



City of Chicago  
**COMMISSION ON HUMAN RELATIONS**  
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654  
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

**IN THE MATTER OF:**

Anita Sellers  
**Complainant,**  
v.

Felix Outland  
**Respondent.**

**Case No.:** 02-H-037

**Date Mailed:** April 24, 2009

**TO:**

Michael P. Mayer, Matthew R. Carter,  
J. Malcolm Cox  
Winston & Strawn LLP  
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Chicago, IL 60601

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**FINAL ORDER ON SUPPLEMENTAL FEES AND COSTS**

YOU ARE HEREBY NOTIFIED that, on April 15, 2009, the Chicago Commission on Human Relations issued a Final Ruling on Supplemental Attorney Fees and Costs in favor of Complainant in the above-captioned matter. The Commission orders Respondent to pay attorney fees in the total amount of \$67,915.27 and costs in the total amount of \$75.00 for a total award of \$67,990.27. Of this amount, \$25,021.01 in fees is awarded to Attorney Michael Mayer, \$42,894.26 in fees is awarded to Attorney Andrew Shapiro, and the \$75.00 in costs is awarded to Winston & Strawn LLP. The findings and specific terms of the ruling are enclosed.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law at this time. Compliance with this Final Order and the Final Order on Liability and Relief entered on October 30, 2008, shall occur no later than 28 days from the date of mailing of this order.<sup>1</sup> Reg. 250.210

CHICAGO COMMISSION ON HUMAN RELATIONS  
Dana V. Starks, Chair and Commissioner

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<sup>1</sup> **COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. CCHR Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

**Payments of attorney fees and costs** are to be made to Complainant's attorney of record.



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**IN THE MATTER OF:**

Anita Sellers  
**Complainant,**  
v.

Felix Outland  
**Respondents.**

**Case No.:** 02-H-37

**Date of Ruling:** April 15, 2009

## **FINAL RULING ON SUPPLEMENTAL ATTORNEY FEES AND COSTS**

### **I. Procedural History**

This case is before the Commission on Complainant's Petition filed pursuant to Commission Regulation 240.640, seeking supplemental attorney fees and costs after court review. This case originated with the filing of a Complaint on May 9, 2002, alleging sexual harassment in violation of the Chicago Fair Housing Ordinance. On October 15, 2003, the Commission on Human Relations issued a Final Order and Ruling on Liability and Remedies, awarding the Complainant actual damages of \$47,076, punitive damages of \$120,000.00, attorney fees and costs, and other relief. On March 17, 2004, the Commission issued a Final Order and Ruling awarding attorney fees and costs in the amount of \$32,873.22.

Respondent appealed the Commission decision to the Circuit Court of Cook County and then to the First District of the Illinois Appellate Court. On September 15, 2008, the Appellate Court issued its opinion upholding the Commission's finding of liability, affirming the award of compensatory damages and attorney fees, and reversing the award of punitive damages.

On October 30, 2008, 45 days after the Appellate Court decision, Complainant filed her supplemental Petition for Attorneys' Fees and Costs, seeking an additional \$99,972 in fees and \$1,340.59 in costs. On the following day, October 31, 2008, Complainant filed a Motion for Extension of Time to File Petition for Attorneys' Fees. On November 2, 2008, Respondent filed a Response to both the Petition and the Motion for Extension of Time. On November 24, 2008, Complainant moved for leave to reply. The hearing officer granted leave by order dated December 1, 2008, and Complainant filed her Reply Brief on December 8, 2008.

The hearing officer issued his Recommended Decision on Attorneys Fees on January 23, 2009. In the Recommended Decision, the hearing officer also granted Complainant's requested extension of time to file the Petition. The hearing officer issued a subsequent order clarifying that the due date for any objections was February 23, 2009. No objections were received from either party and Respondent filed no request for review of the interlocutory order granting the extension of time pursuant to Reg. 240.630(b).

