STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIMO ON THE BEACH I CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

vs. Case No. 21-0385FC

TAL SIMHONI,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES AND COSTS

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020)[1], by Zoom Conference, on February 26, 2021, by Administrative Law Judge ("ALJ") Robert E. Meale of the Division of Administrative Hearings ("DOAH"). When ALJ Meale became unavailable, this case was transferred to ALJ Cathy M. Sellers to prepare and issue this Final Order.

APPEARANCES

For Petitioner: Nataly Gutierrez, Esquire
PeytonBolin, PL
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For Respondent: Tal Simhoni, pro se
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[1] All references to Florida Statutes are to the 2020 codification.

STATEMENT OF THE ISSUE

What is the amount of attorney's fees[2] to which Petitioner, Mimo on the Beach I Condominium Association, Inc., is entitled in Case No. 1D19-2165?

PRELIMINARY STATEMENT

On May 16, 2019, the Florida Commission on Human Relations ("FCHR") issued a Final Order Dismissing Petition for Relief from a Discriminatory Housing Practice ("Final Order") in DOAH Case No. 18-4442, dismissing then-Petitioner Tal Simhoni's housing discrimination claim against then-Respondent, Mimo on the Beach I Condominium Association, Inc. ("Association"). Simhoni appealed the Final Order to the First District Court of Appeal ("First DCA"). The appeal was assigned Case No. 1D19-2165.

On June 8, 2020, the First DCA affirmed the Final Order, *per curiam*, in Case No. 1D19-2165, and issued an Order pursuant to section 760.11(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.400, ("Appellate Attorney's Fees Order"), provisionally granting the Association's motion for appellate attorney's fees and costs, and remanding the proceeding to DOAH to determine the amount of appellate attorney's fees and costs to which the Association is entitled for having prevailed in Case No. 1D19-2165.

On August 3, 2020, the Association filed Respondent Association's Renewed Motion for Entitlement to Attorney's Fees and Cost[s] as the Prevailing Party After Appeal, initiating this proceeding. On February 18, 2021, the ALJ issued the Official Notice of DOAH and First District Cases and Order Limiting Evidence that Petitioner May Offer in Hearing to

[2] The Association did not present any evidence regarding costs incurred in Case No. 1D19-2165. Accordingly, this case only determines the reasonable attorney's fees to which the Association is entitled.

Establish Attorney's Fees and Costs ("Order Limiting Evidence on Fees and Costs"), which took official recognition of the dockets in Case Nos. 1D19-2165 and 18-4442, and limited the scope of this proceeding to determining only the amount of appellate attorney's fees and costs that should be awarded to the Association pursuant to the Appellate Attorney's Fees Order.

The final hearing in this proceeding was held by Zoom Conference on February 26, 2021. The Association presented the testimony of Mauri Ellis Peyton, Arlyn Mendoza, and Michael H. Johnson. Petitioner's Exhibits 1 and 2 were admitted into evidence.[3] On March 1, 2021, the Association filed an amended Exhibit 2 ("Amended Exhibit 2") to correct a redaction error on, and replace, the version of Petitioner's Exhibit 2 that was filed at DOAH before the final hearing. Simhoni testified on her own behalf, and did not tender any exhibits for admission into evidence.

The Transcript of the final hearing was filed at DOAH on March 30, 2021. The parties were given until April 19, 2021, to file their proposed final orders. The parties timely filed their post-hearing submittals on April 19, 2021, and both have been duly considered in preparing this Final Order.

FINDINGS OF FACT

I. The Parties

1. Petitioner, Association, is the condominium association responsible for operating and managing the Mimo on the Beach I Condominium ("Condominium"). The Association was the prevailing party in Case No. 1D19-2165.

[3] The Association's Proposed Recommended Order (which should have been titled a proposed final order) refers to attorney's fees affidavits that were submitted to DOAH, as proposed exhibits, before the final hearing. However, the record does not reflect that they were tendered or admitted into evidence. Accordingly, they cannot serve as the basis for any findings of fact in this Final Order. *See* § 120.57(1)(j), Fla. Stat. ("[f]indings of fact . . . shall be based exclusively on the evidence of record and on matters officially recognized").

2. Respondent, Simhoni, is the owner of a unit in the Condominium. Simhoni was the non-prevailing party in Case No. 1D19-2165.

II. Evidence Presented at the Final Hearing

3. As noted above, on June 8, 2020, the First DCA awarded prevailing party attorney's fees and costs to the Association, pursuant to rule 9.400, and remanded the proceeding to DOAH to determine the amount of attorney's fees and costs to be awarded.

4. Pursuant to the Order Limiting Evidence on Fees and Costs, the ALJ limited the attorney's fees and costs to be considered in this proceeding to only those incurred between June 1, 2020—the date on which Simhoni filed the notice of appeal in Case No. 18-4442—and August 17, 2020—the date on which the First DCA issued the mandate in Case No. 1D19-2165. Thus, pursuant to the Order Limiting Evidence on Fees and Costs, any fees or costs billing entries for dates before June 1, 2020, or after August 17, 2020, are excluded from consideration in determining reasonable appellate attorney's fees in this proceeding.[4]

A. The Evidence Presented by the Association

5. Simhoni filed a notice of appeal from FCHR's Final Order in Case No. 18-4442 on June 13, 2019. The filing of the notice of appeal initiated Case No. 1D19-2615. Simhoni filed her Initial Brief on August 27, 2019.

