COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

MR. T'S HEART OF GOLD AND DIAMONDS, LLC,	:	Case No. 13CVF-2280
Appellant,	:	JUDGE HOLBROOK
v.	:	
OHIO DEPARTMENT OF COMMERCE DIVISION OF FINANCIAL INSTITUTIONS,	:	
Appellee.	:	

DECISION AND ENTRY
AFFIRMING THE ORDER OF THE STATE OF OHIO DEPARTMENT OF COMMERCE, DIVISION OF FINANCIAL INSTITUTIONS DATED FEBRUARY 15, 2013
AND
NOTICE OF FINAL APPEALABLE ORDER

HOLBROOK, JUDGE

This is an administrative appeal pursuant to R.C. 119.12 of a February 15, 2013 Division Order of the State of Ohio Department of Commerce, Division of Financial Institutions ("Division"), mailed to Appellant Mr. T's Heart Of Gold And Diamonds, LLC ("Mr. T's") on February 15, 2013, denying its February 13, 2013 Amended Motion for Attorney Fees.

Background

On or about August 21, 2012, the Division issued a Notice of Intent to Issue a Cease and Desist Order, Notice of Intent to Issue a Fine, and Notice of Hearing ("Notice") to Mr. T's alleging violations of the Precious Metals Dealers Act, R.C. 4728.01-99. An adjudication hearing was set for October 4, 2012. However, Mr. T's moved for a continuance of the hearing and the parties agreed to reschedule the hearing for November 13, 2012.

On November 9, 2012, before the agreed adjudication hearing, Mr. T's filed a motion on with the Hearing Examiner, appointed by the Division, requesting that the action be dismissed. Mr. T's first motion asserted that the Division failed to comply with R.C. 119.07 and the Notice issued to Mr. T's was defective. As a result of Mr. T's November 9, 2012 motion, the November 13, 2012 hearing was vacated at the suggestion of the Hearing Examiner and at the request of both parties so that they could brief the jurisdictional issues and Mr. T's request for dismissal. On December 2, 2012, the Hearing Examiner issued a Decision finding that the Division did have jurisdiction to proceed, recommending that the Division deny Mr. T's request to dismiss the matter, and setting the matter for an adjudication hearing on January 14, 2013.

On December 5, 2012, the United States District Court, Southern District of Ohio issued a preliminary injunction enjoining the Department of Commerce from enforcing the Precious Metals Dealers Act in *Liberty Coins, LLC v. David Goodman, Director*, Case No. 1:12-cv-998. The Division initially continued this case indefinitely on December 17, 2017, based on the district court's invitation to file a motion to modify the injunction. On the same day, December 17, 2012, Mr. T's filed a second motion with the Hearing Examiner requesting that the action be dismissed with prejudice based upon the *Liberty Coins* case. On December 28, 2012, the United States District Court modified its preliminary injunction to permit the Division to enforce R.C. 2728.12. The Hearing Examiner issued a Decision on December 31, 2012, concluding and recommending that this case be dismissed without prejudice.

On January 12, 2013, the Division issued a Division Order that was mailed to Appellant on February 12, 2013. In its January 12, 2013 Order, the Division terminated the Notice without prejudice. The Division found that "[n]o hearing was conducted in this case; therefore no transcript exists for review." R. at 33. The Division also addressed the Hearing Examiner's

December 31, 2012 decision and considered both of Mr. T's motions to dismiss. The Division found "that an indefinite continuance, issued shortly after a preliminary injunction was put in place, was the appropriate course of action[.]" R. at 38. The Division also found that it had the power to withdraw charges, not the Hearing Examiner. Additionally, the Division found that the Hearing Examiner had no authority to recommend the pending action be dismissed: the Hearing Examiner pointed to "no rule, statute, or precedent which establishes authority to make such a recommendation." Moreover, the Division cited to Paragraph 5.5 of its manual limiting a hearing officer's powers which derive solely from delegation by the Division. Among the limits the Division specifically noted was "nothing is these procedures is to be construed as granting a hearing officer the authority to dismiss any hearing." The January 12, 2013 Order also set forth Appellant's right to appeal the Order. Mr. T's did not appeal the Order.

On February 13, 2013, counsel for Mr. T's filed an amended motion for attorney fees pursuant to R.C. 119.092. Mr. T's asserted it was entitled to attorney fees because it was a prevailing party. The Division denied the motion, finding that Mr. T's did not meet the statutory definition of an eligible prevailing party. Mr. T's motion failed, the Division reasoned, because Mr. T's did not prevail "*after an adjudication hearing*, as reflected in an order entered in the journal of the agency." (Italics in original). That Division Order was signed on February 15, 2013. Mr. T's filed an appeal of the February 15, 2013 Division Order on March 4, 2013.

