

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

AMR SALAM,

Petitioner,

v.

CASE NO. 1D06-3956

BOARD OF PROFESSIONAL
ENGINEERS,

Respondent.

Opinion filed December 15, 2006.

Petition for Writ of Mandamus -- Original Jurisdiction.

Edwin A. Bayó of Gray, Robinson, P.A., Tallahassee, for Petitioner.

Charlie Crist, Attorney General, and Lee Ann Gustafson, Senior Assistant Attorney General, Tallahassee, for Respondent.

PER CURIAM.

Petitioner, an applicant for licensure as a professional engineer, sought a writ of mandamus complaining that the Board of Professional Engineers failed to grant or deny his petition for formal hearing within 15 days of receipt as required by section 120.569(2)(a), Florida Statutes (2005). By unpublished order, we granted the petition and directed the Board to rule on the petition for formal hearing within 15 days. See

Teachers Educators Ass'n, Inc. v. Duval County Sch. Dist., 763 So. 2d 1265 (Fla. 1st DCA 2000).

Because petitioner has obtained the relief sought in his petition for writ of mandamus, we grant petitioner's request for attorney's fees. The agency's action in failing to rule on his petition for formal hearing within 15 days as required by section 120.569(2)(a) constituted a gross abuse justifying an award of attorney's fees to petitioner pursuant to section 120.595(5). In the administrative process, it is fundamental that an aggrieved person receive a formal administrative hearing upon request. Here, that request was timely made and the agency randomly put it on hold; by so doing, the agency exercised its discretion arbitrarily and capriciously in violation of fundamental requirements. The agency's unexplained delay necessarily involved a discretionary act, which under the circumstances of this case was gross. The agency's inexplicable delay put petitioner's request for licensure on hold for four months while the agency postponed ruling on his request for a formal hearing. A citizen's rights under the Florida Statutes must be taken seriously by the State's agencies and handled expeditiously.

BROWNING, C.J., and BARFIELD, J., CONCUR. VAN NORTWICK, J., CONCURS IN PART AND DISSENTS IN PART WITH WRITTEN OPINION.

VAN NORTWICK, J., concurring in part and dissenting in part.

I agree with the majority that the petition for writ of mandamus should have been granted. I dissent with respect to the award of attorney's fees to petitioner. Section 120.595(5), Florida Statutes (2005), provides that when there is an appeal, the court may award reasonable attorney's fees and costs "to the prevailing party if the court finds . . . that the agency action which precipitated the appeal was a gross abuse of the agency's discretion." Here, the Board of Professional Engineers did not exercise its discretion when it failed to act on the petition for formal hearing within 15 days of receipt. Instead, the Board failed to perform the ministerial duty of ruling on the petition for formal hearing.¹ The Board will exercise its discretion when it determines whether to grant or deny the petition for formal hearing. The failure to ministerially rule on the petition cannot be "a gross abuse of discretion" under section 120.595(5). Compare, Residential Plaza At Blue Lagoon, Inc. v. Agency for Health Care Admin., 891 So. 2d 604 (Fla. 1st DCA 2005) (granting attorney fees where the court found that the agency grossly abused its discretion by denying renewal of a license, refusing to grant a formal hearing on the denial and failing to respond to substantive arguments on appeal).

¹"Mandamus does not lie to compel the exercise of discretion in a particular fashion or to establish a right." Marshall v. State, 838 So. 2d 702, 703 (Fla. 5th DCA 2003).