6. Pursuant to a written retainer agreement, PeytonBolin serves as General Counsel for the Association.

7. By separate unwritten agreement, the Association retained PeytonBolin to represent it in Case No. 1D19-2165, at the hourly billing rates of $350 for partners, $250 for non-partner attorneys, and $145 for paralegals.

8. The first document filed on behalf of the Association in Case

[4] This is consistent with case law holding that a litigant may claim attorney's fees where entitlement to fees is the issue, but may not claim attorney's fees incurred in litigating the amount of fees. *Bayview Loan Serv, LLC v. Cross*, 286 So. 3d 858, 861 (Fla. 5th DCA 2019). Since the purpose of this proceeding is to determine the amount of appellate attorney's fees to which the Association is entitled in Case No. 1D19-2165, the Association is not entitled to an award of fees for work done after the appeal was over.

No. 1D19-2165—a motion for extension of time to file answer brief and motion to require Simhoni to transmit the record of Case No. 18-4442 to the court—was filed by partner Mauri Ellis Peyton on September 16, 2019. The first items shown on Amended Exhibit 2 were billed on September 16, 2019.

9. Peyton testified that the Association is seeking attorney's fees for 55.1 hours of work by attorneys and paralegals in Case No. 1D19-2165, for a total amount of $16,207.50 in attorney's fees. These amounts differ from the 57.7 hours and total of $16,545.00 in fees shown on Amended Exhibit 2. Peyton explained that the revised amounts of 55.1 hours and the $16,207.50 in fees exclude purely clerical work by his paralegal, and also exclude billing entries for work performed outside of the timeframe established in the Order Limiting Evidence on Fees and Costs.

10. Amended Exhibit 2, filed on March 1, 2020, still reflects billing entries for work done after August 17, 2020, and does not appear to have eliminated any hours or fees reflected on the original version of Exhibit 2 filed prior to the final hearing. Thus, in calculating the reasonable attorney's fees in this case, the undersigned has taken, as the starting point, the 57.7 hours and total amount of $16,545.00 in attorney's fees, and has deducted the hours and fees for all billing entries for work done after August 17, 2020. Additionally, as discussed below, the undersigned has deducted the hours and fees for any other billing entries that constitute "fees for fees" work, and billing entries for duplicative work.

11. In support of the Association's request for attorney's fees, Peyton testified regarding the pertinent factors set forth in Florida Rule of Professional Conduct 4-1.5.

12. Specifically, he testified that because he was not counsel for the Association in Case No. 18-4442, he needed to review the record in that case, which consisted of approximately 2,000 pages, and included the transcript of the two-day final hearing; the exhibits admitted into evidence; and the pleadings and motions filed in that case. Additionally, he needed to review

the Initial Brief, which consisted of 19 pages of text and 49 pages of exhibits; review the case law cited in the brief; and research the issues raised in the brief. He noted that PeytonBolin was retained "pretty late in the appeal, after the Initial Brief was filed," so a substantial effort was required to get up to speed on the pertinent law and the issues in the appeal.

13. Peyton testified that the appeal involved what was, "in the association world, a very novel complaint involving many different issues." He acknowledged that he "had to go outside the scope of our normal practice and get into the world of administrative hearings and discrimination claims." On the basis of his significant appellate experience, he determined that he and his firm were qualified to represent the Association in Case No. 1D19-2165.

14. Peyton testified, credibly, that the outside attorneys with whom he consulted regarding the appeal would have charged more than the amount his firm charged to represent the Association in the appeal.

15. He acknowledged that he was able to save considerable time by reviewing the Association's Proposed Recommended Order and the ALJ's Recommended Order in Case No. 18-4442. However, he persuasively testified, and a review of the Initial Brief bears out, that the scope of issues raised in the Initial Brief went beyond those raised in Case No. 18-4442, and the Initial Brief contained exhibits which, while not addressed in the text of the brief, needed to be addressed in the Answer Brief, in anticipation of arguments that may have been raised in the Reply Brief.

16. Peyton testified, and the billing entries on Amended Exhibit 2 verify, that he did almost all of the work on the appeal. He was assisted by partner Joseph Gianell; non-partner attorneys Nataly Gutierrez and Michael Goldstein; and paralegal Carmen Jarquin, none of whom billed significant amounts of time. Peyton testified, credibly, that "[i]t took many days to write the brief, to revise it, to edit it." As a consequence, he was unable to work on other matters while he was working on the Answer Brief.