Appellant's Assignments of Error

The Appellant sets forth the following three assignments of error:

FIRST ASSIGNMENT OF ERROR: The Division's Order Is Not In Accordance With Law Because It Failed To Comply With R.C. 119.092.

SECOND ASSIGNMENT OF ERROR: In The Alternative, Should The Court Find That The Division Complied With R.C. 119.092 When It Did Not Refer The Request For

Attorney Fees To The Hearing Examiner, The Division Is Incorrect That An Adjudication Hearing Was Not Held.

THIRD ASSIGNMENT OF ERROR: In The Alternative, Should The Court Find That The Division Complied With R.C. 119.092 When It Did Not Refer The Request For Attorney Fees To The Hearing Examiner, And Also Find That No Hearing Was Held Before The Division, Attorney Fees Should Still Be Awarded.

Standard of Review

With regard to an appeal of an agency ruling on a R.C. 119.092 request for attorney fees, Ohio law provides that

> **The court** hearing an appeal under this division **may modify** the determination of the referee, examiner, or agency with respect to the motion for compensation for fees **only if the court finds that the failure to grant an award, or the calculations of the amount of an award, involved an abuse of discretion.** The *judgment of the court is final and not appealable*, and a copy of it shall be certified to the agency involved and the prevailing eligible party. . ..

(emphasis added). "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies [an] attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

Consequently, absent an abuse of discretion on the part of the Division in failing to grant an award of attorney fees to Mr. T's, this Court cannot substitute its judgment for that of the Division and may not modify the Division's determination. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 1993-Ohio-122.

Law and Analysis

Ohio courts follow the "American rule" with respect to attorney fees, which requires that each party involved in litigation pay his or her own attorney fees. *EAC Properties, L.L.C. v. Brightwell*, 10th Dist. No. 13AP-773, 2014-Ohio-2078, ¶8; *McConnell v. Hunt Sports Ent.*, 132 Ohio App.3d 657, 699 (10th Dist.1999), citing *Sorin v. Bd. of Edn. of Warrensville Hts. School*

Dist., 46 Ohio St.2d 177, 179 (1976). However, there are three well-known exceptions to this rule, which include the following: contractual provisions between parties that shift the costs of defending; circumstances where there has been a finding of bad faith; and statutory provisions which specifically provide that a prevailing party may recover attorney fees. *EAC Properties*, supra, at ¶8; *McConnell v. Hunt Sports Ent*., 132 Ohio App.3d at 699, citing *Pegan v. Crawmer*, 79 Ohio St.3d 155, 156 (1997). Mr. T's brings this appeal requesting attorney fees under R.C. 119.092, which governs attorney fees under R.C. Chapter 119 and controls the process.

R.C. 119.092 states in relevant part:

> (B)(1) Except as provided in divisions (B)(2) and (F) of this section, **if an agency conducts an adjudication hearing under this chapter**, **the prevailing eligible party is entitled**, upon filing a motion in accordance with this division, **to compensation for fees** **incurred by that party in connection with the hearing**. A prevailing eligible party that desires an award of compensation for fees shall file a motion requesting the award with the agency within thirty days after the date that the order of the agency is entered in its journal. . . ..
>
> (2) Upon the filing of a motion under this section, the request for the award shall be reviewed by the referee or examiner who conducted the adjudication hearing or, if none, by the agency involved. In the review, the referee, examiner, or agency shall determine whether the fees incurred by the prevailing eligible party exceeded one hundred dollars, whether the position of the agency in initiating the matter in controversy was substantially justified, whether special circumstances make an award unjust, and whether the prevailing eligible party engaged in conduct during the course of the hearing that unduly and unreasonably protracted the final resolution of the matter in controversy. The referee, examiner, or agency shall issue a determination . . ..

(emphasis added). Consequently, in order to seek attorney fees under R.C. 119.092, the statute clearly provides that a prevailing party is "eligible" and is "entitled" to compensation for fees "if the agency conducts an adjudication hearing" pursuant to R.C. Chapter 119. The compensation that the prevailing party may be awarded is "for fees incurred by that party in connection with the [adjudication] hearing." *Id*.

