



City of Chicago
COMMISSION ON HUMAN RELATIONS
 740 N. Sedgwick, 4th Floor, Chicago, IL 60654
 312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Jessica Davis
Complainant,
 v.

MVA Property Management LLC, and
 Michael Andiorio
Respondents.

Case No.: 18- II-33

Date of Ruling: April 14, 2022

FINAL RULING ON ATTORNEY FEES AND COSTS

I. INTRODUCTION

On September 9, 2021, the Chicago Commission on Human Relations issued a Final Ruling in favor of Complainant Jessica Davis on her claim that Respondents MVA Property Management LLC and Michael Andiorio subjected her to housing discrimination. Specifically, the Commission found that Respondents had discriminated against Complainant based on her use of a Chicago Housing Authority Housing Choice Voucher (formerly known as a “Section 8 voucher”) in an apartment rental in which Respondents were acting as agents for the owner. Respondents had defaulted in this litigation prior to the hearing. The Commission awarded Complainant damages in the total amount of \$15,000 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. *Davis v. MVA Property Management LLC et al.*, CCHR Case No. 18-H-13 (Sept. 9, 2021).

Following that Final Ruling, in a timely petition filed on August 17, 2021, Complainant requested \$62,132.14 in attorney fees and costs.¹ Respondents did not file any objections to the petition with the Commission. The hearing officer issued a recommended ruling on the petition on December 16, 2021. No objections were filed.

II. APPLICABLE LEGAL STANDARDS

Section 2-120-510(1) of the Chicago Municipal Code authorizes the Commission to order “reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the Commission or at any stage of judicial review.” CCHR Reg. 240.630 (a)(1) requires the petitioner to file:

A statement showing the number of hours for which compensation is sought in segments of no more than one-quarter hour, itemized according to the date performed, the work performed, and the individual who performed the work.

¹ Aneel L. Chablani, another attorney who filed an appearance in this matter on behalf of Complainant, did not file a petition for attorney fees.

CCHR Reg. 240.630 (a)(2) requires the petitioner to file:

A statement of the hourly rate customarily charged by each individual for whom compensation is sought, or in the case of a public or non-profit law office which does not charge fees or which charges fees at less than market rates, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise.

Finally, CCHR Reg. 240.630 (a)(3) requires the petitioner to file:

Documentation of costs for which reimbursement is sought.

Decisions of the Commission have established the standards for determining whether the fees are reasonable. The Commission uses the lodestar method of determining whether attorney fees are reasonable. *Suggs v. Montessori Academy Infant-Toddler Center, Inc.*, CCHR No. 13-E-56 (Aug. 13, 2015). Using that method, the Commission determines whether the hours spent on individual tasks were reasonable, then multiplies the hours by the hourly rate customarily charged by the attorneys. See, e.g., *Jones v. Lagniappe—A Creole Cajun Joynt, LLC, et al.*, CCHR No. 10-E-40 (May 15, 2013) and cases cited therein.

The party seeking fees has the burden of presenting sufficient evidence from which the Commission can determine the fees are reasonable both in terms of hourly rates and time expended. *Brooks v. Hyde Park Realty Co.*, CCHR No. 02-E-116 (June 16, 2004).

Fees do not have to be proportional to the amount of damages awarded. *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010). Thus, the fact that Complainant was awarded \$15,000 in actual and punitive damages does not limit the amount of attorney fees to any particular amount. Rather, the fee petition must be reviewed to determine if the fees requested were reasonable in terms of the amount of hours for tasks completed and that the hourly rates were reasonable.

III. APPROPRIATE HOURLY RATES

In determining an attorney's appropriate hourly rate for fee award purposes, the Commission summarized its approach to determining the appropriate hourly rate in *Sellers v. Outland*, CCHR No. 02-H-73 (Mar. 17, 2004 and Apr. 15, 2009), following the reasoning of the Seventh Circuit as set forth in *Small v. Richard Wolf Medical Instruments Corp.*, 264 F.3d 702, 707 (7th Cir. 2001):

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.

“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. Loflon & Loflon 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 (2nd Dist. 2001). Respondents did not file any objections to Complainant’s fee petition. Despite Respondents’ 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.

According to Complainant’s fee petition, five attorneys from the law firm of Katten Muchin Rosenman LLP (“Katten”) represented Complainant at various times and in various roles during the litigation of this matter from February 26, 2018, to April 28, 2021. Complainant’s fee petition states that the hourly rates assigned to each attorney were the normal rates charged by Katten during these times. Attorney Mario Robertson filed a sworn affidavit that stated that the records submitted were the records kept by Katten in the ordinary course of business; these records included the name of the attorney involved, the date of service, the hours, and the “base amount” (hours by hourly rate). As these documents present rates normally charged by the law firm during this time according to the petition, these rates will be considered reasonable absent any evidence that the rates are not the customary rates.

