

[Cite as *Byrd v. Ohio Atty. Gen.*, 2017-Ohio-2868.]

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| HOUSTON BYRD, JR. | Case No. 2016-00782-AD |
| Plaintiff | Clerk Mark H. Reed |
| v. | |
| OHIO ATTORNEY GENERAL | <u>MEMORANDUM DECISION</u> |
| Defendant | |

{¶1} Plaintiff Houston Byrd, Jr. (hereinafter “plaintiff”) filed a complaint against defendant the Ohio Attorney General (hereinafter “OAG”) on October 25, 2016. On December 21, 2016, OAG filed its investigation report. On December 29, 2016, plaintiff filed his response.

{¶2} Based on a review of plaintiff’s complaint, it appears that he alleges that the Consumer Protection Section of the OAG’s office failed to fully investigate and prosecute two consumer complaints filed by plaintiff. As a result of this failure, plaintiff alleges he suffered \$7,413.00 in damages. Specifically, plaintiff alleges the loss of \$5,500.00 for material for the siding of his home that was accepted by a person named Mr. Ross, but no materials were provided. He also alleges a loss of \$1,913.00 for paint for the side of his home that was accepted by Oasis Painting for which no services were received. Plaintiff alleges that defendant should have written “a Demand Letter to the contractors demand reparations for monies immediately or an arrest warrant be issued.” (Complaint, Appendix Pg. 1).

{¶3} In its investigation report, defendant denies every allegation contained in plaintiff’s complaint and argues that “the OAG took all reasonable measures it could to try to resolve this private issue for Plaintiff.” (Investigation Report, Pg. 1). Defendant argues that plaintiff’s complaint fails for the following two reasons: (1) “plaintiff has failed to state a claim upon which relief can be granted in the Court of Claims because the OAG is entitled to discretionary immunity in its decision not to bring civil claims against

the contractors;" and (2) "the Court lacks jurisdiction because Plaintiff is not seeking monetary damages against the OAG." (Investigation Report, Pg. 4).

{¶4} With regard to the first argument, defendant states that the decision to not bring civil charges against the contractors was a decision involving a high degree of discretion to which the OAG is entitled to immunity pursuant to the Ohio Supreme Court cases *Reynolds v. State*, 14 Ohio St.3d 68, 70, 471 N.E.2d 776 (1984) and *Von Hoene v. State*, 20 Ohio App.3d 363, 364, 486 N.E.2d 868 (1985). In support of its argument, defendant cites *Schweisberger v. Med. Bd. of State of Ohio*, 10th Dist. No. 92-AP-1766, 1993 WL 112493 (April 8, 1993) and *Robinson v. Office of Disciplinary Counsel*, 10th Dist. No. 98-AP-1431, 1999 WL 645275 (Aug. 26, 1999).

{¶5} In *Schweisberger*, the Tenth District Court of Appeals held that the basic function of the medical board to investigate and prosecute disciplinary complaints against doctors was one involving a high degree of discretion, and decisions not to investigate are entitled to discretionary immunity. *Schweisberger*, at *1-3. In *Robinson*, the Tenth District Court of Appeals held, similarly to *Schweisberger*, that the Office of Disciplinary Counsel was entitled to discretionary immunity regarding its decision to not investigate an attorney who had several complaints filed against him. *Robinson*, at *1, 4-5.

{¶6} With regard to its second argument, defendant argues that plaintiff is seeking to recover money allegedly owed to him by the contractors, not the State of Ohio, and the Court of Claims does not have jurisdiction over plaintiff's complaint. In his response to defendant's investigation report, plaintiff appears to make arguments similar to those made in his complaint, namely that the OAG did not send demand letters and failed to prosecute his claims.

{¶7} Upon review, the court agrees with both of defendant's arguments. First, the OAG's decision not to bring civil charges against the two contractors that plaintiff alleges failed to provide services that he paid for was an executive or planning function

involving the making of a basic policy decision that was characterized by the exercise of a high degree of official judgment or discretion. Furthermore, R.C. 1345.07(A), cited by plaintiff on page two of his response to defendant's investigation report, states that "[i]f the attorney general, by the attorney general's own inquiries or as a result of complaints, has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates this chapter, and that the action would be in the public interest, the attorney general may bring any of the following:" (Emphasis Added). Regardless of whether the decision involves a high degree of discretion, the OAG is not required to bring an action as the result of an inquiry.

{¶8} Second, plaintiff is not seeking to recover money owed to him by the State of Ohio, rather plaintiff wants the contractors to repay him the money that he paid them. Therefore, the Court does not have jurisdiction over plaintiff's complaint. See R.C. 2743.03(A)(2). As such, plaintiff's claim is denied.

HOUSTON BYRD, JR.

Plaintiff

v.

OHIO ATTORNEY GENERAL

Defendant

Case No. 2016-00782-AD

Clerk Mark H. Reed

ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

MARK H. REED
Clerk

Filed 1/20/17
Sent to S.C. Reporter 5/18/17