A. Assignment of Error #2 – An Adjudication Hearing Was Not Held By The Division Under R.C. 119.092

Because it is dispositive, the Court will address Appellant Mr. T's second argument first. Appellant's second assignment of error asserts that the Division's February 15, 2013 Order was "incorrect" in its determination that "[n]o adjudication hearing was held in this matter." Division Order, p. 1; Amended Notice of Appeal, Exh. 1; Appellant's Br. p. 4-5. Appellant's argument is not well taken.

The Division specifically held in its January 12, 2013 Order that "[n]o hearing was conducted in this case," and that, instead, the Division voluntarily terminated its Notice. January 12, 2013 Order, p. 3. Indeed, the Division's January 12, 2013 Order notes that it is a "Termination of Notice of Intent to Issue Cease and Desist Order and Notice of Intent to Issue Fine & Notice of Appellate Rights." (emphasis added). The Order sets forth Mr. T's appellate rights with regard to the Order, including its right to file a notice of appeal with the Division to the extent that Mr. T's believed that any part of the January 12, 2013 Order was not supported by reliable, probative and substantial evidence and was not in accordance with law. *Id*. p. 4. Mr. T's was given notice that such appeal was required to be filed within fifteen (15) days of the mailing of the Division's Order. *Id*. Notably, Mr. T's does not contend in this appeal that he filed an appeal of the Division's January 12, 2013 Order and its determination that no adjudication hearing was held in this matter.

The record establishes that no appeal was taken from that Order, and Mr. T's did not challenge the Division's Order. Therefore, because the Division's January 12, 2013 Order was not challenged, overturned or vacated on appeal, it became law of the case. Appellant Mr. T's had an adequate administrative remedy at law, but failed to pursue it with regard to the Division's January 12, 2013 Order. Pursuant to the well-established doctrine of failure to

exhaust administrative remedies, Mr. T cannot now invoke this Court's jurisdiction to challenge the Division's finding in its January 12, 2013 Order that no adjudication hearing pursuant to R.C. Chapter 119 occurred in this matter. *Jain v. Ohio State Med. Bd.*, 10th Dist. No. 09AP-1180, 2010-Ohio-2855, ¶10 ("A party generally waives the right to appeal an issue that could have been, but was not, raised in earlier proceedings. *MacConnell v. Ohio Dept. of Commerce*, 10th Dist. No. 04AP-433, 2005-Ohio-1960, ¶21. The doctrine of exhaustion requires a person to exhaust administrative remedies before seeking redress from the judicial system. *Basic Distrib. Corp. v. Ohio Dept. of Taxation*, 94 Ohio St.3d 287, 290, 2002-Ohio-794.").

Therefore, Mr. T's has not met the statutory prerequisite of R.C. 119.092(B)(1), which permits a prevailing party to file a motion for compensation and fees only if the agency first conducts an adjudication hearing under R.C. Chapter 119. *State ex rel. Ohio Dep't of Health v. Sowald*, 10th Dist. No. 88AP-1171, 1990 Ohio App. LEXIS 3837, * 4 (Aug. 30, 1990)("Thus, in order for R.C. 119.092 to be applicable, there must have first been an adjudication hearing as defined in R.C. 119.01."). *See also State ex rel. Ohio Dep't of Health v. Sowald*, 65 Ohio St.3d 338, 343 (1992)("R.C. 119.07 prescribes the manner in which [adjudication] hearings are afforded."). The Division's finding in its February 15, 2013 Order denying fees that no adjudication hearing was held in this matter, and thus, Mr. T's was not a "prevailing eligible party" entitled to seek recovery of its fees was not unreasonable, arbitrary or unconscionable in light of the Division's prior finding in its January 12, 2013 Order. The Division did not abuse its discretion. Mr. T's second assignment of error is **overruled**.

B. Assignment of Error #3 – Appellant Was Not A Prevailing Eligible Party And Attorney Fees Should Not Be Awarded Where No Adjudication Hearing Was Held By The Division Under R.C. 119.092

Appellant maintains in his third assignment of error that even if this Court finds that no hearing was held before the Division, Mr. T's is still a prevailing party and attorney fees should still be awarded. Appellant's Brief, p. 5-6; Appellant's Reply Br. p. 5-6. Appellant's argument is meritless.

