

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED

DEC 20 2023

STATE OF OKLAHOMA, ex rel. GLEN)
MULREADY, Insurance Commissioner,)
)
Petitioner,)
vs.)
)
SKY DIAMOND ADJUSTING LLC, an adjuster in)
the State of Oklahoma,)
)
Respondent.)

INSURANCE COMMISSIONER
OKLAHOMA

CASE NO. 23-0243-DIS

ADMINISTRATIVE ORDER

Now on this 20th day of December, 2023, there came on for consideration before the Independent Hearing Examiner, Stephan Mathis, the Application to Tax Costs Including Attorney's Fees ("Application") filed by Respondent, Sky Diamond Adjusting, LLC ("Sky Diamond" or "Respondent"). The hearing examiner, having reviewed Respondent's Application and the Response thereto filed by Petitioner, Oklahoma Insurance Department, ("OID" or "Petitioner"), hereby finds that the Application should be denied.

On or about May 4, 2023, the OID issued a "*Conditional Administrative Order and Notice of Right to be Heard*" in this matter. On or about May 15, 2023, Sky Diamond requested an administrative proceeding pursuant to O.A.C. 365:1-7-1. The OID then issued a "*Notice of Hearing and Order to Show Cause*" on May 23, 2023. On or about August 9, 2023, a hearing was held before the undersigned Hearing Examiner, wherein evidence was submitted and arguments were provided by both parties. On October 26, 2023, the Hearing Examiner issued a Findings of Fact, Conclusions of Law, and Final Administrative Order in this matter, wherein the undersigned found that "[t]he relief requested by the Oklahoma

Insurance Department in the Notice of Hearing and Order to Show Cause filed by the Oklahoma Insurance Department on May 23, 2023 is **DENIED.**”

On or about November 27, 2023, Respondent filed its Application, wherein Respondent asserted that it was entitled to an award of costs and attorney’s fees pursuant to 12 Okla. Stat. 941(B), which states, in pertinent part, that “[t]he respondent in any proceeding brought before any state administrative tribunal by any state agency, board, commission, department, authority or bureau ... shall be entitled to recover against such state entity court costs, witness fees and reasonable attorney fees if the tribunal ... determines that the proceeding was brought without reasonable basis or is frivolous...” Respondent sought \$38,662.68 in costs and attorney’s fees associated with this matter.

Section 941 fees are not proper simply because a state agency is unsuccessful in its legal action. *State ex rel. State Ins. Fund v. Great Plains Care Ctr., Inc.*, 2003 OK 79, ¶ 21, 78 P.3d 83, 90 (citations omitted). Whether an action is frivolous depends upon several factors, including, but not limited to, “whether the issue is one of first impression involving conflicting statutes, a lack of statutory definitions, and the timing of the proceeding as it relates to applicable law.” *Id.* The Oklahoma Supreme Court has stated that a matter is frivolous when it has “no legitimate legal or factual basis and is so totally devoid of merit as to be regarded as facially unworthy of consideration.” *Id.* at ¶22, 90-91. Further, all doubts concerning whether the proceeding is frivolous must be resolved in favor of the party against whom the fees are sought. *Id.*

Applying this standard to the present case, the undersigned finds that the OID had a reasonable basis for bringing the present action and it was not frivolous. In response to a consumer complaint (#114983) submitted to the OID by Brandy and Michael Davis

(together referred to as the "Davises"), on or about May 4, 2023, Petitioner issued a *"Conditional Administrative Order and Notice of Right to be Heard"* alleging that Sky Diamond's Public Adjuster Contract (the "Contract") violated 36 O.S. §§6216.2(D)(6) and (D)(7) because it allegedly lacks a description of the loss and its location and a description of the services to be provided to the insured.

The evidence presented at the hearing demonstrated that although the contract at issue had a specific area in section 2 designated as "Description of Loss and Location" wherein to write the location of and type of loss, it was left blank. However, the in-person testimony given at the hearing by the Complainant, Mrs. Davis, and the Respondent's Representative, Ms. Case, established beyond reasonable doubt that both Complainant and Respondent understood and agreed that the description of the subject loss was "a fire" which caused substantial damage to the Davises home located at 64000 E 260 Rd in Grove, Oklahoma. As such, the undersigned found that the Contract substantially complied with the requirements of Section 6216. However, because the Contract did not contain a description of the loss and its location, as required by Section 6216(D)(6), the undersigned finds that the OID had a reasonable basis for issuing the Conditional Administrative Order and this proceeding was not frivolous. Accordingly, Respondent's Application is denied.

IT IS THEREFORE ORDERED that the relief requested in the Application to Tax Costs Including Attorney's Fees filed by Respondent, Sky Diamond Adjusting, LLC on November 27, 2023 is **DENIED**.

Dated this 20th day of December, 2023.



A handwritten signature in blue ink, reading "Stephan Mathis".

Stephan Mathis
Independent Hearing Examiner
Oklahoma Insurance Department

CERTIFICATE OF MAILING

I, Antuanya "Bo" DeBose, hereby certify that a true and correct copy of the above and foregoing Final Administrative Order was mailed by first class U.S. Mail and by certified mail with postage prepaid and return receipt requested on this 20th day of December, 2023 to:

Sky Diamond Adjusting LLC
7610 N. 127th E Ave
Owasso, Oklahoma 74055
skydiamondadjusting@gmail.com

CERTIFIED MAIL
9589 0710 5270 0679 4484 83

John M. O'Connor, OBA #6741
15 West 6th Street, Suite 2505
Tulsa, Oklahoma 74119
john@johnmoconnorlaw.com

CERTIFIED MAIL
9589 0710 5270 0679 4484 76

and that a copy was delivered to:

Licensing and Consumer Assistance Division

A handwritten signature in blue ink, reading "AS DeBose".

Antuanya "Bo" DeBose