## II. Motion for Extension of Time

Complainant sought an extension of time upon discovering via the Commission's website that the Commission had amended its regulations effective July 1, 2008, and that the amended Reg. 240.640 required that a supplemental petition for attorney fees and costs after court review be filed 28 days after the favorable decision of the ruling court, rather than the 45 days permitted under the prior Reg. 240.640. The Motion for Extension of Time argued that this case had been litigated in the Commission pursuant to the prior regulations, which had been in effect since 2001, that Complainant's counsel was unaware of any 2008 amendments, that the Commission's website was insufficiently clear about the repeal of the prior regulations, and that the Commission has no established process for notifying the public of amendments to its regulations. Complainant cited *Dunlap v. Ford Motor Company Chicago Assembly Plant*, CCHR No. 02-E-178 (Jan. 9, 2003), for the principle that a procedural misunderstanding can be overlooked where a party reasonably believed it was acting properly and complied with the correct requirements when it became aware of the problem.

In its Response, Respondent argued that the Petition was untimely and Complainant should not be granted additional time to file it. Without citation of legal authority, Respondent argued, in essence, that Complainant's ignorance of the law should not be an excuse and that Respondent had been found in default in the case even though he had argued he did not receive sufficient notice and had not intended to disregard the Commission's procedures.

Commission Regulation 240.640(a), prior to its amendment in 2008, provided as follows:

If, in reviewing a Commission Final Order, the state court rules in favor of the Complainant but does not determine the amount of attorney's fees the Complainant is entitled to, in order to have the Commission award attorney's fees and costs for his or her state court work (see Chic. Muni. Code, §2-120-510(l)), the Complainant must file with the Commission and serve upon the other parties and the Administrative Hearing Officer a statement of fees and/or costs he or she incurred during the state court proceedings, supported by argument and affidavits. That statement must be filed and served no later than 45 days after the date of a state court decision in favor of the Complainant.

Subsection 5 of Reg. 240.640(a) specifically provided, "A party may request additional time to file and serve a pleading covered by this subsection pursuant to Reg. 270.130 below."

The Commission amended its regulations on May 21, 2008, with an effective date of July 1, 2008. The new Regulations include an introductory provision on applicability stating, "Except as stated below, these regulations shall be effective as of July 1, 2008, regardless of the filing date of the complaint. These regulations replace all prior regulations."

The new Reg. 240.640 provides in relevant part, "The petition must be filed and served no later than 28 days after the date of the court decision." It further provides that the content and procedural requirements for the petition are as set forth in Reg. 240.630 for similar petitions after a liability ruling by the Board of Commissioners. Reg. 240.640 as amended does not explicitly provide for an extension of time; however, Reg. 230.630(a) provides that a fee petition is to be filed in 28 days "unless otherwise ordered." Further, amended Reg. 210.320(a) provides generally for a motion for extension of time "to file any pleading, brief, or other document" and further provides

that the motion “must be filed and served as soon as the reasons for the extension are known to the party seeking it.”

Complainant has not argued that the amended regulations cannot be constitutionally applied to this case or this supplemental Petition. Rather, conceding as Complainant must that the amended regulations are applicable, Complainant argues that the failure to uncover the new regulations was, in effect, excusable neglect and a product of the Commission’s lack of a clear notice or publication process for regulation amendments.

There is authority in Commission case law allowing a hearing officer to exercise discretion to extend the deadline for filing a petition for attorney fees. In *Craig v. New Crystal Restaurant*, CCHR Case No. 92-PA-40 (May 15, 1996), a complainant was granted leave to file a fee petition after the deadline, after learning that his attorney had not timely filed the petition. See also *King v. Houston/Taylor*, CCHR No. 92-H-162 (Aug. 31, 1994), in which an attorney was allowed to file a fee petition two days late where, due to inadvertence, he had received the ruling setting the deadline for the petition on the day the petition was due; the respondent was found not to be prejudiced by the delay. And in an analogous case under federal law, it was held that a district court judge had the discretion to extend the time in which to file a fee petition beyond the deadline set by local rule. See *Helms v. Local 705 IBT Pension Plan*, 2002 WL 356516 (N.D. Ill. 2002). See also *In Re J.H. v. Ruth H*, 384 Ill.App.3d 507 (1<sup>st</sup> Dist. 2008), where the Illinois Appellate Court reversed a circuit judge’s order which had refused to allow the late filing of a fee petition.

