

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
APPOINTMENT BY THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS**

Paula M. Haley, Executive Director, Alaska)
State Commission for Human Rights *ex rel.*)
JANET WASS,)
)
Complainant,)
)
v.)
)
ACE DELIVERY & MOVING, INC.,)
)
Respondent.)

OAH No. 13-0143-HRC
ASCHR No. J-11-254

ORDER DENYING MOTION FOR ATTORNEY’S FEES AND COSTS

I. Introduction

A Revised Recommended Decision was issued in this case on September 10, 2013. Ace Delivery & Moving, Inc. (Ace Delivery) moved for an award of attorney fees and costs. That motion was held in abeyance until the final decision was issued by the Commission. The Commission issued its final decision in the matter on December 27, 2013. The parties then completed briefing Ace Delivery’s motion. Under the Commission’s regulations, there is no basis for an award of attorney’s fees or costs to Ace Delivery. Nor is there any other applicable law or rule that would permit an award of costs and fees in this matter. Accordingly, Ace Delivery’s motion is denied.

II. Discussion

A. Attorney’s Fees Pursuant to the Human Rights Act

The Alaska legislature created the Commission for Human Rights, and authorized the Commission to hold administrative hearings to determine whether unlawful practices have occurred.¹ Those hearings are governed by portions of AS 44.64, and by the procedures set out in AS 44.62.330 – 630 except as otherwise provided in AS 18.80.² In addition, the Commission has adopted its own regulations for Commission hearings.³ At the conclusion of the hearing, the

¹ AS 18.80.120.

² AS 18.80.120(b).

³ See 6 AAC 30.410 – 497.

Commission has the authority to award reasonable costs, including attorney fees, to any private party.⁴

The Commission has delegated its authority to award fees and costs to the administrative law judge who conducted the hearing.⁵ In doing so, the Commission also limited the situations in which awards could be made:

An award of attorney's fees and costs will be made against a complainant upon a showing that he or she pursued an action not authorized by the executive director that was frivolous, unreasonable, or groundless, or that an action authorized by the executive director was based upon information furnished in bad faith by [the] complainant.^[6]

This provision allows for fees and costs against a complainant – in this case Janet Wass – in two situations. First, costs and fees can be awarded against Ms. Wass if she took a frivolous, unreasonable, or groundless action in relation to this case that was not authorized by the executive director.⁷ Second, costs and fees can be awarded against Ms. Wass if prosecution of the allegations against Ace Delivery was based on information furnished by Ms. Wass in bad faith.⁸ Nothing in this regulation allows for an award of attorney's fees or costs against the Executive Director or the Commission itself.

Ace Delivery correctly notes that AS 18.80.130(e) broadly grants the Commission the authority to pay costs and attorney fees to any private party when “in its discretion, [the Commission] determines the allowance is appropriate.”⁹ However, the statute does not prohibit the Commission from establishing parameters for when an award of costs and attorney's fees may be considered appropriate.¹⁰ The Commission has exercised its discretion to say that an award will only be made when certain conditions have been met.

To the extent it may have been unclear before, Ace Delivery's Reply specifically acknowledges that it is seeking an award of attorney's fees and costs from the Commission, and

⁴ AS 18.80.130(e).

⁵ 6 AAC 30.492(a). *See* Order in *Phillips v Tew's Excavation, Inc.*, OAH No. 09-0372-HRC (2012) available at <http://aws.state.ak.us/officeofadminhearings/Documents/OAH/HRC090372%20Order%20Denying%20Motion%20for%20Attorney's%20Fees%20and%20Costs.pdf>

⁶ 6 AAC 30.492(b)

⁷ Order in *Phillips v Tew's Excavation*, OAH No. 09-0372-HRC, page 3.

⁸ Order in *Phillips v. Tew's Excavation*, OAH No. 09-0372-HRC, page 4. *See also Butt v. Westward Seafoods*, ASCHR No. C-93-127, October 3, 1996, page 23 (Board adoption of decision interpreting 6 AAC 30.492 as limiting situations when attorney fees may be awarded).

⁹ AS 18.80.130(e).

¹⁰ Adopting parameters by regulation helps ensure that the Commission's discretion will not be exercised inconsistently.

not from Ms. Wass.¹¹ When a respondent seeks reimbursement for expenses, including attorney fees, the Commission’s regulations direct it to do so pursuant to 6 AAC 30.492.¹² As noted above, the Commission has exercised its discretion to grant that reimbursement only when the request is made based on the complainant’s improper conduct, something that has not been asserted here.¹³

B. Attorney’s Fees under 42 USC §1988, AS 09.60.010, and Civil Rule 68

Ace Delivery has also referred to 42 USC §1988, AS 09.60.010, and Civil Rule 68, which allow for an award of attorney’s fees to a prevailing party in certain civil cases. These statutes and civil rule only apply to proceedings in court.¹⁴ This proceeding was not in court,¹⁵ and the statutes and rules cited by Ace Delivery simply do not apply. Those authorities might be applied by analogy as guidance if there were grounds for making a fee award, but as discussed above, there is no basis for an award of attorney’s fees under the Commission’s current regulation.

III. Conclusion

The Executive Director asserted a broad interpretation of AS 18.80 in this hearing. The Commission was not persuaded to adopt that interpretation, and found that Ms. Wass had not been discriminated against. In Alaska civil courts, the general rule is that the prevailing party is entitled to an award of costs and attorney’s fees. That general rule does not apply in administrative proceedings, however, where there are usually no provisions for an award to a prevailing party. Alaska Statute 18.80 provides for an exception to the general rule in administrative proceedings, and grants the Commission discretion to award costs and attorney’s fees. The Commission has, by regulation, limited the circumstances in which such an award may

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¹¹ Reply Memorandum, page 4.
¹² 6 AAC 30.490 (respondent may “apply for reimbursement under 6 AAC 30.492”).
¹³ The evidence currently in the record is insufficient to support a finding that Ms. Wass acted in bad faith or took any frivolous, unreasonable, or groundless action.
¹⁴ See AS 09.60.010(d)(1); 42 USC §1988(b); Alaska R. Civ. Pro. 68 and 79.
¹⁵ This is an executive branch administrative proceeding. See *In re H.J.W.*, OAH Case No. 07-0161-PER (Office of Administrative Hearings 2008), page 8 (discussing difference between civil actions heard by the judicial branch and administrative proceedings before an executive branch agency), <http://aws.state.ak.us/officeofadminhearings/Documents/PER/PER070161.pdf>.

be made. Ace Delivery has not asserted that those circumstances exist here. Accordingly, Ace Delivery's motion for an award of attorney's fees and costs is DENIED.

DATED this 14th day of January, 2014.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

This is the final agency order on the Motion for Attorney's Fees and Costs. It is issued on behalf of the Alaska State Commission for Human Rights pursuant to AS 18.80.120(b), AS 44.64.040 and 6 AAC 30.492. Judicial review of this order may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this order.

[This document has been modified to conform to the technical standards for publication.]