17. Michael H. Johnson testified on the Association's behalf, as an expert witness regarding reasonable attorney's fees determinations.[5] Johnson has practiced law for 23 years, is a bankruptcy attorney, and has experience in administrative law, real estate foreclosures, and homeowners association foreclosures. Pertinent to this case, Johnson has testified between 25 and 30 times as an expert witness regarding reasonable attorney's fees determinations. Specifically, he has testified regarding whether requested fees amounts are reasonable; whether hourly billing rates are reasonable for the area of law in a given case; and whether the amount of time expended on matters for which fees are sought is reasonable.

18. In formulating his opinion regarding the fees that the Association seeks in Case No. 1D19-2165, Johnson reviewed the pleadings and the Initial Brief, Answer Brief, and Reply Brief; and evaluated the time spent on the case in light of the pertinent factors in rule 4-1.5. He also consulted with three attorneys who practice appellate law in South Florida, regarding the amount of time expended in the case, to determine if the amount of fees and billing rates were reasonable for the appeal.

19. Based on these considerations, Johnson concluded that the 55.1 hours of work that PeytonBolin spent on the appeal were reasonable, and even on the low end, given the novel nature of some of the issues raised in the Initial Brief.

20. Regarding the fees rates charged for the appeal, Johnson opined that the $350-per-hour rate for partner work on the appeal, to which the Association agreed, was reasonable, and perhaps low. He also noted that some billing entries reflected a reduced $300-per-hour rate for partner work. Johnson's opinion was formulated considering the expertise and time constraints placed on the partners handling the appeal, and the hourly rates

[5] At the final hearing, Simhoni did not object to Johnson being qualified as an expert in reasonable attorney's fees determinations.

customarily charged for partner work on appeals in the South Florida market.

21. He considered these same factors and circumstances in formulating his opinion that the $250-per-hour billing rate for non-partner attorneys was reasonable, and on the low end, for handling appeals in the South Florida market.

22. He also opined, based on locality and expertise, that the $145-per-hour rate charged for paralegal work was reasonable. He noted that PeytonBolin did not bill for any administrative—i.e., clerical or non-legal—work by its paralegals, so that the paralegal work had been properly billed.

B. Testimony Elicited by Simhoni and Argument in Proposed Final Order

23. Simhoni did not testify regarding any matters about which she had personal knowledge regarding the hourly rates, time spent, and attorney's fees charged by PeytonBolin to handle the appeal in Case No. 1D19-2165; to this point, she stated that it was her opinion that the hours and attorney's fees should be reduced, but acknowledged that her opinion was not based on any personal knowledge of facts that would warrant a reduction. She did not present the testimony of any other witnesses. Thus, the competent substantial evidence she presented consisted only of the cross-examination testimony of Peyton and Johnson regarding their expertise and the hours spent and rates charged for certain billed items.

24. Simhoni expressed skepticism that, and questioned whether, it took Peyton .2 hours to review the First DCA's order issued on July 27, 2020, which she characterized as a "one-sentence order." Peyton testified that his firm billed in increments of one-tenth of an hour, so that if reviewing the order took him longer than six minutes, he billed .2 hours for the work. He testified, credibly, that "I must have spent seven minutes to reviewing that document. . . . If I put a .2, it's because I spent more than six minutes reviewing whatever document that was." Simhoni did not present any countervailing evidence showing that Peyton spent 6 minutes or less

reviewing the order. Accordingly, Peyton's testimony is accepted as credible evidence that he correctly billed .2 hours for reviewing the order.

25. Simhoni questioned Peyton regarding 1.8 hours that he billed on June 23, 2020, for which the task description was redacted. The Association corrected this redaction error in Amended Exhibit 2. As corrected, this entry is 1.8 hours billed for "[r]eceive and review Motion for Rehearing and Motion for Written Opinion." Peyton credibly explained that this time was spent on reviewing Simhoni's 21-page motion for rehearing and written opinion. Although the First DCA denied this motion before the Association filed its written response, Peyton testified, "that doesn't mean we weren't in the process of preparing a response." The competent substantial evidence establishes that Peyton correctly billed 1.8 hours for this work.

26. Simhoni also questioned billing entries on June 10 and 22, 2020, for drafting a renewed motion for attorney's fees. Simhoni contended that these entries appeared to be "fees for fees," which generally are not recoverable in attorney's fees awards under Florida law. Simhoni's point is well-taken. The billing entries for work associated with the motion for entitlement to attorney's fees were made on December 23 and 30, 2019,[6] and the motion was filed on December 30, 2019. Thus, the billing entries on June 10 and 22, 2020, for preparing a motion for attorney's fees, appear to be for work in litigating the *amount* of fees to which the Association is entitled. Pursuant to *Bayview*,[7] these fees cannot be taken into account in determining the reasonable attorney's fees for Case No. 1D19-2165. Accordingly, the hours and fees for the June 10 and 22, 2020, billing entries have been deducted from the total number of hours and total amount of fees determined to be reasonable for Case No. 1D19-2165.

[6] Amended Exhibit 2 shows the motion regarding entitlement to attorney's fees as having been filed with the First DCA on December 30, 2019.