This case has been hard fought over a seven-year period involving multiple layers of appeal. Complainant would be harshly penalized if she were not allowed to file her fee petition seventeen days late due to an understandable oversight by her attorneys, especially where they were apparently in compliance with the regulations that had been in effect throughout most of this case.

Respondent, on the other hand, was not prejudiced by this relatively brief extension. Respondent has been provided ample opportunity to respond to the Petition on the merits. The procedural issues in the underlying Commission case which Respondent references in arguing that this extension of time would be inequitable were thoroughly litigated on appeal and resolved against Respondent.

The Commission acknowledges that its governing ordinances and regulations do not specify a formal method of publicizing new or amended regulations (See §2-120-510(p), Chicago Muni. Code, and Subpart 260 of the Commission’s Regulations). These parties had no actual notice of the 2008 amendments,<sup>1</sup> and this situation contributed to the late filing which technically violated amended Reg. 240.640. For all of these reasons, the hearing officer exercised his discretion to grant Complainant’s Motion and allow her to file her supplemental Petition for Attorneys’ Fees and Costs *instanter*. Respondent did not request review of that interlocutory order and the Commission discerns no basis to overrule it.

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<sup>2</sup> After the Commission amended its regulations on May 21, 2008, it notified each party in cases pending in the investigation or administrative hearing stages of the amended regulations by mail. Prior to the effective date of July 1, 2008, the Commission placed the amended regulations on its web site, designated “2008” compared to the prior regulations designated “2001,” which were kept available because of their limited applicability to some older pending cases. However, the Commission inadvertently failed to send the notice mailing to the parties in the small number of cases, including this one, which were in post-adjudication court review or enforcement proceedings.

### III. The Petition for Attorneys' Fees and Costs

Respondent first argues that the Commission has no jurisdiction to entertain an award of attorney fees because the Appellate Court did not remand the cause back to the Commission. This argument ignores Reg. 240.640, which specifically authorizes the filing of supplemental fee petitions *after* state court review regardless of whether the state court remands the case:

If, in reviewing a Commission final order, the reviewing court rules in favor of the complainant but does not determine the amount of attorney fees and costs to which the complainant is entitled, the complainant may file with the Commission and serve on the other parties and the hearing officer a petition for an award of supplemental attorney fees and costs incurred during the state court proceedings....

See also *Barnes v. Page*, CCHR No, 92-E-1, (Sept. 15, 1999).

Respondent next argues that supplemental fees should not be awarded because Complainant did not prevail on appeal, given that the Appellate Court reversed the award of punitive damages. In *Becovic v. City of Chicago*, 296 Ill.App.3d 236, 694 N.E.2d 1044 (1<sup>st</sup> Dist. 1998) the court rejected a similar argument, affirming the award of fees despite the fact that no punitive damages were awarded and only \$2,500 in compensatory damages were granted. The Court held:

[The Complainant's] claim for punitive damages clearly arose from the same set of facts upon which his housing discrimination claim was based. Where a plaintiff's claims of relief involve a common core of facts or are based on related legal theories, such that much of his attorney's time is devoted generally to the litigation as a whole, a fee award should not be reduced simply because all requested relief was not obtained....

A relatively small damages award neither makes a successful civil rights plaintiff's victory "*de minimis*" nor justifies awarding attorney fees strictly in proportion to the amount of damages awarded. Damage awards under the Human Rights Act and other similar civil rights provisions infrequently reflect the social benefits obtained in remedying discrimination and vindicating civil rights. The availability of an award of attorney fees both encourages citizens to bring suit when their rights have been violated and provides incentives for attorneys to undertake representation in socially beneficial cases where the potential monetary recoveries are minimal.

Here, Complainant secured a substantial compensatory damages award of \$47,076 plus attorneys' fees incurred before the Commission, both of which were affirmed on appeal. The court affirmed the entry of an order of default, the entry of a liability finding, and all forms of relief awarded other than the punitive damages, which were reversed solely on the ground that Respondent was not given sufficient notice that such damages were being sought. Thus Complainant is a prevailing party and is entitled to all reasonable attorney fees and costs associated with the state court review.

#### **IV. Specific Objections to the Fees**

Respondent makes numerous specific objections to the Petition, each of which will be dealt with individually.