Jonathan Baum has served as the Director of Pro Bono Services at Katten for 27 years. He coordinated Katten *pro bono* services, including this matter. His hourly rates ranged from \$840-\$1,010 during this litigation.

Sarah Scruton was a summer associate at Katten during her time with this matter. Her hourly rate was \$250.

Kyle T. Finnegan was an associate at Katten until his departure from Katten in April 2019. His hourly rates were \$500-\$630.

Alexandra McNicholas was an associate at Katten until her departure from Katten in June 2019. Her hourly rates were \$435-\$530.

Mario Robertson was an associate at Katten during the pendency of this matter. His hourly rates were \$500-\$690.

The Commission has not awarded fees in these ranges as a matter of course. However, in the absence of any effort by Respondents to respond to this fee petition, and with the sworn affidavit that these are the customary fees charged by Complainant’s counsel, the Commission adopts the hearing officer’s recommendation that the rates requested are appropriate.

IV. RELATIONSHIP OF FEES TO DAMAGES AWARDED

As noted above, fees do not have to be proportional to the amount of damages awarded. *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010).

The only relevant inquiry when fees appear substantial is whether Complainant’s attorneys were reasonable in the amount of time devoted to their representation. That will be accounted for in the discussion of the individual entries. Reviewing other cases and comparing the awards of damages and fees in those cases to the instant case is mostly irrelevant, because this case may have required

additional activities by the attorneys to fully and reasonably represent the client.

In *Gilbert and Gray v. 7355 South Shore Condominium Assn., et al.*, CCHR No. 01-H-18/27 (June 20, 2012), the Commission addressed the issue of proportionality of fees to the damage award. In *Gilbert and Gray*, the Commission awarded \$100 and \$2,000 in damages to the complainants and \$61,535.66 in fees. In rejecting the Respondent's argument that fees should not be awarded at all due to the complainants' "minimal success," the Commission noted that it had previously found that the award of damages does not have to be proportional to the fees awarded, citing *Lockwood v. Professional Neurological Services, Ltd.*, supra; *Cotten v. Addiction Sports Bar and Lounge*, CCHR No. 08-P-68 (Feb. 17, 2010); and *Cotten v. CGI Industries, Inc.*, CCHR No. 07-P-109 (May 9, 2010). Citing *City of Riverside v. Rivera*, 477 U.S. 561, 574, 106 S.Ct. 2686 (1986) the Commission noted: "Regardless of the form of relief he actually obtains, a successful civil rights plaintiff often secures important social benefits that are not reflected in the nominal or relatively small damage awards."

V. RESPONDENTS' ABILITY TO PAY ATTORNEY FEES

The Commission has long been clear that the amount of fees awarded to a prevailing complainant is not based on the respondent's ability to pay. *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Feb. 24, 1999); *Williams v. Banks*, CCHR No. 92-H-169 (Mar. 15, 1995); and *Rushing v. Jasniowski, et al.*, CCHR No. 92-H-127 (Jan. 18, 1995).

VI. DETERMINATION OF REASONABLE FEES

Complainant submitted timesheets detailing 103.66 attorney hours expended in the prosecution of this case, for a total of \$61,784.00.² The timesheet meets the criteria of CCHR Reg. 240.630 (a)(1), in that the timesheet details the date, the number of hours, the rate, the total fees, the attorney expending the time and a description of the services. The petition said that certain hours of work provided to Complainant that did not relate to this matter had been removed.

It is important to remember that this case was a default action and that Complainant's attorneys knew that the default judgment had been entered over a year prior to the hearing.³ Therefore, Complainant's attorneys were aware of the relatively straightforward nature of this matter long before the hearing. In the default hearing, per CCHR Reg. 235.320, Respondents were deemed to have admitted the allegations of Complainant's Complaint and to have waived any defenses to the allegations, including any defenses about the sufficiency of the Complaint. The administrative hearing was held solely to allow Complainant to establish a *prima facie* case, and to establish the nature and amount of relief to be awarded. *Hall v. Woodgett*, CCHR No. 13-H-51 (Nov. 5, 2015). The fact of this limited role for Complainant's counsel in the hearing should be considered in determining whether the hours expended to prepare for the hearing are reasonable.

²The hearing officer's calculation of the total fee hours was slightly different (a few hours more than Complainant's counsel submitted). The hearing officer noted that this difference may have resulted from editing the listing of hours expended prior to submission of the petition. Nevertheless, the hearing officer used the total hours submitted by Complainant's counsel in determining the fee amount.

