



City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:

Andrea Suggs
Complainant,
v.

Montessori Academy Infant-Toddler Center,
Inc.
Respondent.

Case No.: 13-E-56

Date of Ruling: January 14, 2016

FINAL RULING ON ATTORNEY FEES AND COSTS

I. INTRODUCTION

On August 13, 2015, the Chicago Commission on Human Relations issued a Final Ruling in favor of Complainant Andrea Suggs on her claims that Respondent Montessori Academy Infant-Toddler Center, Inc. subjected her to pregnancy related sex discrimination in violation of Chapter 2-160 of the Chicago Municipal Code. The Commission awarded Complainant damages in the total amount of \$15,993.75, plus interest on the damages, and ordered fines paid to the City of Chicago in the amount of \$1,000. The Commission also awarded Complainant her reasonable attorney fees and costs. *Suggs v. Montessori Academy Infant-Toddler Center, Inc.*, CCHR No. 13-E-56 (Aug. 13, 2015).

Following that Final Ruling, in a timely petition filed October 5, 2015, Complainant requested \$69,950 in attorney fees and \$1,732.50 in paralegal fees, plus interest on these fees, and \$1,314.01¹ in costs. Respondent did not file any objections to the petition with the Commission. The hearing officer issued a recommended ruling on the petition on October 22, 2015. No objections were filed.

II. APPLICABLE LEGAL STANDARDS

Commission Regulation 240.630(a) requires that an attorney fee petition establish the number of hours for which compensation is sought in segments of no more than one-quarter hour itemized according to the date performed, work performed, and individual who performed the work. It also must establish the rate customarily charged by each individual for whom compensation is sought, or in the case of a public or not-for-profit law office which does not charge market rate fees, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise.

The Commission follows the lodestar method of calculating reasonable attorney's fees. That is, the Commission determines the number of hours that were reasonably expended on the case and multiplies that number by the customary hourly rate for attorneys with the level of experience of the complainant's attorney. *Barnes v. Page*, CCHR No. 92-E-1 (Jan. 20, 1994); *Nash and Demby v. Sallas Realty et al.*,

¹ Although stated in the fee petition as \$1,255.68, the correct total in costs is \$1,314.01.

CCHR No. 92-H-128 (Dec. 7, 2000). The party seeking recovery of attorney fees has the burden of presenting evidence from which the Commission can determine whether the fee requested is reasonable. *Brooks v. Hyde Park Realty Company, Inc.*, CCHR No. 02-E-116 (June 16, 2004).

The Commission is not required to award attorney fees in an amount proportional to the amount of damages awarded. *Nash and Demby, supra*; see also *Wright v. Mims*, CCHR No. 93-H-12 (Sept. 17, 1997), and *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010). The party seeking attorney fees has the burden of presenting evidence from which the Commission can determine whether the fees requested are reasonable. *Brooks v. Hyde Park Realty Co.*, CCHR No. 02-E-116 (June 16, 2004).

III. AMOUNT OF HOURS REASONABLY EXPENDED

Complainant's attorney is to be compensated at an approved hourly rate for all time reasonably expended on this case. See, e.g., *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Feb. 24, 1999); *Soria v. Kerns*, CCHR No. 95-H-13 (Nov. 20, 1996). "In determining the amount of time reasonably spent on a given case, the Commission considers the specific facts of the case." *Nuspl v. Marchetti*, CCHR No. 98-E-207 at 6 (Mar. 19, 2003). "In addition, the hearing officer may use his or her own experience, knowledge and expertise to determine the amount of time reasonably required for such work." *Id.*

Here, Complainant seeks fees for 139.9 hours expended in this matter and 23.1 hours spent by her paralegal over approximately a one-year period.² The hearing officer found that the litigation in this matter was hotly contested with numerous pre and post-hearing motions being filed by both parties. Upon examination of the time sheets submitted by Complainant's attorney, the hearing officer found that the time spent was reasonably attributable to the tasks performed, with the following exceptions:

a. 27.7 hours of time was spent related to the researching, drafting and filing of Complainant's post-hearing briefs. This consists of the following time entries:

