

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

PALAFX, LLC,

Petitioner,

vs.

Case No. 21-0614F

CARMEN DIAZ,

Respondent.

---

RECOMMENDED ORDER ON REMAND

The final hearing in this case was held via Zoom videoconference on May 21, 2021, in Tallahassee, Florida, before Suzanne Van Wyk, Administrative Law Judge of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner:     W. Douglas Hall, Esquire  
                          James E. Parker-Flynn, Esquire  
                          Carlton Fields, P.A.  
                          215 South Monroe Street, Suite 500  
                          Post Office Drawer 190  
                          Tallahassee, Florida 32301

For Respondent:    Jefferson M. Braswell, Esquire  
                          Braswell Law, PLLC  
                          116 Northeast 3rd Avenue  
                          Gainesville, Florida 32601

STATEMENT OF THE ISSUE

The amount of reasonable attorney’s fees and costs to be awarded to Petitioner, Palafox, LLC (“Petitioner” or “Palafox”), and against Respondent, Carmen Diaz (“Respondent”), in the underlying administrative matter as a sanction pursuant to section 120.595, Florida Statutes.

PRELIMINARY STATEMENT

On September 12, 2019, the Northwest Florida Water Management District (“District”) issued a Notice of Final Agency Action to issue an Environmental Resource Permit (“Permit”) to Palafox. Palafox had applied for the Permit from the District for a project known as Market District Housing, located at the intersection of Palafox Lane and Martin Hurst Road, in unincorporated Leon County. The Permit will authorize the construction of a surface water management system that has been designed to serve the project.

Respondent lives in Palafox Preserve Subdivision and timely filed an Amended Petition for Formal Proceedings Before a Hearing Officer, which challenged the District’s issuance of the Permit on the basis that her property will be adversely affected by the stormwater discharge authorized by the Permit. That case was assigned DOAH Case No. 19-5831.

A final hearing in Case No. 19-5831 was held February 19 and 20, 2020, in Tallahassee, Florida, before the undersigned. Along with its Proposed Recommended Order, the District filed a Motion for Attorney’s Fees and/or Sanctions against Respondent and her counsel, Jefferson Braswell, under sections 120.569 and 120.595 (“Motion”). Palafox joined in and adopted that Motion.

The undersigned issued a Recommended Order on May 18, 2020, finding that Respondent had not met her burden to demonstrate that Palafox had not provided reasonable assurance that its proposed activities meet the conditions for issuance set forth in the District’s permitting regulations and handbook, and concluding that the Permit should be issued. As part of that Recommended Order, the undersigned reserved ruling on the Motion until a

final order was issued. The Governing Board of the District subsequently adopted the Recommended Order in toto.

Palafox then timely filed a Renewed Motion for Attorney's Fees and Sanctions on July 6, 2020 (the "Renewed Motion"). As the Final Order in Case No. 19-5831 had already been issued, the Renewed Motion was treated as a new, ancillary matter, and assigned Case No. 20-3014F.

A final hearing on entitlement to fees was before the undersigned via Zoom videoconference on August 19, 2020, in Tallahassee, Florida. After the hearing, and after the parties submitted proposed orders, the undersigned issued a Supplemental Recommended Order in which the undersigned concluded that Respondent had participated in the underlying proceeding for an "improper purpose" pursuant to section 120.595. The Governing Board of the District subsequently adopted the Supplemental Recommended Order in toto, and remanded to DOAH to determine the amount of reasonable attorney's fees that Respondent must pay to Palafox.

This proceeding to determine the amount of fees then followed. At the final hearing, Palafox presented the testimony of W. Douglas Hall, Esquire, one of its attorneys in the underlying proceeding; and Craig D. Varn, Esquire, who was accepted as an expert on attorney's fees. Petitioner's Exhibits 1 through 5 were admitted in evidence.

Respondent testified on her own behalf, and offered the testimony of Mr. Braswell. Respondent offered no exhibits in evidence.

At the conclusion of the final hearing, the undersigned set a deadline of June 1, 2021 (ten days following the hearing date), for the parties to file their proposed recommended orders. On that date, Petitioner filed both a Proposed

Recommended Order and the final hearing Transcript. Given that the Transcript was filed with DOAH, the undersigned issued an Order on Post-Hearing Filings, extending the deadline for proposed recommended orders to June 11, 2021 (ten days following filing of the Transcript). On June 16, 2021, Respondent filed a notice that she would not be filing a proposed recommended order.