##### **A. Duplicate Billing**

Respondent objects that two attorneys, Andrew Shapiro and Michael P. Mayer, often billed for working on the same matter at or about the same time. As Complainant rightly points out, there is no rule that precludes two attorneys from working on the same matter. *Huezo v. St. James Properties*, CCHR No. 90-E-44 (Oct. 9, 1991) In *Richardson v. Chicago Area Council of Boy Scouts*, CCHR No. 92-E-80 (Nov. 20, 1996) *reversed on other grounds*, 322 Ill. App. 3d 17 (1<sup>st</sup> Dist. 2001), *dismissed on remand*, CCHR No. 92-E-80 (Feb. 20, 2002), the Commission awarded fees for three attorneys and one paralegal, while reducing fees where billing was unreasonable. The appropriate question, therefore, is whether the time spent on a particular task was reasonable. Where two lawyers are performing separate tasks they deserve to be compensated. Where the time records reveal that they are collaborating together on what would customarily be considered in the legal community to be a two-person task, then both attorneys' time is reasonable. However, where documentation of the tasks performed by each attorney is scant or where reasonable billing practices would dictate that only one attorney should be billed for a task, the second attorney's time will be disallowed. Reviewing the objections filed by Respondent, the hearing officer made the following determinations which the Commission now accepts and adopts:

Nov. 29–Dec. 28, 2004: Mr. Shapiro billed 11.75 hours (not 6.75 as stated by Respondent) to review and analyze the pleadings, transcripts, and documents generated before the Commission, while Mr. Mayer billed 5.5 hours for a similar review. Given that both counsel were working on the various levels of appeals, it was reasonably necessary for each attorney to become familiar with the record. The amount of time spent in this endeavor was not excessive or duplicative.

Jan. 10, 2005: Mr. Shapiro billed 2 hours at \$320 per hour to review and analyze a motion for extension of time and to perform legal research. That same day, Mr. Mayer billed 1.75 hours of time for what appears to be a similar review of the same motion. This task should have been done by one attorney; therefore, 1.75 hours of Mr. Mayer's time at \$320 per hour (\$560) will be excluded.

Jan. 11, 2005: Mr. Shapiro billed 2.5 hours at \$320 related to a conference with Mr. Mayer and L. Coberly to discuss strategy. Mr. Mayer billed 1.0 hour for this same conference. It is reasonable for attorneys who are jointly working on a matter to confer. Counsel appears to have exercised billing judgment by not billing each attorney for the entire conference. Respondent's objections to this time are overruled.

Apr. 26–29, 2005: Mr. Shapiro billed 2.25 hours of time conferring with R. Heyback and with Mr. Mayer related to the Respondent's motion for extension of time in the Appellate Court. Mr. Mayer also billed .5 hours related to this motion. The joint time was excessive. Complainant will be awarded 1.0 hours of Mr. Shapiro's time for this work and no time for Mr. Mayer's work on this matter; 1.25 hours at \$320 (\$400) will be excluded from Mr. Shapiro and .5 hours at \$320 (\$160) excluded from Mr. Mayer.

May 15-16, 2005: Mr. Shapiro billed 1.5 hours to review and analyze the transcript and to confer with Mr. Mayer. On May 15, 2005, Mr. Mayer billed .25 hours discussing procedural issues with Mr. Shapiro. This time is not excessive.

May 17, 2005: Mr. Shapiro billed 1 hour for a telephone call with R. Heybach, a telephone call with G. O'Connell, and a conference with Mr. Mayer regarding those telephone calls. Mr. Mayer billed 1 hour for this same time. One hour of Mr. Mayer's time at \$320 will be disallowed.

June 6, 2005: Mr. Shapiro billed 1 hour for a conference with C. Dombreck and with M. Mayer regarding the appeal. Mr. Mayer billed 1.5 hours to confer with Mr. Shapiro and to analyze the case file. This time appears to be duplicative. Mr. Mayer's time working on the file will be allowed and 1 hour of his time (\$320) conferring with Shapiro will be disallowed.

June 13, 2005: Mr. Shapiro billed three hours conferring with Ms. Heybach, performing legal research, and preparing the record on appeal. Mr. Mayer has billed 1 hour for the phone call and for "discussing issues" with other counsel. Mr. Mayer's time (\$320) will be disallowed.