[7] *Bayview*, 286 So. 3d at 861 (Fla. 5th DCA 2019).

27. Simhoni also questioned the multiple billing entries made between December 22 and 26, 2020, regarding preparing and filing the Answer Brief. As noted above, Peyton credibly testified that it took more than one day to review the record on appeal and prepare the Answer Brief. Thus, the competent substantial evidence establishes that the multiple billing entries between December 22 and 26, 2020, regarding researching and preparing the brief, are not duplicative.

28. Simhoni also questioned the amount of time that Peyton spent conducting research and preparing the Answer Brief, specifically focusing on whether the number of hours he spent conducting research and preparing the brief were excessive due to Peyton's lack of experience in discrimination matters. In response, Peyton testified, credibly, that he consulted with other attorneys regarding the amount of time and fees necessary to adequately and diligently represent the Association in the appeal, and all of them would have charged more than PeytonBolin for researching and preparing the Answer Brief. Thus, the competent substantial evidence establishes that the hours spent and amount of fees billed for researching and preparing the Answer Brief were reasonable, and were not excessive.

29. Simhoni also questioned whether it was reasonable for Peyton to have billed for work preparing a motion for a second extension of time to file the Answer Brief, which was necessitated by personal matters—specifically, the birth of his child. Peyton credibly testified that requests for extensions of time to file briefs are routine, and that in his experience, most appeals involve two or three extensions of time to file the briefs. He further noted that under the Florida Rules of Appellate Procedure, extensions of time are automatically granted if the extension is unopposed. Based on this testimony, and in the absence of any countervailing evidence, the undersigned finds that the hours spent, and fees charged for, preparing the second request for extension of time to file the Answer Brief were reasonably within the scope of

PeytonBolin's representation of the Association in Case No. 1D19-2165, and were not excessive.

30. Additionally, Simhoni questioned why Peyton billed .2 hours on September 20, 2019, for reviewing a First DCA order that she characterized as "less than a paragraph." Peyton credibly testified, and the billing entry on Amended Exhibit 2 confirms, that for that particular entry, Peyton reviewed four orders issued by the court. Thus, the competent substantial evidence supports the hours billed for reviewing the orders.

31. In cross-examining Johnson, Simhoni posed questions that were aimed at calling into question whether he was qualified to render an opinion regarding the reasonableness of attorney's fees in a discrimination case. She also questioned whether any of the lawyers with whom Johnson consulted had experience in discrimination case appeals. In response, Johnson testified, credibly, that he had experience testifying in appeals of administrative law and other types of cases, so he was qualified to render an opinion regarding reasonable attorney's fees in Case No. 1D19-2165. He further testified that, in his opinion, which was based, in part, on having consulted with other attorneys who engage in appellate practice in the South Florida market, fees for discrimination appeals would be substantially higher than those incurred in other types of administrative appeals. The undersigned finds Johnson's testimony regarding his qualifications, as well as his opinion regarding the reasonableness of the hours billed and rates charged by PeytonBolin in Case No. 1D19-2165, to be credible and persuasive.

32. In her Proposed Final Order, Simhoni contends that the appellate attorney's fees award should be reduced from $16,207.50—the amount now sought by the Association—to $6,021.50. She makes several arguments in support of her position.

33. First, she contends that because she raised only two substantive issues in the Initial Brief—roof repairs the Association did not provide, and

her right to lease out her condominium unit—it was unnecessary for PeytonBolin to address six issues in the Answer Brief.

34. However, a review of the Initial Brief shows that, while it only discussed the merits of two of the substantive issues in Case No. 18-4442, a substantial portion was directed at arguing that the ALJ committed numerous procedural and substantive errors in his Recommended Order (which was adopted *in toto* by FCHR in its Final Order); thus, it was necessary for PeytonBolin to address these issues in its Answer Brief. Additionally, many of the exhibits filed as part of the Initial Brief contained information or material that, while not specifically discussed in the text of the brief, were nonetheless part of the brief, and raised issues that needed to be addressed in the Answer Brief. This was particularly the case, given that Peyton was in the position of having to anticipate arguments made in reliance on those exhibits, in a reply brief. Diligence and thoroughness in representing the Association justify PeytonBolin having addressed six issues in the Answer Brief.

35. Simhoni also contends, in her Proposed Final Order, that because Peyton did not regularly practice in the area of discrimination law, he spent too much time researching and learning the relevant law in order to prepare the Answer Brief. However, she did not present any evidence, through her own testimony or the testimony of any other witness,[8] to support a finding that Peyton spent too much time on the Answer Brief. To the contrary, the credible, persuasive testimony of both Peyton and Johnson—which constitutes the competent substantial evidence in this proceeding—supports the finding that the amount of time Peyton spent preparing the Answer Brief not only was reasonable, but was on the low end compared to time expended

[8] When a party does not present evidence to support its factual contentions, the ALJ is not at liberty to reject the competent substantial evidence in the record in favor of positions that are unsupported by the evidence. *See Eady v. State, Ag. for Health Care Admin.*, 279 So. 3d 1249, 1259 (Fla. 1st DCA 2019).

and fees typically charged by attorneys in the South Florida market to handle appeals, including those involving less complex and novel issues.