³Delays were the inevitable, if unfortunate, result of the pandemic, including Complainant's request to appear remotely due to the pandemic. (This request was denied, but the issue was remedied by a nearly five-month delay in the hearing from the last hearing date set in 2020.)

Previously, the Commission found that 82.5 hours for a relatively simple housing discrimination case was excessive and unreasonable. *Hutchison v. Iftekaruddin*, CCHR No. 8-H-21 (June 16, 2010). The hearing officer recommended that the total amount requested for attorney fees be reduced by twenty-five percent to account for the excessive hours. The Commission agreed that 82.5 hours of legal fees was unwarranted for a “direct-evidence source of income discrimination claim based on a single instance of refusal to rent to a Section 8 voucher recipient, with no legal or factual issues of unusual complexity and no extensive evidence to be managed.” That description describes this litigation as well.

On November 13, 2018, Complainant filed a motion to voluntarily withdraw her complaint against one of the three respondents. There is no demarcation in the time sheets or the petition whether hours devoted to this withdrawal (and possible settlement) are included in the time sheets; hours devoted solely to resolving this matter with the third respondent should not be included, as is discussed below. Hours devoted to the two remaining respondents, Andiorio and his company, MVA Property Management LLC, for the ruling against them are appropriate for this fee petition.

Respondents chose not to file a response to this fee petition. Consequently, the hearing officer considered only the history of this matter as shown in the Commission’s hearing record and the fee petition to assess the reasonableness of the hours expended, as explained below.

Jonathan Baum

Baum seeks compensation for 24.3 hours. Baum was the *pro bono* supervising attorney for Katten and provided those services from March 20, 2018, to April 28, 2021. In general, his hours are reasonable for a supervising attorney in an action that took some time to complete due to the restrictions imposed by the pandemic. Two large items deserve some attention. On December 19, 2019, and December 20, 2019, according to the information provided, Baum prepared for and attended a settlement conference at an unspecified location; a settlement conference had been set by the Commission for this date. Although this settlement conference may have resulted ultimately in only the settlement for the one dismissed party, all parties were invited to attend and thus the hours were reasonably related to all respondents, including Respondents Andiorio and MVA Property Management LLC. Therefore, the hearing officer recommended that 24.3 hours for Baum are reasonable expenditures of time and should be reimbursed.

Kyle Finnegan

Finnegan was an associate at Katten; he provided legal services from February 26, 2018, to April 8, 2019. Finnegan seeks compensation for a total of 36.8 hours. Finnegan drafted the complaint, met with the client, reviewed the Commission’s regulations and precedents, drafted and reviewed settlement proposals, kept the litigation team informed and provided various other early-stage litigation activities. It appears from a review of the petition that certain activities unrelated to this matter were not included in the billing. (See, e.g., entries for April 26, 2018, and August 16, 2018.) The following individual entries need to be addressed:

February 26, 2018, (.30) and February 28, 2018, (.20): The narratives for both dates have the identical entry: “Analysis of facts for client intake; communication with B. Barreno-Paschall; research identity of defendants.” The hearing officer recommended disallowing .2 hours, or \$100 in fees.

March 29, 2018 (.50): “Plan and prepare for drafting complaint re: State and Longwood properties (.8); e-mail B. Barreno-Paschall re: State and Longwood properties (.2).” Only the Longwood property is the subject of this litigation. This amount was divided in two per the hours listed (.5); no further

reduction is warranted. Similar reductions were found on the April 26, 2018, and May 22-24, 2018, entries.

May 4, 2018 (.6) and May 7, 2018 (.10): Both dates have the same activity entered: "Coordinate filing of original Longwood St. Property complaint." Filing a complaint or other filings is essentially a clerical activity. *Sleper v. Maduff & Maduff*, CCHR No. 06-E-90 (Feb. 20, 2013). The hearing officer recommended denying .7 hours, or \$350 in fees because as written, it is essentially a clerical activity.

May 21, 2018 (.10) and May 22, 2018 (.20): The narratives for both dates have the identical entry: "Review acknowledgement of State and Longwood St. Complaints." The State complaint is unrelated to this litigation. The second date was reduced by half; the first was not. The hearing officer recommended disallowing .1 hours, or \$50 in fees because as written, it is essentially a clerical activity.

May 24, 2018 (.2): "Coordinate filing of appearances (.1)." Filing a complaint or other filings is essentially a clerical activity. *Sleper v. Maduff & Maduff*, CCHR No. 06-E-90 (Feb. 20, 2013). The hearing officer recommended denying .1 hours and \$50 in fees because as written, it is essentially a clerical activity.

June 1, 2018 (.20): "Circulate settlement demand letters re: State St., Longwood St. properties." No reduction for the unrelated matter is evident. The hearing officer recommended disallowing .1 hours and \$50 in fees.