R.C. 119.092 provides that a prevailing eligible party in an adjudication hearing involving a state agency may seek compensation for attorney fees. R.C. 119.092(A)(1) defines who is an eligible party. It states that an eligible party is "a party to an adjudication hearing other than the following:"

> (a) The agency;
>
> (b) An individual whose net worth exceeded one million dollars at the time he received notification of the hearing;
>
> (c) A sole owner of an unincorporated business that had, or a partnership, corporation, association, or organization that had, a net worth exceeding five million dollars at the time the party received notification of the hearing, except that an organization that is described in subsection 501(c)(3) and is tax exempt under subsection 501(a) of the Internal Revenue Code, shall not be excluded as an eligible party under this division because of its net worth;
>
> (d) A sole owner of an unincorporated business that employed, or a partnership, corporation, association, or organization that employed, more than five hundred persons at the time the party received notification of the hearing.

R.C. 119.092(A)(4) defines a "prevailing eligible party" as "an eligible party that prevails after an adjudication hearing, as reflected in an order entered in the journal of the agency." This section makes clear that a prevailing eligible party is entitled to compensation for fees only if an agency conducts an adjudication hearing. Because this Court has already found that an

adjudication hearing did not occur in this case, Mr. T's is not a prevailing eligible party under the plain and unambiguous terms of R.C. 119.092(A).

Appellant argues, nonetheless, that he was a prevailing eligible party because "[t]he administrative case against Appellant was terminated because of the Motion that was filed and the decision in the Hearing Examiner's Report and Recommendation." Reply Br. p. 7. See Amended Motion for Attorney Fees, p. 1 #3 ("[M]r. T's is the prevailing party in case number M2010-220. The Notice issued by the Division was dismissed on February 12, 2013."). Mr. T's statement, however, is not correct. The January 12, 2013 Order, which was mailed to Mr. T's on February 12, 2013, terminated the Division's Notice without prejudice to the Division, which retained the right to re-file the Notice against Mr. T's. As noted above, Mr. T's did not prevail on either its November 9, 2012 Motion or December 17, 2012 Motion filed with the Hearing Examiner seeking dismissal with prejudice. Neither motion was granted, and the Notice issued to Mr. T's was not dismissed with prejudice. After considering the record, including both pending motions, the Division terminated the matter without prejudice in its January 12, 2013 Order. As a result, Mr. T's motions failed to obtain the relief sought by Mr. T's. In short, Mr. T's did not prevail on its motions. Again, as noted above, Mr. T's did not appeal the Division's January 12, 2013 Order, which considered and rejected the relief sought by Mr. T's motions.

Recently, the Tenth District Court of Appeals expansively discussed the term "prevailing party" as used in a fee-shifting provision of a lease agreement in *EAC Props., L.L.C. v. Brightwell*, 10th Dist. No. 13AP-777, 2014-Ohio-2078. While not a R.C. 119.092 fee case, the holding of the Tenth District in *Brightwell* is instructive. The court stated:

> Black's Law Dictionary (9th ed.2009) defines 'prevailing party' as '[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded.' *Hikmet v. Turkoglu*, 10th Dist. No. 08AP-1021, 2009-Ohio-6477, ¶73, quoting Black's Law Dictionary (9th Ed.2009). A 'prevailing party' is generally

> the party 'in whose favor the decision or verdict is rendered and judgment entered.' Id. at ¶ 74, quoting *Hagemeyer v. Sadowski,* 86 Ohio App.3d 563, 566, 621 N.E.2d 707 (6th Dist.1993), quoting *Yetzer v. Henderson*, 5th Dist. No. CA-1967, 1981 Ohio App. LEXIS 12353 (June 4, 1981). In *Hikmet*, this court further defined 'prevailing party' as: The party to a suit who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily to the extent of his original contention. The one in whose favor the decision or verdict is rendered and judgment entered. . . . To be such does not depend upon the degree of success at different stages of the suit, but whether, at the end of the suit, or other proceeding, the party who had made a claim against the other, has successfully maintained it. Id. at ¶ 75, citing *Moga v. Crawford*, 9th Dist. No. 23965, 2008-Ohio-2155, ¶ 6.

Here, there was no final verdict rendered or judgment entered in Mr. T's favor. There was no order entered in the journal of the Division, as required by R.C. 119.092(A)(4), with regard to the merits of the Notice and the relief sought by the Division against Mr. T's. The underlying action is not yet decided as the Division retains the right to re-file the Notice issued to Mr. T's. The final verdict or judgment requirement set forth by the Tenth District in *Brightwell* is similar to the statutory requirement of R.C. 119.092 that there be a successful adjudication in favor of the prevailing party that is journalized in an order before the prevailing party is eligible to seek compensation for attorney fees. An "'adjudication' for purposes of R.C. Chapter 119 is a determination by the highest or ultimate authority of an agency of the rights, duties, privileges, or legal relationships of a specified person" conducted after a hearing. R.C. 119.01(D); *In re Rocky Point Plaza Corp.* 86 Ohio App.3d 485 (10thDist.1993). Based upon the Tenth District's definition of a prevailing party, the Division finding in its February 15, 2013 Order that Mr. T's was not a "prevailing eligible party" entitled to seek recovery of its fees was not unreasonable, arbitrary or unconscionable. The Division did not abuse its discretion.