36. Focusing on specific billing entries, Simhoni contends that Peyton spent too much time reading what she characterized as a "one-sentence document." Again, this argument is based on her personal opinion; she did not present any testimony or documents to provide evidentiary support for that contention. Peyton credibly testified that it took him more than six minutes to review the court's order, and in the absence of evidence supporting a contrary finding, his testimony constitutes the sole competent substantial evidence in the record to support billing .2 hours for that work.

37. Simhoni also contends that Peyton spent too much time on, and, thus overbilled for, reviewing the case law cited in the Initial Brief and verifying that it was still "good law." As before, Simhoni's position is based on her personal opinion and on assumptions that are not supported by competent substantial evidence in the record. As discussed above, Peyton testified, credibly and persuasively, regarding the case law research he conducted to prepare the Answer Brief, and the necessity to thoroughly address all issues raised in the Initial Brief and its exhibits. Peyton's testimony constitutes competent substantial evidence supporting the amount of time billed for that work.

38. Similarly, Simhoni contends that Peyton spent too much time conducting research on, and preparing, the standard of review section of the Answer Brief. Again, this contention is based on her personal opinion regarding the amount of time and effort that "should" be entailed in preparing this portion of the brief, but it is not supported by any competent substantial evidence in the record. Peyton credibly testified that it took him 1.7 hours to research and draft this section of the Reply Brief, and there is no countervailing evidence in the record to support a finding that this amount of time was excessive, or that Peyton was untruthful about the amount of time he spent on this section of the brief.

39. Simhoni also contends that Peyton should not be permitted to charge attorney's fees for preparing a second request of extension of time to file the Answer Brief, due to personal reasons. As she put it, "it is unclear why Respondent should be required to pay for this," and "there is nothing reasonable about requiring Respondent to pay for Mr. Peyton's extensions of time, especially when they were for personal reasons."

40. The uncontroverted evidence establishes that the Association retained PeytonBolin to handle the appeal in Case No. 1D19-2165, which would include all matters reasonably encompassed within that representation. The scope of that representation dictates the services related to the appeal for which Peyton could (and could not) bill the Association.[9] Peyton testified, credibly, that in his experience, extensions of time are typical in the course of appeals, and are routinely granted as a matter of course unless opposed. This evidence supports the determination that the scope of PeytonBolin's representation of the Association included preparing and filing requests for extensions of time, as necessary, as part of the appeal.[10]

41. In similar vein, Simhoni contends that because Title VII[11] cases do not specifically address the types of legal services that should be included in determining a reasonable attorney's fee under section 760.11(13), the term "reasonable" in that statute should be read to exclude the preparation of

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[9] To the extent Simhoni contends that it is unreasonable for *her* to pay for an extension of time necessitated by personal matters, it is important to keep in mind that PeytonBolin represented *the Association* in Case No. 1D19-2165, so the scope of *that representation* controls the type of work for which PeytonBolin could bill the Association.

[10] To the extent Simhoni contends that the scope of the Association's representation in Case No. 1D19-2615 excluded legal services related to requesting extensions of time to file the Answer Brief, it was incumbent on her to establish the existence of that exclusion by evidence in the record. She failed to do so. *See Balino v. Dep't of HRS*, 348 So. 2d 349 (Fla. 1st DCA 1977)(the party asserting the affirmative of an issue in an administrative tribunal has the burden of proof with respect to that issue).

[11] Simhoni cites federal Title VII case law as support for this argument. However, as discussed in the Conclusions of Law, below, Florida statutory and case law, rather than Title VII case law, govern reasonable attorney's fees determinations in cases under the Florida Civil Right Act.

motions. In support, Simhoni notes that in a different attorney's fees statute, section 57.111(3)(a), Florida Statutes, the Legislature has expressly defined the term "attorney's fees and costs" to identify the types of legal services, including motions, for which "attorney's fees and costs" can be recovered under that statute. Simhoni reasons that if the Legislature had intended for attorney's fees to be awarded for the preparation of motions under section 760.11(13), it would have expressly said so, just as it did in section 57.111. As discussed below, this argument is not supported by established principles of statutory construction, and, thus, is not persuasive.

42. Simhoni also contends that the testimony of Johnson, who was accepted as an expert in attorney's fees at the final hearing—notably, without objection—should be given little weight because he has no experience regarding attorney's fees in discrimination cases. However, as discussed above, Johnson has testified as an expert witness on attorney's fees in numerous cases, including administrative cases. In formulating his opinion that the hourly rates and amount of fees charged by PeytonBolin in Case No. 1D19-2165 are reasonable, he consulted with appellate attorneys who practice in South Florida. As discussed above, based on his review of the work done, and input from appellate attorneys with whom he consulted, he concluded that PeytonBolin's hourly rates, the number of hours expended, and amount of fees charged for Case No. 1D19-2165 not only were reasonable, but were low, particularly for South Florida. Given Johnson's extensive experience as an expert witness in determining reasonable attorney's fees in a range of different types of cases; taking into account that he applied the pertinent factors set forth in Rule 4-1.5 in formulating his opinion; and considering that once he developed his opinion, he consulted with appellate attorneys in the South Florida market to verify that the fees were reasonable, the undersigned finds Johnson a credible, persuasive witness whose testimony should be given substantial weight in determining the reasonable attorney's fees in this case.

