

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2149

JUDI GUTH

VERSUS

**STATE OF LOUISIANA, DIVISION OF ADMINISTRATION,
OFFICE OF COMMUNITY DEVELOPMENT, THROUGH
ANGELE DAVIS, COMMISSIONER OF ADMINISTRATION**

—
**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 577,572, Section 24
Honorable R. Michael Caldwell, Judge Presiding**
—

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Judi Guth**

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State of Louisiana**

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Judgment rendered JUL - 9 2010

PARRO, J.

The plaintiff appeals those portions of the district court judgment that sustained defendant's exception raising the objection of no cause of action and dismissed her petition for judicial review. For the following reasons, we affirm.

Factual Background and Procedural History

As a result of the damage to her home in New Orleans East by flood waters associated with Hurricane Katrina, Judi Guth applied for benefits under the Road Home Program administered by the Louisiana Office of Community Development (OCD), an agency of the State of Louisiana, within the Division of Administration. Based on OCD's determination that Guth's home was not damaged 51 percent or more of its pre-hurricane value, her application was denied.¹ Therefore, she filed a "Petition for Judicial Review of Administrative Decision Denying Road Home Benefits" in district court, relying on the Louisiana Administrative Procedures Act (APA), LSA-R.S. 49:964 et seq. In her petition, Guth urged that OCD's decision was not supported by a preponderance of the evidence and that it was arbitrary, capricious, manifestly erroneous, and contrary to the constitution. She further alleged that OCD, through its administrator, acted in an unconstitutional, unfair, and biased manner with regard to the denial of her application for benefits. Based on these allegations, Guth requested that the district court vacate OCD's decision, declare that she is eligible for a Road Home compensation grant, and award her Road Home benefits pursuant to the procedures set forth for homes with damages of 51 percent or more.

OCD responded by filing an exception urging the objections of no cause of action and no right of action based on the following: (1) the Road Home Program is not an entitlement program, (2) Guth has no right or standing to challenge the disbursement of Community Development Block Grant funds, (3) the APA does not apply, and there is no other statutory or constitutional basis for judicial review of OCD, and (4) OCD has developed a comprehensive appeal process to ensure uniform application of the policies and fairness for all applicants.

¹ Calculation of an applicant's loss depends on whether the damage to the property was 51 percent or more of its pre-storm damage.

After the hearing in this matter, the district court found that the applicable federal statutes do not create a property right; they only create a privilege. The district court observed that the APA provides for judicial review where a statutory or constitutional provision so authorizes and noted that there is no statutory or constitutional provision giving dissatisfied Road Home Program applicants the right to judicial review. Moreover, the district court found that there had been no violation of Guth's right of due process. Accordingly, the district court sustained OCD's exception urging the objection of no cause of action.² Guth appealed.

Discussion

This court considered the issues raised in this appeal in Dandridge v. Office of Community Development, 09-1564 (La. App. 1st Cir. 12/7/09) (unpublished writ action).

The district court in Dandridge found as follows:

La. R.S. 49:964 grants aggrieved parties the right to appeal administrative rulings. Plaintiffs have stated a cause of action and thus have a right of action in that Plaintiffs have alleged that their Road Home award was based on mathematical errors and miscalculations. The OCD provides the Court with some background on its appeals process; however, the OCD does not allege that Plaintiffs failed to pursue or exhaust its appeals process. The State merely argues that the Plaintiffs should not be afforded judicial review because the OCD has its own appeal process and once that process has been completed there is no further review of decisions available. The Court did not and could not find, nor was any submitted by the OCD, any law barring administrative decisions from judicial review. If such were true, an initial decision of the OCD would essentially operate as a final decision of the OCD since all appeal levels are reviewed by various persons of the OCD. Such a process is not harmonious with the legal right of a party to seek an appeal. Though state agencies operate pursuant to their particular procedures and protocols, those procedures and protocols remain subject to state law. To operate otherwise, as the OCD suggest, would usurp applicants of their due process rights and circumvent the laws of this State.

Therefore, the district court in Dandridge denied OCD's peremptory exception raising the objections of no cause of action and no right of action, and OCD filed an application for a supervisory writ with this court.

After considering the merits of the writ application in Dandridge, this court found that the Dandridges (1) did not have a cause of action or a right of action for judicial review as provided for in LSA-R.S. 49:964, (2) failed to show that OCD's calculation of their award pursuant to the Road Home Program was arbitrary and capricious, and (3)

² OCD's objection of no right of action was overruled.

Civil Service Rule 13.35 grants the Commission the discretionary power to award attorney fees when the action of an appointing authority is modified or reversed, and an abuse of that discretion must be shown for this court to modify or vacate the award.¹ Morgan v. Louisiana State University, 06-0570 (La. App. 1st Cir. 4/4/07), 960 So.2d 1002, 1007. Having found no manifest error with the Commission's factual findings, and having concluded the Commission's reversal of the disciplinary action and order of reimbursement for the reduction in pay with interest were not arbitrary or capricious and did not constitute an abuse of discretion, we find the Commission acted well within its discretion in awarding attorney fees in this case.

Accordingly, we affirm the decision of the State Civil Service Commission in accordance with URCA Rule 2-16.2(A)(4), (5), (6), (7), and (8). The costs of this appeal in the amount of \$1,121.50 are assessed to LSU Health Sciences Center, University Medical Center.

AFFIRMED.

¹ Civil Service Rule 13.35(a) provides:

When the Commission or a referee approves a settlement, recision, or modification of an action that has been appealed, or renders a decision, including a decision on application for review, which reverses or modifies an action that has been appealed, the appellee may be ordered to pay attorney's fees in amount not to exceed \$1,500.