Moreover, Appellant's contention that it is an eligible prevailing party entitled to attorney fees violates basic rules of statutory construction dictating that when a statute is clear on its face, as is R.C. 119.092, the statute is not to be enlarged or construed other than as its words demand.

Kneisley v. Lattimer-Stevens Co., 40 Ohio St.3d 354, 357 (1988), citing *Hough v. Dayton Mfg. Co.*, 66 Ohio St. 427 (1902). "A basic rule of statutory construction requires that 'words in statutes should not be construed to be redundant, nor should any words be ignored.'" *D.A.B.E. v. Toledo-Lucas Cty. Bd. of Health,* 96 Ohio St.3d 250, 2002-Ohio-4172, ¶ 26, quoting *E. Ohio Gas Co. v. Pub. Util. Comm.*, 39 Ohio St.3d, 295, 299 (1988). Statutory language "'must be construed as a whole and given such interpretation as will give effect to every word and clause in it.'" *D.A.B.E.* at ¶26, quoting *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 372-73 (1917). "[W]ords must be given their usual, normal, and/or customary meanings." *Proctor v. Kardassilaris*, 115 Ohio St.3d 71, 2007-Ohio-4838, ¶12. Further, when the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory construction. *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St.3d 93, 96, 573 N.E.2d 77 (1991); *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413, paragraph five of the syllabus (1944).

Indeed, strict compliance with the provisions of Chapter 119 of the Revised Code is the general rule. *Citizens for Akron v. Ohio Elections Comm.*, 10th Dist. Nos. 11AP-152 & 11AP-153, 2011-Ohio-6387, ¶27 (failure of the Ohio Election Commission to comply within the time allowed to file the complete record of proceedings as required by R.C. 119.12 required the court to enter a finding in favor of the party adversely affected). This is particularly true with regard to the provisions of R.C. 119.092, with which this Court, the Tenth District Court of Appeals, and the Ohio Supreme Court have all required strict compliance. *State ex rel. Auglaize Mercer Community Action Comm'n v. Civ. Rights Comm'n*, 73 Ohio St. 723, 727 (1995) (rejected claim that R.C. 119.092 is a remedial statute which should be liberally construed, and found, instead, that it is a statute whose meaning is unequivocal, unambiguous, and definite); *Ohio Fresh Eggs,*

L.L.C. v. Boggs, 183 Ohio App.3d 511, 2009-Ohio-3551, ¶18 (10thDist.) (Appellant failed to follow the procedures set forth in R.C. 119.092 and failed to file with its motion for attorney fees with the common pleas court, instead of ERAC. ERAC was not an agency for purposes of R.C. 119.12 and had no jurisdiction to consider the motion for attorney fees); *Orth v. State of Ohio Dep't of Edu.*, Franklin Cty. C.P. No. 13CVF-8724 (J., Schneider), October 24, 2014 Decision and Entry, p. 5 & 11 ("the language of the statute [R.C. 119.092] is plain and unambiguous" and "[t]his Court can neither ignore the plain language of the [R.C. 119.092], nor insert words or phrases into the statute that have not been placed there by the General Assembly."). Cf. *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, ¶17 (stating that "[j]ust as we require an agency to strictly comply with the requirements of R.C. 119.09, a party adversely affected by an agency decision must likewise strictly comply with R.C. 119.12 in order to perfect an appeal"); *Nibert v. Ohio Dept. of Rehab. & Corr.*, 84 Ohio St.3d 100, 102, 1998-Ohio-506, quoting *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.*, 69 Ohio St.3d 521, 525 (1994) (interpreting the R.C. 119.12 appeal requirements and stating " '[t]here is no need to liberally construe a statute whose meaning is unequivocal and definite' "); *Sinha v. Dept. of Agriculture*, 10th Dist. No. 95APE09-11239 (March 5, 1996)(deciding an appellant was entitled to judgment under R.C. 119.12 when the agency certified the record to the court of common pleas 31 days after the notice of appeal was filed).