FINDINGS OF FACT

1. Petitioner is a Florida limited liability company and was the applicant for the Permit challenged in Case No. 19-5831.

2. Respondent is the owner of Lot 18, Block A, of the Palafox Preserve Subdivision, and was the Petitioner in Case No. 19-5831.

3. Petitioner was represented by the firm of Carlton Fields, P.A. (“the Firm”), in Case Nos. 19-5831 and 20-3014F.

4. Petitioner’s counsel and paralegal with the Firm spent 392.4 hours litigating both the underlying substantive case and entitlement to attorney’s fees, for a total of \$123,763.50 in fees, broken down as follows:

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Subtotal</u>
W. Douglas Hall	171.8	\$382.50	\$65,713.50
James E. Parker-Flynn	197.4	\$270.00	\$53,298.00
Christine Graves	.3	\$382.50	\$ 114.75
Kimberly Pullen	22.9	\$202.50	\$ 4,637.25

5. The hourly rates shown above were discounted by approximately 10 percent of the standard rates charged by the Firm at the time this matter originated. Furthermore, over the course of representing Palafox in this matter, the Firm discounted a number of its bills as a courtesy because of the amount of time required to litigate the matter and to adjust for potential overlap among attorneys working on the case. Those courtesy adjustments totaled \$7,437.45. Applying that discount to the total fees shown above, the

total amount of attorney's fees incurred by Palafox in litigating this matter is as follows:

Total Unadjusted Attorney's Fees	\$123,763.50
Less Courtesy Adjustments	\$ 7,437.45
Total Adjusted Attorney's Fees	\$116,326.05

6. In addition to attorney's fees, Palafox incurred the following taxable costs and expenses:

Court Reporter - Diaz Depo.	\$ 564.28
JSB-Advantage Court Reporters - Carswell Depo.	\$ 1,032.48
Phipps Reporting - DOAH Transcript -Day 1	\$ 1,605.67
Phipps Reporting - DOAH Transcript -Day 2	\$ 542.52
WSource Group, LLC (1/8/20-1/27/20)	\$ 3,987.50
WSource Group, LLC (2/6/20-2/20/20)	\$ 9,652.50
Total Taxable Costs	\$ 17,384.95

7. Additionally, Palafox is seeking the costs incurred by its expert, Mr. Varn, up through and including the final hearing. Mr. Varn's hourly rate for his work on this case was \$250, and, including the final hearing, he spent 9.8 hours on the case. The total cost for his services was \$2,450.00.

8. Palafox is seeking a total of \$136,161.00 in fees and costs.

9. Mr. Varn testified that both the rates charged by Palafox, and the hours Palafox's counsel spent on the matter, were reasonable and consistent with the rates charged and time spent for similar work by other attorneys in the area. His opinion was supported by detailed time records kept by Palafox's counsel, who confirmed that the fee statements were reviewed and periodically adjusted as necessary to account for potential overlap and duplication of effort among the attorneys working on the case, or if it appeared the bill simply needed to be reduced.

10. Respondent stipulated that Mr. Varn is an attorney with sufficient qualifications to render an opinion regarding the amount of reasonable attorney's fees to be awarded to Palafox in this proceeding. Respondent did not object to the rates charged by the Firm, and did not challenge any of the Firm's time entries, fees, or costs.

11. The number of hours set forth above by the attorneys and the paralegal working on this case were reasonable, the rates charged were reasonable, and the costs expended by Palafox were reasonable.

#### CONCLUSIONS OF LAW

12. DOAH has jurisdiction of this case, and the parties thereto, pursuant to sections 120.57(1) and 120.595, Florida Statutes (2020).

13. The party opposing an attorney fee award “has the burden of pointing out with specificity which hours should be deducted.” *22nd Century Properties, LLC v. FPH Properties, LLC*, 160 So. 3d 135, 143 (Fla. 4th DCA 2015) (failure to “explain exactly which hours [are] unnecessary or duplicative is generally viewed as fatal”) (internal cites and quotations omitted).

14. Ms. Diaz did not identify any hours which should be deducted from the attorney’s fees sought by Petitioner. Nor did she introduce any expert witness testimony to refute Petitioner’s expert witness testimony that the hours spent on the underlying case were reasonable and the rates charged were consistent with those charged for similar work by other attorneys in the area. At the final hearing, counsel for Ms. Diaz admitted that he was not challenging the hourly rates or any specific time entry submitted in evidence by Petitioner.

