

1 **Final agency action regarding decision below:**

2 **REQHRG Date hearing requested**

3 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

4 **PATRICK ERTZ,**

5 Petitioner,

6 -v-

7 **ARIZONA SECRETARY OF STATE,**

8 Respondent.

No. 06A-002-NOT

**ORDER DENYING APPLICATION  
FOR ATTORNEY'S FEES AND COSTS**

9 Pending before the Office of Administrative Hearings is Petitioner Patrick Ertz's  
10 March 12, 2007 Application of Attorney's Fees and Costs, and the Arizona Secretary of  
11 State's March 27, 2007 Objection to said Application. Pursuant to the Application,  
12 Petitioner seeks an award of fees in the amount of \$31,609.00, and costs in the amount  
13 of \$1,789.98. For the reasons set forth herein, the Application is denied.

14 Background

15 This case presented the question of whether the Arizona Secretary of State  
16 properly revoked Patrick Ertz's commission as a notary public. The parties presented  
17 evidence at a formal administrative hearing on September 7, 2006 and October 12,  
18 2006. Both parties submitted post-hearing memoranda. On January 11, 2007, the  
19 Administrative Law Judge issued an Administrative Law Judge Decision (the "Decision")  
20 that was adverse to the Secretary's position. The Secretary rejected the Decision by  
21 Order dated February 9, 2007. Thereafter, Mr. Ertz sought an award of attorney's fees  
22 and costs pursuant to A.R.S. § 41-1007.

23 Applicable Law

24 A.R.S. § 41-1007 provides, in pertinent part:

25 A. Except as provided in section 42-2064, subsection G, a hearing  
26 officer or administrative law judge shall award fees and other costs  
27 to any prevailing party in a contested case or an appealable agency  
28 action brought pursuant to any state administrative hearing  
29 authority. For purposes of this subsection, a person is considered  
30 to be a prevailing party only if both:

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

1. The agency's position was not substantially justified.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

1 2. The person prevails as to the most significant issue or  
2 set of issues unless the reason that the person prevailed is  
3 due to an intervening change in the law.

3 Analysis

4 Mr. Ertz's application for attorney's fees and costs must be denied because Mr.  
5 Ertz was not the prevailing party in this matter. While it is true that the Decision was  
6 favorable to Mr. Ertz, the controlling decision for purposes of A.R.S. § 41-1007 is the  
7 decision of the Secretary (see A.R.S. § 41-1092.08(F)), and that decision was adverse  
8 to Mr. Ertz.

9 Based on the foregoing,

10 **IT IS ORDERED** that Mr. Ertz's application for attorney's fees and costs is  
11 **DENIED.**

12  
13 Done this day, April 5, 2007.

14  
15 \_\_\_\_\_  
16 Daniel G. Martin  
17 Administrative Law Judge

18 Copy mailed this \_\_\_\_ day of April, 2007 to:

19 Jan Brewer, Secretary of State  
20 ATTN: Gene Palma  
21 Business Services Division  
22 1700 W. Washington, 7th Floor  
23 Phoenix, AZ 85007

24 Paul A. Conant, Esq.  
25 Thomson Conant PLC  
26 2398 E. Camelback Road, Suite 925  
27 Phoenix, AZ 85016

28 Christina A. Kinnear, Esq.  
29 Assistant Attorney General  
30 Office of the Attorney General  
15 S. 15th Avenue, 4th Floor  
Phoenix, AZ 85007

By \_\_\_\_\_