

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000487-MR

MILFORD MARTIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 01-CI-007677

KENTUCKY BOARD OF MEDICAL LICENSURE

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER, AND DYCHE, JUDGES.

BARBER, JUDGE: The Appellant, Milford Martin (Martin), *pro se*, seeks review of an Opinion and Order of the Jefferson Circuit Court dismissing his request for costs against the Appellee, the Kentucky Board of Medical Licensure ("the Board"), under the Open Records Act. Finding no error, we affirm.

On November 9, 2001, Martin filed a complaint in the Jefferson Circuit Court against the Board for costs associated with obtaining relief from the Attorney General's office in

regards to an Open Records request. In his brief, Martin explains that "[t]hrough extensive letter writing and the Appellant finally having to go through the Office of the Attorney General did he finally receive the documents that he requested all along."

The circuit court dismissed the complaint, because KRS 61.882(2) only provides for an award of costs where it is necessary to resort to legal action.

The statute provides:

5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars (\$25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

Here, Martin was successful in obtaining relief through an appeal to the Attorney General's office. He did not prevail "in an action in the courts"; therefore, the statute does not apply. We conclude that the trial court properly granted the motion to dismiss. Accordingly, we affirm the

Opinion and Order of the Jefferson Circuit Court entered
February 5, 2002.

ALL CONCUR.

BRIEF FOR APPELLANT:

Milford T. Martin, Pro Se
Central City, Kentucky

BRIEF FOR APPELLEE:

C. Lloyd Vest, II
Louisville, Kentucky