15. Instead, Respondent testified, and her counsel argued at hearing, that the total amount of fees awarded against her should be reduced because they had “proven” several of her claims in the underlying matter, because Palafox did not have a right to put water on her property, because it would be unfair for fees to be assessed against her, and because it was her right to bring her claims in the underlying case and her attorney represented her pro bono. In her testimony, Ms. Diaz also asserted that the award of fees against her was unfair because her counsel was responsible for all of the decisions made during litigation.

16. Respondent’s arguments as to mitigation are misplaced. First, as her counsel eventually conceded, she did not in fact prove any of her claims in the underlying matter. Palafox prevailed on all issues, and the undersigned concluded she had participated in the proceedings for an “improper purpose.”

17. Moreover, Respondent’s arguments go to the issue of whether Palafox was entitled to fees in the first instance, which was decided by the undersigned in Case No. 20-3014. Those arguments are not relevant to the issue in the instant case—the amount of reasonable attorney’s fees to be assessed against Respondent.

18. Based on the expert witness testimony introduced by Petitioner, and Respondent’s failure to refute that evidence, the undersigned concludes that Palafox is entitled to recover reasonable attorney’s fees in the amount of \$116,326.05.

#### Taxable Costs

19. In addition to other taxable costs, parties *may* recover the fees charged by their expert witnesses as taxable costs. *See Travieso v. Travieso*, 474 So. 2d 1184, 1186 (Fla. 1985).<sup>1</sup> However, “[e]xpert witness fees paid to the testifying expert are not discretionary if the attorney expects to be compensated for [her] testimony.” *Rock v. Prairie Building Solutions, Inc.*, 854 So. 2d 722, 724 (Fla. 2d DCA 2003) (quoting *Stokus v. Phillips*, 651 So. 2d 1244, 1246 (Fla. 2d DCA 1995)).

20. Mr. Varn testified that he spent approximately 9.8 hours preparing to testify in this case (including his appearance at the final hearing) at an hourly rate of \$250.00, for a fee of approximately \$2,450.00. That amount is also taxable.

---

<sup>1</sup> The majority held that expert witness fees *may* be taxed as costs for a lawyer who testifies as an expert as to reasonable attorney’s fees. The court explained, however, that “[g]enerally, lawyers are willing to testify gratuitously for other lawyers on the issue of reasonable attorney’s fees. This traditionally has been a matter of professional courtesy. An attorney is an officer of the court and should be willing to give the expert testimony necessary to ensure that the trial court has the requisite competent evidence to determine reasonable fees.” *Travieso*, 474 So. 2d at 1186.

21. Palafox is therefore entitled to recover \$17,384.95 for the taxable costs described above, plus the cost for its expert witness in the amount of \$2,450.00, for a total of \$19,834.95 in taxable costs.

22. Respondent did not meet her burden to identify with specificity which fees, if any, should be reduced. Her argument of unfairness is not cognizable in this proceeding because DOAH has no common law authority and is not a court of equity. *See French v. Ag. for Pers. with Disab.*, Case No. 06-4565F (Fla. DOAH Mar. 28, 2007). DOAH's authority to award attorney's fees and costs is prescribed by statute (i.e., section 120.595), not common law principles of equity. *Id.*

RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Carmen Diaz, pay to Palafox its reasonable attorney's fees and taxable costs in the amount of \$136,161.00.

DONE AND ENTERED this 23rd day of June, 2021, in Tallahassee, Leon County, Florida.



---

SUZANNE VAN WYK  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of June, 2021.



COPIES FURNISHED:

Nicholas D. Fugate, Esquire  
Nicholas D. Fugate, P.A.  
Post Office Box 7548  
Tallahassee, Florida 32314

James E. Parker-Flynn, Esquire  
Carlton Fields, P.A.  
Post Office Drawer 190  
Tallahassee, Florida 32302

Brett J. Cyphers, Executive Director  
Northwest Florida Water  
Management District  
81 Water Management Drive  
Havana, Florida 32333-4712

W. Douglas Hall, Esquire  
Carlton Fields, P.A.  
215 South Monroe Street, Suite 500  
Post Office Drawer 190  
Tallahassee, Florida 32301

Jefferson M. Braswell, Esquire  
Braswell Law, PLLC  
116 Northeast 3rd Avenue  
Gainesville, Florida 32601

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.