June 14, 2005: Mr. Shapiro billed 2.5 hours preparing a brief opposing a motion for leave to file the record on appeal. Mr. Mayer billed the same 2.5 hours working on what appears to be the same brief opposing an extension of time to file a record on appeal. Spending 5 hours of attorney time to oppose a motion for extension of time is excessive. Two hours of that time will be disallowed, one for each attorney. Thus \$320 is disallowed for Mr. Shapiro and \$320 for Mr. Mayer.

June 16-17, 2005: Mr. Shapiro billed 6.25 hours of time working on a motion to dismiss and in conference calls with Mr. Mayer and with L. Coberly (presumably another attorney). Mr. Mayer billed 7.75 hours for these same tasks. The time entries make almost no distinction between the tasks performed by each attorney. On its face, the time appears duplicative. Mr. Shapiro's time will be allowed; 6.25 hours of Mr. Mayer's time will be disallowed but 1.5 hours for "cite checking and edit motion to dismiss appeal" will be allowed. Thus \$2,000 will be disallowed from Mr. Mayer's fees.

Aug. 27-29, 2005: Mr. Shapiro spent .5 hours preparing a motion to oppose an extension of time to file a brief. Remarkably, Mr. Mayer claims to have spent another 6.25 hours preparing and revising a brief in opposition to a motion for an extension. Attorneys who practice in the Illinois courts should recognize that such motions are routinely made and granted and exercise billing judgment accordingly. Mr. Shapiro's time is allowed and Mr. Mayer's time (\$2,000) is disallowed.

Oct. 17, 2005: Mr. Shapiro billed 1.5 hours for various telephone calls and consultation with Mr. Mayer. Mr. Mayer billed 1.75 hours for this same work and for a phone call with opposing counsel. Mr. Mayer will be awarded .25 hours for this time and 1.5 hours (\$480) will be disallowed.

Nov. 1-2, 2005: Both Mr. Shapiro and Mr. Mayer were reviewing and analyzing the appellate brief. This is a task often performed by two attorneys. This time will be allowed.

Nov. 3, 2005: Both attorneys billed for a telephone conference with Ms. Heybach. Mr. Mayer also billed for work on the appellant's brief. The apparently duplicative work of 1.0 hours (\$320) will be disallowed from Mr. Mayer's time.

Nov. 6, 2005-Jan. 12, 2006: During this period, Mr. Shapiro billed 71.25 hours in connection with the preparation of an appellate brief and Mr. Mayer billed 50.5 hours working on the

brief. Respondent argues that this amount is unreasonable given the fact that the same issues, arguments, and facts had already previously been researched, presented, and litigated in both the Chicago Commission and the Circuit Court of Cook County. Under these circumstances, the hearing officer and Commission agree that 121 hours of attorney time at \$320 per hour is unreasonable and reflects a degree of duplication. The combined time of Mr. Shapiro and Mr. Mayer for preparation of this brief will be reduced by approximately one-third from 121.75 hours to 80.7 hours, disallowing the requested fees by 40.3 hours. The excluded time will be apportioned equally between the two attorneys and calculated at what was their blended rate during this period of time of \$342.50 per hour, thus excluding \$6,901.37 each from Mr. Shapiro and from Mr. Mayer.

Mar. 27, 2005: Both counsel billed .5 hours to review the City of Chicago's brief. This is allowed.

Jan. 5, 2007: In anticipation of oral argument, attorneys Shapiro and Mayer each billed 2 hours. Mr. Mayer additionally put together a binder of materials for R. Heybach. This time will be allowed.

Oct. 7-9, 2007: Mr. Mayer's time of 1.25 hours, at \$415 per hour (\$518.75) for among other things, "discussing various issues with A. Shapiro" is disallowed.

Oct. 12, 2007: Mr. Mayer's time of 1.0 hour (\$415) discussing strategy with Mr. Shapiro is disallowed.

