected. While the outcome is unknown, the basis for entitlement to fees under a prevailing party provision is known from the outset. *See Advanced Chiropractic & Rehab. Ctr. v. United Auto. Ins. Co.*, 140 So. 3d 529, 536 (Fla. 2014) (distinguishing section 627.428 fees from statutes providing fees based on events that occur during the cause of action [such as fees claimed under section 57.105]).

There was no barrier erected by ALJ Boyd in the underlying proceeding to filing a motion for attorney's fees prior to entry of the Recommended Order and relinquishment of jurisdiction to the Board. In his Order, ALJ Boyd could

have retained jurisdiction to consider the award of attorney's fees had such a request been timely made. Further, as noted below, this matter does not even involve an "agency," as that is defined in section 120.52(1).

32. After a series of circuit and appellate court proceedings determined that Petitioners were entitled to a hearing on their motion for attorney's fees, this proceeding ensued. Other than the fact that Petitioners were granted a right to the hearing in this matter, nothing has changed since 2017.

33. Despite this matter arising as the result of state court proceedings ordering that a hearing be held on the issue of attorney's fees, that does not negate the fact that a motion for fees was required prior to issuance of the Recommended Order in the underlying case, preferably in time to allow the ALJ to make required findings, or to reserve jurisdiction for a possible subsequent hearing to do so. *Palacios v. Dep't of Bus. & Prof'l Reg.*, Case Nos. 99-4163F and 99-4164F (Fla. DOAH Nov. 20, 2000); *Sellars v. Broward Cty. Sch. Bd.*, Case No. 97-3540F (Fla. DOAH Sept. 25, 1997). However, in deference to the circuit court and Fourth District Court of Appeal's findings that this matter must be brought before the undersigned for hearing on Petitioners' request for prevailing party attorney's fees, the following conclusions of law explain why such request is both premature and explains why Petitioners are not even prevailing parties entitled to make such a request at this time.

34. The Williamses continue to receive benefits while the parties await the outcome of the criminal proceeding that may or may not trigger the application of section 112.3173 at some future date. As such, when they prevailed in challenging the Board's authority to create the 2016 policy related to the suspension of benefits, this did not mean they prevailed on the question of the forfeiture of their benefits. Consequently, they are not prevailing parties under section 185.05(5).

35. As the subject criminal proceedings are ongoing and no forfeiture by the Board has been initiated under section 112.3173, any determination on

prevailing party status in such a forfeiture proceeding is premature. Common sense dictates that Petitioners are not able to seek fees in a forfeiture proceeding unless, at some time in the future, one is initiated and they prevail in that proceeding.

36. As to the issue of whether this matter is governed by chapter 120, the Administrative Procedure Act (“the Act”), the Board is not an “agency” for purposes of the Act, as defined at section 120.52(1).

37. Hearings before the Board related to the status of members’ benefits are quasi-judicial proceedings. The ministerial act of an entity contracting with DOAH, however, does not, in and of itself, convert a municipal pension plan into an entity deemed an “agency” for purposes of chapter 120. *See First Quality Home Care, Inc. v. All. for Aging, Inc.*, 14 So. 3d 1149 (Fla. 3d DCA 2009) (contractor of state agency is not an agency for the purposes of chapter 120).

38. Section 185.05(5) states:

For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

* * *

(5) In any judicial proceeding or administrative proceeding under chapter 120 brought under or pursuant to the provisions of this chapter, the prevailing party shall be entitled to recover the costs thereof, together with reasonable attorney’s fees.

39. The action brought by Petitioners and heard by ALJ Boyd was not an “administrative proceeding under chapter 120.” The proceeding retains its status as a municipal pension plan proceeding not subject to chapter 120. *See, e.g., Booker Creek Pres., Inc. v. Pinellas Planning Council*, 433 So. 2d 1306 (Fla. 2d DCA 1983). The fact that the Board’s hearing was conducted pursuant to section 120.65(6) (contracting with DOAH for ALJ services) cannot, in and of itself, be a basis for a prevailing party attorney’s fee award

in favor of Petitioners relying on section 185.05(5). See *Palm Bch. Gardens Police Pension Fund Bd. of Trs. v. Beers*, 842 So. 2d 911, 913-14 (Fla. 4th DCA 2003).

40. Section 112.3173 requires the forfeiture of pension benefits if a member of a municipal pension plan is convicted of a specified offense. If any such proceedings were to be initiated by the Board at some future date, then, for purposes of the applicability of section 185.05(5), such forfeiture proceedings would not be “brought under or pursuant to the provisions of” chapter 185 for purposes of triggering the prevailing party provisions in section 185.05(5). Instead, such proceedings would be brought “under or pursuant to” section 112.3173.

41. Petitioners’ challenge to the Board’s suspension policy was not a forfeiture proceeding under section 112.3173, nor was it a proceeding under or pursuant to chapter 185. ALJ Boyd’s November 18, 2016, Recommended Order construed and discussed the powers of the Board to adopt a policy interpreting section 112.3173 under the Code of Ordinances of the City of Coral Springs and several provisions of Florida Statutes. No benefits were addressed by that Order and no provision of chapter 185 is discussed or even mentioned by the ALJ.

42. Petitioners heavily rely on a 2014 Florida Supreme Court case, *Parker v. Board of Trustees of City Pension Fund for Firefighters & Police Officers in City of Tampa*, 149 So. 3d 1129, 1134 (Fla. 2014), to support their claim for attorney’s fees here. *Parker* is distinguishable in that it was a judicial proceeding brought specifically under the benefits provisions of chapters 175 and 185, Florida Statutes. Unlike in *Parker*, Petitioners’ case here did not involve a judicial proceeding or a chapter 120 proceeding under chapter 185. *Parker* was brought as a class action that included a request for attorney’s fees, which was granted by the Court. By contrast, the challenge here to the authority of the Board to adopt the suspension policy was not brought under

or pursuant to the provisions of chapter 185. Therefore, Petitioners' claim did not trigger the prevailing party provisions in section 185.05(5).

43. Based upon the foregoing, Petitioners have not demonstrated entitlement to costs and a reasonable attorney's fee as a prevailing party pursuant to section 185.05(5).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board enter a final order denying Petitioners' request for prevailing party attorney's fees and costs.

DONE AND ENTERED this 19th day of February, 2021, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
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this 19th day of February, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.