

BEFORE THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

LIFE INSURANCE COMPANY OF THE SOUTHEAST
d/b/a NATIONAL LIFE GROUP,

Petitioner,

vs.

DOAH Case No. 19-5140 BID

BROWARD COUNTY SCHOOL BOARD

L.T. Case No. RFP FY20-013

Respondent,

and

AXA EQUITABLE LIFE INSURANCE
COMPANY,

Intervenor.

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**PETITIONER'S RESPONSE TO RESPONDENT'S
AMENDED MOTION TO AWARD COSTS**

COMES NOW, Petitioner, LIFE INSURANCE COMPANY OF THE SOUTHWEST and requests that the School Board's Motion to Award Costs be dismissed or in the alternative that certain costs be disallowed, stating:

1. School Board Policy 3320, VIII, subparagraph N. provides that: "[t]he bond shall be conditioned upon the payment of all costs which may be adjudged against the protestant in a formal administrative hearing in which the action is brought and in any subsequent appellate court proceeding." (emphasis supplied) The same paragraph continues to provide that if the School Board prevails, then the School Board shall recover all costs which shall be included in the Final Order.

2. It is axiomatic that provisions of the same paragraph in an ordinance, rule or policy should be read together and harmonized if possible. Applying that maxim to this paragraph, the School Board, as a litigant in this proceeding, is required to file its Motion for

Costs at the Division of Administrative Hearings in order to receive an award of costs. The Administrative Law Judge would be guided by the Purchasing Policy and the applicable law. The School Board would then award those costs indicated by the Judge in its Final Order. Presently, there are no costs awarded in a “formal administrative hearing” which can be charged against the bond.

3. Further, the School Board’s argument that the Purchasing Policy does not preclude it from deciding the amount of costs to be awarded to itself does not make logical sense. School Board Policy 3320, VIII, subparagraph L states “if there is a disputed issue of material fact, The Board shall refer the protest to the Division of Administrative Hearings for proceedings under Chapter 120.57(1), Florida Statutes, upon the written request of the protestant.” The award of costs is necessarily part of the protest “proceedings” since Chapter 120.57(1) specifically allows for the Administrative Law Judge to rule on motions to tax costs. Thus, the Board’s motion should be properly heard at the Division of Administrative Hearings.

4. Additionally, there are a number of costs asserted in the Cost Affidavit which are not appropriately taxed against Petitioner. The Administrative Procedures Act provides that the term “costs” has the same meaning as provided for in civil actions in Florida. Section 120.595(1)(d), Florida Statutes. The case law provides that the cost of a deposition may be awarded as costs against the non-prevailing party when the taking of the deposition served a useful purpose in aiding the prevailing party in preparing for trial. *Wilkins v. SuperX Drugs of Florida* 232 So.2d 19 (Fla. 4th DCA 1970); See also *Otis Elevator Co. v. Bryan* 489 So. 2d 1189 (Fla. 1st DCA 1986) (“The rule in Florida is to disallow taxation of costs for discovery depositions taken in preparation for trial. But where depositions serve a useful purpose, they are taxable as costs”) and *Crane v. Stultz* 136 So. 2d 238 (Fla. 2d DCA 238)

(“unsuccessful party was improperly charged with costs of deposition which successful party used only for discovery purposes and which was not clearly employed at hearing.”).

5. An evidentiary hearing before the Administrative Law Judge is clearly needed to determine what depositions costs are reasonably taxable against Petitioner. Respondent must present evidence that the deposition served a useful purpose in preparing for trial and/or was employed at the hearing in order to tax costs against Petitioner. At a minimum, the costs of the deposition of Vicki Moten, Erum Motiwala, Daniel Reynolds, Mary Coker, Pete Tingom, Judith Marte, and Gerald Desmond should not be taxed against Petitioner as they were not employed at hearing by Respondent and did not serve a useful purpose in preparing for trial. Those costs are estimated at \$4,305.00.

6. The Statewide Uniform Guidelines for Taxation of Costs provide that it is the burden of the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case.” *-In re Amendments to Unif. Guidelines for Taxation of Costs*, 915 So. 2d 612, 614 (Fla. 2005). While the cost of a magistrate is taxable there is no mention of travel expenses for a magistrate. Indeed, the Guidelines prohibit travel costs of attorneys and witnesses. Similarly, while the costs of producing documents are taxable, the costs associated with delivery of documents are not taxable. *See Robbins v. McGrath*, 955 So. 2d 633, 635 (Fla. 1st DCA 2007) (holding costs including postage, fax transmissions, delivery service, and computer search are office expenses or overhead that should not be taxed as costs. Those costs are estimated to be \$1,590.48.

7. Petitioner maintains there was an understanding that there was an agreement to split the cost of the transcript between the parties. The invoices attached to the School Board’s affidavit in support of the motion for costs reflects that understanding, in that each party paid 1/3 the total cost of the transcript. (See pages 36 and 37 of attachments to cost

affidavit.) The taxation of the costs of the transcript is contrary to that understanding. That would result in a reduction of \$2,340.48.

WHEREFORE, Petitioner requests that the Motion to Award Costs be dismissed without prejudice to refile in the underlying case at the Division of Administrative Hearings so that an evidentiary hearing can be held on whether the cost were reasonably necessary or served a useful purpose in preparing for trial. In the alternative, Petitioner requests that the costs be reduced by \$8,296.00.

RESPECTFULLY SUBMITTED this 6th day of May, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the true and correct copy of the foregoing has been electronically filed with the School Board of Broward County on May 6, 2020, and that a copy was provided by eservice to the parties of record:

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