Oct. 15-18, 2007: Mr. Shapiro and Mr. Mayer billed close to a 40-hour week (34.85 hours) preparing for oral arguments, after having spent 121 hours on their brief. The hearing officer and Commission find this patently unreasonable. Eight hours of work is awarded for this preparation, excluding 26.85 hours. This will be apportioned equally, thus excluding 13.425 hours at \$315 per hour (\$4,228.87) from Mr. Shapiro and 13.425 hours at \$415.00 (\$5,571.37) from Mr. Mayer

Oct. 19, 2007: Counsel for Complainant billed 7 hours for Mr. Shapiro at \$315 per hour and 5.25 hours for Mr. Mayer at \$415 per hour preparing for and participating in a moot of the oral arguments. Respondent believes that this time is unrelated to the *Sellers* case. The time appears to be directly related to the *Sellers* case. It is certainly reasonable to thoroughly moot oral arguments before they take place, a task requiring multiple lawyers. This time is allowed.

Oct. 22-24, 2007: Mr. Shapiro billed an additional 7.90 hours of work in last-minute preparation and research for the oral arguments. Mr. Mayer billed .75 hours assisting Mr. Shapiro. Then each billed for the time spent at the oral argument. All this time is reasonable and is allowed.

Total amounts disallowed are as follows:

Mr. Shapiro: \$11,850.24  
Mr. Mayer: \$20,206.49

## **B. Hourly Rate**

Respondent argues that the hourly rate charged by Complainant's attorneys is unreasonably high and should be lowered to the amount Complainant contracted with her counsel to pay, citing *DeJesus v. Village of Shiller Park*, 2003 ILHUM LEXIS 1 (2003). Mr. Shapiro and Mr. Mayer are



each 2000 graduates of the University of Illinois and University of Wisconsin Law Schools, respectively. They each submitted affidavits averring that their customary hourly billing rates during the applicable time periods while working at Winston & Strawn--and for Mr. Shapiro, later at Butler Ruben Saltarelli & Boyd--ranged between \$265 to \$415 per hour. Each attorney seeks fees based upon his historical rate billed for each task, rather than a higher current rate.<sup>2</sup>

As was stated in the underlying fee decision in *Sellers*, left intact by the Appellate Court:

No evidentiary support has been submitted by Respondent sufficient to place at issue a factual dispute concerning counsels' reasonable market rates. Respondent has presented no counter-affidavits, surveys, scholarly articles or relevant authority suggesting that a lower hourly rate is more appropriate for these lawyers. As was stated in *Richardson v. Chicago Area Council of Boy Scouts*, CCHR No. 92-E-80 (Nov. 20, 1996) *reversed on other grounds*, 322 Ill. App. 3d 17 (1<sup>st</sup> Dist. 2001), *dismissed on remand*, CCHR No. 92-E-80 (Feb. 20, 2002), "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."

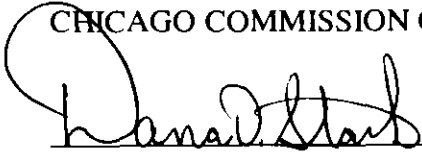
Complainant correctly argues that it is well established that counsel who work on a *pro bono* basis are entitled to reasonable attorney fees if they prevail, based upon reasonable market rates. *Hussian v. Decker*, CCHR No. 93-H-13 (May 15, 1996). Nothing in the Illinois Human Rights Commission decision of *DeJesus v. Village of Schiller Park*, Ill.Hum.Rts.Com., CHARGE NO: 1998 CF 1642 (Nov. 30, 2002), 2003 WL 22764310, compels a contrary result.

## V. Conclusion

Complainant Anita Sellers is awarded supplemental attorney fees and costs as follows:

	Amount Sought:	Amount disallowed:	Fee Awarded:
Michael Mayer	\$45,227.50	\$20,206.49	\$25,021.01
Andrew Shapiro	\$54,744.50	\$11,850.24	\$42,894.26
Total Fees Awarded:	\$67,915.27		
Costs awarded to Winston & Strawn :	\$75.00		

CHICAGO COMMISSION ON HUMAN RELATIONS

  
By: Dana V. Starks, Chair and Commissioner  
Entered: April 15, 2009

<sup>2</sup> In federal courts, a judge generally has discretion to award fees based on an attorney's historical rate, plus interest or based on his or her current rates, to compensate for the delay in payment. *Smith v. Village of Maywood*, 17 F.3d 219 (7<sup>th</sup> Cir. 1994)