3/2/2015	Call with Suggs regarding transcript and briefing issues	.3
3/4/2015	Draft post hearing brief	1.0
3/9/2015	Draft post hearing brief...	1.8
3/11/2015	Draft post hearing brief	.5
3/25/2015	Draft post hearing brief	4.3
4/7/2015	Draft brief...	4.7
4/8/2015	Draft post trial brief...	6.3
4/9/2015	Legal research. Incorporate cases into brief.	5.8
4/12/2015	Review and revise the post hearing brief	.7
4/13/2015	Review and revise post hearing brief...	2.3
	Subtotal:	27.7

In contrast to the post-hearing briefing, Complainant's attorney recorded approximately 27 hours of time preparing for and conducting the administrative hearing. The hearing officer determined that no more than 20 hours were reasonable to spend on the post-hearing brief in this case.

²In the Recommended Decision, the hearing officer incorrectly cited the number of hours for Complainant's attorney as 128.7 and the paralegal as 34.3. The correct number of total hours reported are 139.9 for work performed by Complainant's attorney, and 23.1 for work performed by her paralegal.

b. Complainant's attorney reported that she spent 14.3 hours of time in connection with answering interrogatories propounded by Respondent (and agreed to by the parties). The hearing officer found that the amount of time recorded for this item was excessive and reduced it by 2 hours.

c. Complainant's attorney reported 2.2 hours in connection with an unsuccessful Motion to Strike Respondent's exceptions. That amount will be disallowed, as it is appropriate to reduce an attorney fee award to take into account unsuccessful claims. See, e.g., *Lockwood v. Professional Neurological Services, Ltd.*, *supra*, and *Osswald v. Yvette Wintergarden Restaurant et al.*, CCHR No. 93-E-93 (Jan. 10, 1996).

The Commission agrees with the hearing officer's view that the balance of the time documented by Complainant's counsel was reasonably related to the work necessary to prosecute this action. Therefore, 128 hours of attorney time will be allowed.

Regarding the hours reported for paralegal work, the hearing officer found that the number of hours reported were excessive because the work was solely related to the preparation of the fee petition in this case. However, upon review of the time sheets submitted, the Commission finds that the activities listed for work performed by the paralegal included other tasks related to the litigation of this matter such as preparing responses to interrogatories, drafting pre-hearing motions, and preparing subpoenas. Complainant seeks compensation for a total of 23.1 hours of paralegal work. The Commission finds that the hours requested are reasonable for the work performed; therefore, the request is approved.

IV. REASONABLE HOURLY RATE

In determining an attorney's appropriate hourly rate for fee award purposes, the Commission summarized its approach to determining the appropriate hourly rate in *Flores v. A Taste of Heaven*, CCHR No. 06-E-32 (Jan. 19, 2011):

The fee applicant bears the burden of proving the market rate. The attorney's actual billing rate for comparable work is considered to be the presumptive market rate. If, however, the court cannot determine the attorney's true billing rate—such as when the attorney maintains a contingent fee or public interest practice—the applicant can meet his or her burden by submitting affidavits from similarly experienced attorneys attesting to the rates they charge paying clients for similar work, or by submitting evidence of fee awards that the applicant has received in similar cases. Once the fee applicant has met his or her burden, the burden shifts to the defendants to demonstrate why a lower rate should be awarded.

Id. at 2, quoting *Small v. Richard Wolf Medical Instruments Corp.*, 264 F.3d 702, 707 (7th Cir. 2001). "Once an attorney provides evidence of his/her billing rate, the burden is on the respondent to present evidence establishing a good reason why a lower rate is essential. A respondent's failure to do so is essentially a concession that the attorney's billing rate is reasonable and should be awarded." *Warren v. Lofton & Lofton Mgmt. d/b/a McDonald's*, CCHR No. 07-P-62/63/92 at 3 (May 19, 2010), quoting *Richardson v. Chicago Area Council of Boy Scouts*, CCHR No. 92-E-80 (Nov. 20, 1996), *rev'd on other grounds* 322 Ill. App. 3d 17 (2d Dist. 2001). Respondent did not file any objections to Complainant's fee petition. Despite Respondent's failure to file objections, the Commission has an independent duty to review the petition to assure that the petition conforms to its regulations and that the request is reasonable. *Warren, supra* at 2.