43. Simhoni contends that the redaction of information on billing entries which are protected by the attorney-client or work product privileges "means that it is literally impossible for Respondent to comment on their reasonableness or lack thereof." Thus, she proposes that the undersigned assume one hour billed for all such entries, at the partner billing rate of $350.00 per hour. However, this assumption is not supported by any competent substantial evidence in the record. Rather, the competent substantial evidence establishes that the redacted entries on Amended Exhibit 2 are attorney-client privileged communications, so are properly redacted. Accordingly, these billing entries will not be modified or reduced on the basis of that redaction.

CONCLUSIONS OF LAW

44. DOAH has jurisdiction over the subject matter of, and parties to, this proceeding. §§ 120.569, 120.57(1), and 760.011(13), Fla. Stat.

I. Burden and Standard of Proof

45. In this proceeding, the Association is asserting that it is entitled to an award of appellate attorney's fees and costs in the amount of $16,207.50 for having prevailed in Case No. 1D19-2165. As the party asserting entitlement to this amount, the Association bears the burden of proof to demonstrate that, pursuant to section 760.11(13) and rule 4-1.5, $16,207.50 is a reasonable attorney's fee for Case No. 1D19-2165. *See Ocean Club Comm'y Ass'n, Inc. v. Curtis*, 935 So. 2d 513, 517 (Fla. 3d DCA 2006)(party seeking a specified amount of attorney's fees bears the burden to demonstrate entitlement to that amount); *Balino v. Dep't of HRS*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). The standard of proof applicable to this proceeding is the preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

II. Applicable Statute, Rule, and Case Law

46. Section 760.11(13) states, in pertinent part:

> Final orders of the commission are subject to judicial review pursuant to s. 120.68. . . . In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the cost. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.[12]

47. In the absence of specific statutory provisions establishing the pertinent considerations in awarding attorney's fees, Florida courts apply the factors listed in rule 4-1.5(b) in determining the amount of reasonable attorney's fees for legal services in Florida, including those incurred in cases under the Florida Civil Rights Act, *see Phillips v. Florida Commission on Human Relations*, 846 So. 2d 1221, 1222 (Fla. 5th DCA 2003), and in administrative law cases, *see University Community Hospital v. Department of Health & Rehabilitative Services*, 493 So.2d 2, 4 (Fla. 2d DCA 1986).

48. Rule 4-1.5 codifies the factors established by the Florida Supreme Court in *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), for determining reasonable attorney's fees and costs for legal services, in cases in which specific statutory provisions do not otherwise establish the pertinent considerations.[13]

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[12] The last sentence of this section—which, at the time, was numbered section 760.11(5)—was added to the statute in 1992, to make clear that, consistent with federal civil rights case law, multipliers are not authorized in determining reasonable attorney's fees in cases under the Florida Civil Rights Act. *Winn-Dixie Stores, Inc. v. Reddick*, 954 So. 2d 723, 729 (Fla. 1st DCA 2007); *Haines City HMA, Inc. v. Carter*, 948 So. 2d 904, 908 (Fla. 2d DCA 2007). No fees multiplier is sought in this case; therefore, this provision has no bearing on the determination of reasonable attorney's fees in this case.

[13] Florida courts make clear that when a statute specifically addresses attorney's fees awards, those specific provisions govern attorney's fees awards *under that statute*. *See, e.g., Dep't of Agric. & Consumer Servs. v. Schick*, 580 So. 2d 648 (Fla. 1st DCA 1991). In *Schick*, the court stated: "[I]f a statute exists . . .in which the legislature has set forth specific criteria that must be considered by a tribunal when deciding a reasonable award of an attorney's fee, that specific statute controls—not *Rowe*." *Id.* at 650. In section 57.111(3)(a), the Legislature specifically defined "attorney's fees and costs" *for purposes of section 57.111*; thus, that definition governs awards of attorney's fees and costs *under that statute*. By contrast, in this case, section 760.11(13) does not specifically identify the factors considered in determining reasonable attorney's fees awards under the Florida Civil Rights Act. Thus, as discussed above, the factors enumerated in *Rowe*,

49. Rule 4-1.5(b) states, in pertinent part:

> Factors to Be Considered in Determining Reasonable Fees and Costs.
>
> (1) Factors to be considered as guides in determining a reasonable fee include:
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> (A) the time and labor required, the novelty, complexity, difficulty of the questions involved, and the skill requisite to perform the legal service properly;
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> (B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
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> (D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;
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> (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;
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> (F) the nature and length of the professional relationship with the client; (G) the experience,