In this case, the language of R.C. 119.092 is plain and unambiguous. A party is an "eligible prevailing party" only if the party prevails after the agency conducts an adjudication hearing, and the agency's order following that hearing is journalized. Under the plain, unambiguous, normal and customary meaning of the language of R.C. 119.092(A)(1) & (A)(4), Mr. T's was required to prevail, it was required to prevail after an adjudication hearing, and an

order had to be journalized after the adjudication hearing. None of those things occurred in this matter. Consistent with this reasoning, the Tenth District has found that where a party does not meet the statutory requisites that are necessary for a party to file a proper motion in accordance with the statute, the motion for fees should be denied. *See Mech. Contrs. Ass'n of Cincinnati, Inc. v. Univ. of Cincinnati*, 10th Dist. No. 02AP-689, 2003-Ohio-1837. Controlling precedent and the laws of statutory construction simply do not permit the Court to overlook the use of the words "prevail" and "after the agency conducts an adjudication hearing" of the statute. *State v. Craig*, 116 Ohio St.3d 135, 2007-Ohio-5752, ¶14. These are not mere technicalities, as Appellant suggests. There is no other possible result. Mr. T's is not an eligible prevailing party. Mr. T's third assignment error is **overruled.**

C. Assignment of Error #1 – The Division's Order Is In Accordance With Law, It Did Comply With R.C. 119.092, And The Hearing Officer Was Not Authorized To Review The Motion For Fees.

Mr. T's argues in its first assignment of error that "Hearing Examiner Melle should have reviewed the request for attorney fees" and by making the decision itself, the Division acted in "direct contradiction to R.C. 119.092." Appellant's Br. p. 3. Mr. T's suggests any decision otherwise would "created an absurd and ridiculous result." *Id*. p. 4. Mr. T's argument, however, ignores the plain and unambiguous language of R.C. 119.092, with which this Court has already found strictly compliance is required.

R.C. 119.092(B)(2) provides that "[u]pon the filing of a motion [for attorney fees] under this section, the request for the award shall be reviewed by the referee or examiner who conducted the adjudication hearing or, if none, by the agency involved." In this case, this Court has determined that no adjudication hearing was conducted. As a result, there was no "referee or examiner who conducted the adjudication hearing." In such circumstances, the statute provides

that the agency involved – the Division – shall review the request for the award. *Id.* Moreover, the Ohio Supreme Court has found that R.C. 119.092 requires only a "review" of the request for attorney fees, not a hearing on the motion. *State ex rel. Auglaize Mercer Community Action Comm'n*, supra, at 726. Under the unambiguous terms of R.C. 119.092(B)(2), the Division was required to review Mr. T's Amended Motion for attorney fees. The Division did not abuse its discretion and did not fail to comply with the requirements of R.C. 119.092. Mr. T's first assignment of error is **overruled**.

DECISION

The February 15, 2013 Division Order of the State of Ohio Department of Commerce, Division of Financial Institutions is not unreasonable, arbitrary or unconscionable, and the State of Ohio Department of Commerce, Division of Financial Institutions did not abuse its discretion in denying Appellant's Amended Motion for Attorney Fees filed on February 13, 2013.

Appellant Mr. T's Heart of Gold and Diamonds, LLC's assignments of error one, two and three are **OVERRULED**. The February 15, 2013 Division Order of the State of Ohio Department of Commerce, Division of Financial Institutions is **AFFIRMED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

> **(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry. Costs to Appellant.

IT IS SO ORDERED.

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Franklin County Court of Common Pleas

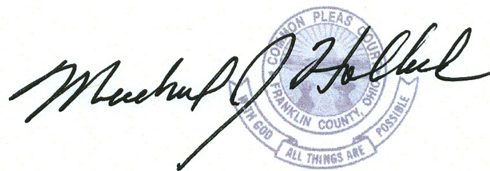
Date: 10-24-2014

Case Title: MR TS HEART OF GOLD AND DIAMONDS LLC -VS- OHIO STATE DEPART COMMERCE DIV FINANCIAL

Case Number: 13CV002280

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Michael J. Holbrook

Franklin County Ohio Clerk of Courts of the Common Pleas- 2014 Oct 24 10:41 AM-13CV002280

Court Disposition

Case Number: 13CV002280

Case Style: MR TS HEART OF GOLD AND DIAMONDS LLC -VS-
OHIO STATE DEPART COMMERCE DIV FINANCIAL

Final Appealable Order: Yes