Complainant asserts that a reasonable market rate for the services of Attorney Elizabeth Hubbard is \$500 per hour. Hubbard has been practicing employment law in Illinois for over 40 years. Ms. Hubbard's affidavit establishes that her current hourly billing rate for employment discrimination matters is \$450 or \$500 an hour depending on the type of case involved. Additionally, the reasonableness of her request for \$500 per hour as the market rate for an attorney with her experience is supported by affidavits of employment attorneys David Lee and John O'Connor. The hearing officer found that \$500 per hour is the reasonable market rate for an attorney with Ms. Hubbard's experience. The hearing officer also found that the hourly rate of \$75 per hour for paralegal time is reasonable. Accordingly, the Commission adopts the hearing officer's finding that the rates requested are reasonable and should be approved.

Once the amount of fees is determined using the lodestar method, then the fee award may be adjusted by the "*Hensley* factors" ...although, as the court noted in [*People Who Care v. Rockford Board of Education*, 90 F.3d 1307, 1310-11 (7 Cir. 1996)], "most of those factors are usually subsumed within the initial lodestar calculation." *Rosezena Pierce and Roasa Parker v. New Jerusalem Christian Development Corp*, CCHR No. 07-H-12 and 07-H-13 (May 16, 2012).

The *Hensley* factors are (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. S. Rep. No. 1011, 94th Cong. 2d Sess. 6 (1976), as cited in *People Who Care* at n. 1; *Hensley v. Eckerhart*, 461 U.S. 424 at 434 n. 9, 103 S.Ct. 1933 at 1940 n. 9.

The hearing officer determined that none of the *Hensley* factors require an adjustment to the lodestar amount. The time and labor involved in the instant case was neither excessive nor out of the ordinary. The issues were straight forward with numerous evidentiary matters and mitigation of damages issues being presented. Also, the hearing officer found that Ms. Hubbard, a sole practitioner, efficiently, skillfully and successfully represented her client's interests on a contingent fee basis. As such, neither an upward nor downward adjustment to the lodestar amount is justified. The Commission agrees and adopts the recommendation.

V. COSTS

Complainant submitted appropriate documents supporting her request for compensation for costs incurred in the amount of \$1,314.01—including mailing, copying, and court reporter services. In the absence of any objections, the claimed costs are found reasonable and approved. Because Respondent has not objected to these costs and the hearing officer has recommended payment, the Commission finds that Complainant's request to be compensated for \$1,341.01 in costs is reasonable.

VI. INTEREST

Complainant's counsel requested interest on the award of fees and costs. The Commission has awarded post-judgment interest on fees and costs when interest was sought by complainants. Interest on the attorney's fees shall be awarded at the bank prime loan rate as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates. *Sleper v. Maduff & Maduff LLC*, CCHR No. 06-E-90 (Mar. 22, 2013). The Commission adopts the recommendation of the hearing officer that interest on the award of fees and costs be calculated pursuant to CCHR Reg. 240.700, starting from the date of entry of the Final Order of Liability and Relief, on August 13, 2015.

VII. SUMMARY AND CONCLUSION

In conclusion, the Commission approves and adopts the hearing officer's recommended analysis for determining the reasonable attorney fees and costs in this matter. However, the Commission finds that the error in calculation of the total number of attorney hours affects the calculation of the final fee award compared to the amount recommended by the hearing officer.

After the hearing officer's recommended reductions, the recommended award should be restated as \$65,732.50 in attorney fees and \$1,314.01 in costs for a total recommended award of \$67,046.51, plus interest from August 13, 2015. These are the amounts the Commission approves and orders Respondent to pay.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:



Mona Noriega, Chair and Commissioner

Entered: January 14, 2016