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which are now codified in rule 4-1.5, govern attorney's fees awards in such cases. Further, and importantly, neither rule 4-1.5, nor the case law applying these factors, has ever categorically excluded motion practice from the universe of legal services compensable under those factors; rather, rule 4-1.5 and the applicable case law focus on whether fees for *all* types of legal services, including motion practice, are reasonable, as determined applying those factors. Where neither rule 4-1.5 nor case law have expressly created a categorical exclusion from fees awards for motion practice, the undersigned is not authorized to read rule 4-1.5 as containing one. *See Furst v. Rebholz as Tr. of Rob Rebholz Revocable Tr.*, 302 So. 3d 423, 429 (Fla. 2d DCA 2020)(courts cannot read into statutes provisions that are not there); *see Eastwood Shores Prop. Owners Ass'n v. Dep't of Econ. Opp.*, 264 So. 3d 264, 268-69 (Fla. 2d DCA 2019)(courts are not at liberty to add language to statutes).

> reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services[.]

50. In *Rowe*, the court explained how these factors are to be considered and applied in determining reasonable attorney's fees.

51. The first step in the attorney's fees determination process—also known as the "lodestar" process—requires the court to determine the number of hours reasonably expended on the litigation. Florida courts have emphasized the importance of keeping accurate and current records of work done and time spent on a case, particularly when someone other than the client may pay the fee. *See M. Serra Corp. v. Garcia,* 426 So.2d 1118 (Fla. 1st DCA); *Brevard Cty. Sch. Bd. v. Walters*, 396 So. 2d 1197 (Fla. 1st DCA 1981). To accurately assess the labor involved, the attorney's fees applicant should present records detailing the amount of work performed. Counsel is expected to claim only those hours properly billed to the client. Inadequate documentation may result in a reduction in the number of hours claimed, as will a claim for hours that the court finds to be excessive or unnecessary. The "novelty and difficulty of the question involved" should normally be reflected by the number of hours reasonably expended on the litigation. *Rowe*, 472 So. 2d at 1150.

52. The second part of the attorney's fees determination process, which encompasses many aspects of the representation, requires the court to determine a reasonable hourly rate for the services of the prevailing party's attorney. The party who seeks the fees carries the burden of establishing the prevailing "market rate," i.e., the rate charged in that community by lawyers of reasonably comparable skill, experience, and reputation, for similar services. *Id.*

53. The number of hours reasonably expended, determined in the first step, multiplied by a reasonable hourly rate, determined in the second step,

produces the lodestar, which is an objective basis for the award of attorney's fees. *Id.* at 1151.

54. Finally, as discussed above, "fees for fees" are not considered in determining reasonable attorney's fees awards in Florida. *Bayview*, 286 So. 3d at 861.

III. Application of this Legal Authority to this Case

55. The first factor to be considered, pursuant to rule 4-1.5(b)(1)(A), is the time and labor required, the novelty, complexity, difficulty of the questions involved, and the skill requisite to perform the legal service properly. Unnecessarily duplicative work is a germane consideration under this factor in determining whether attorney's fees are reasonable. *Brevard Cty. v. Canaveral Prop., Inc.*, 696 So. 2d 1244, 1245 (Fla. 5th DCA 1997).

56. Pursuant to the testimony, it is determined that the novelty, complexity, difficulty of the questions involved, and skill requisite to perform the work in Case No. 1D19-2165 justifies the billing rates, and almost all of the hours, charged. As discussed below, to the extent Amended Exhibit 2 includes matters excluded by the Order Limiting Evidence on Fees and Costs, or that constitute "fees for fees" or duplicative work, those hours have been deducted from the hours billed and total amount of the attorney's fees award.

57. The second factor to be considered, pursuant to rule 4-1.5(b)(1)(C), is the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer. As discussed above, Peyton testified that his work on the Answer Brief, in particular, precluded him from working for other clients during the time he was researching and preparing the brief. Thus, this factor supports the award of the fees requested, subject to the deductions for work excluded by the Order Limiting Evidence on Fees and Costs, or for "fees for fees" or duplicative work, discussed below.

58. The third factor to be considered, pursuant to rule 4-1.5(b)(1)(C), is the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature. The competent substantial evidence, consisting

of Johnson's expert testimony, establishes that the billing rates PeytonBolin charged for its work in Case No. 1D19-2165 was reasonable, and even low, for appeals involving complex issues in the South Florida legal market.

59. The fourth factor to be considered, pursuant to rule 4-1.5(b)(1)(D), is the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained. The competent substantial evidence establishes that the issues in Case No. 1D19-2615 were significant to the Association; that PeytonBolin was solely responsible for representing the Association in Case No. 1D19-2165; and that as a result of PeytonBolin's efforts, the Association prevailed on appeal. This factor militates in favor of granting an attorney's fees award in the requested amount, subject to the deductions discussed below.

60. The fifth factor, pursuant to rule 4-1.5(b)(1)(E), considers 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. While the evidence does not establish that the Association imposed any specific time limits on Peyton Bolin's representation in Case No. 1D19-2165, the competent substantial evidence establishes that the amount of time that PeytonBolin expended on the appeal was reasonable, particularly given the nature of the issues on appeal.

61. The sixth factor to be considered, pursuant to rule 4-1.5(b)(1)(F), concerns the nature and length of the professional relationship with the client. Here, the competent substantial evidence establishes that PeytonBolin and Mauri Ellis Peyton have served as the Association's general counsel since 2015. The billing rates for PeytonBolin partners, attorneys, and paralegals, to which the Association agreed in this matter were reasonable, given the nature and length of the professional relationship between PeytonBolin and the Association.

62. The seventh factor, pursuant to rule 4-1.5(b)(1)(G), considers the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services. Here, the competent substantial evidence, consisting of Johnson's expert testimony, establishes that, given the complexity of the issues raised in the Initial Brief, and considering the effort necessary for PeytonBolin to diligently address all of the pertinent issues, the amount of time that PeytonBolin spent on the appeal was reasonable, and even on the low side, compared to similar matters.

63. As noted above, the undersigned concludes that some hours billed, as shown on Amended Exhibit 2, should not be considered in determining the reasonable attorney's fees in Case No. 1D19-2165.

64. Specifically, as discussed above, the billing entries on June 10, 2020, by the paralegal; June 22, 2020, by the partner; and July 29, 2020, by the paralegal constitute for "fees for fees" work. Pursuant to *Bayview*, these billing entries cannot be considered in determining reasonable appellate attorney's fees.

65. Additionally, pursuant to the Order Limiting Evidence on Fees and Costs, the billing entries on August 27 and 28, 2020, and February 10, 2021, are excluded from consideration in determining reasonable appellate attorney's fees.

66. Collectively, the deduction of these hours and corresponding charges result in a reduction of 2.7 hours of time billed.

67. Additionally, there were two billing entries by paralegals that are duplicative of work performed by attorneys; therefore, these billing entries have been deducted from the hours and amounts billed. Specifically, the June 8, 2020, time entry of .1 hours for reviewing the First DCA's Order granting appellate fees is duplicative of the work billed by a partner on June 8, 2020, for substantially the same task. Additionally, the September 26, 2019, time entry is duplicative of the September 20, 2019,

work billed by a partner; thus, .1 hours for paralegal work has been deducted. Collectively, these deductions result in a reduction of .2 hours of time billed.[14]

68. As discussed above, Simhoni contends that redacted descriptions on Amended Exhibit 2 for certain billing entries render it impossible to determine whether these entries are reasonable. Redaction should be done in such a manner that it does not disclose attorney-client privileged communications or attorney work product, but does not withhold information that does not fall within these categories protected from disclosure. *See Finol v. Finol*, 869 So. 2d 666 (Fla. 4th DCA 2004). A review of the redacted entries shows that the redactions involved attorney communications with the client, which generally are protected from disclosure under the attorney-client privilege. [15]To the extent Simhoni wished to explore whether the attorney-client privilege properly attached to these entries, she could have conducted prehearing discovery and requested the ALJ to conduct an in camera review to determine whether the attorney-client privilege attached to the communications. *See Old Holdings, Ltd. v. Taplin, Howard, Shaw & Miller, P.A.*, 584 So. 2d 1128 (Fla. 4th DCA 1991). She did not do this. Here, there is no countervailing evidence in the record to rebut the competent substantial evidence presented by the Association, showing that these communications were protected by the attorney-client privilege. Accordingly, the undersigned declines to deduct any hours or amount billed by PeytonBolin on the basis of redacted billing entries.

69. Based on the foregoing, it is concluded that the total number of hours billed for Case No. 1D19-2165 should be reduced by 2.9 hours, from 57.7 hours to 54.8 hours, and the amount of reasonable attorney's fees to be

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[14] Courts are authorized to deduct duplicative fees in determining reasonable attorney's fees. *See Brake v. Murphy*, 736 So. 2d 745, 748 (Fla. 3d DCA 1999); *Canaveral Prop., Inc.* 696 So. 2d at 1245 (Fla. 5th DCA 1997).

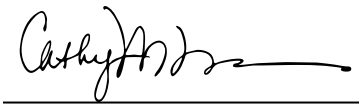
[15] *See* § 90.502(1)(c), Fla. Stat.

awarded to the Association in Case No. 1D19-2165 should be reduced by $582.00, from $16,545.00 to $15,963.00.[16]

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the reasonable attorney's fees owed to Petitioner, Mimo on the Beach I Condominium, by Respondent, Tal Simhoni, total $15,963.00.

DONE AND ORDERED this 24th day of May, 2021, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of May, 2021.

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[16] As noted above, these calculations were derived by deducting, from the hours worked and fees billed as stated on Amended Exhibit 2, the amount of hours worked and fees billed that, pursuant to the foregoing Findings of Fact and Conclusions of Law, were not considered in determining reasonable attorney's fees in Case No. 1D19-2165.

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.