July 16, 2018 (.8): "Coordinate filing of amended Longwood St. complaint." The hearing officer recommended denying .8 hours and \$400 in fees because as written it is essentially a clerical activity.

October 25, 2018 (.90) and October 26, 2018 (.10): Both dates had the identical narrative: "Coordinate filing of reply in support of Longwood St. complaint." The hearing officer recommended denying 1.0 hours and \$500 in fees because as written, it is essentially a clerical activity.

November 2, 2018 (1.40): "Client meeting re: Longwood case status, settlement agreement with J. Gillespie." Gillespie represented the respondent with whom Complainant reached an early resolution. This entry has no clarity as to what, if any, of the activity pertains to Respondents. The hearing officer recommended denying 1.40 hours and \$700 in fees.

April 8, 2019 (6.00): "Review/organize files; clean office." These are essentially clerical activities; therefore, the hearing officer recommended disallowing 6.00 hours and \$3,480 in fees.

The hearing officer found that the remaining hours sought for Attorney Finnegan were a reasonable expenditure of time, except for the 10.4 hours listed above, for a total reduction of \$5,680.

Alexandra McNicholas

Alexandra McNicholas was an associate at Katten; she provided legal services from March 21, 2018, to June 10, 2019. Complainant's fee petition seeks reimbursement for .9 hours performed by McNicholas. McNicholas sat in on a few calls with other counsel and met with other counsel the day before she filed her motion to withdraw. Each of these meetings or calls had other supervisory and/or associate counsel in attendance; those attorneys provided actual services (drafting the complaint, pursuing settlement options, e.g.). This represents a total of \$693 in attorney fees. The hearing officer determined that McNicholas' hours were not a reimbursable expenditure of time because this was excessive staffing of a simple case. *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (Sep. 21, 2005).

Sarah Scruton

Sarah Scruton was a summer associate at Katten; she provided legal services from March 21, 2018, to June 10, 2019. Scruton seeks reimbursement for 1.9 hours of services. Scruton “took notes” on calls with the client (June 29, 2018, and July 13, 2018), drafted a FOIA request regarding an unrelated state enforcement action (July 16, 2018)⁴ and participated in a call with co-counsel. No actual legal services to the client in this matter were conducted; some of the services were clerical in nature and/or were unrelated to this matter. This represents a total of \$475. The hearing officer determined that Scruton’s hours were not a reimbursable expenditure of time because this was excessive staffing of a very simple case (*Sullivan-Lackey v. Godinez*, supra), the duties were clerical in nature (*Matias v. Zachariah*, CCHR No. 95-H-110 (Feb. 10, 1997)), or the duties were unrelated to this matter (*Leadership Council for Metro. Open Comms. v. Souchet*, CCHR No. 98-H-107 (May 16, 2001)).

Mario Robertson

Mario Robertson is an associate at Katten; he provided legal services from February 7, 2020, to April 28, 2021. The fee petition seeks reimbursement for 51.1 hours of Robertson’s services. Robertson prepared for the pre-hearing conference and the default hearing, and, due to unfortunate delays due to the pandemic, had both to reschedule these events and to prepare again for these events as necessary. He conducted the approximately one-hour hearing with some input from his supervisor, Baum; Respondents did not appear.

Although in general the efforts seem to be reasonable, some activities appeared to take longer than necessary for a simple default hearing where Respondents were limited in their defenses. *Sullivan-Lackey v. Godinez*, supra. In addition, some hours listed in the petition are not clear as to the purpose of the activities. Particular examples include:

December 4, 2020: Confer with ARC [unidentified] regarding Order from the Commission.

January 22, 2021: Confer with ARC [unidentified] regarding custom time report for J. Davis case.

January 22, 2021: Confer with Schwalb [unidentified] regarding status of J. Davis case.

March 22, 2021: Confer with ARC [unidentified] concerning mailing E. Reid [unidentified] a copy of his deposition transcript.

These four entries represent a total of \$464.50. The hearing officer found that they are not reimbursable.

The hearing officer also found that some hours appear excessive, including .6 hours, or \$303 to prepare a simple appearance form (February 24, 2020) and .6 hours, or \$303 to prepare a notice of filing and certificate of service. Further, over 15 hours and \$8,363.50 were spent on preparing a pre-hearing memorandum for a simple default hearing. Based on the review of the hours spent by Robertson for some activities that seemed excessive and the listing of activities for which the purposes are not clear, the hearing officer recommended a reduction in the reimbursement for Attorney Robertson’s activities to be reflected in the total fees awarded to Katten.

Given the determination that the fees sought for the activities of Finnegan, McNicholas, and Scruton should be reduced, and that Robertson’s fees were somewhat excessive and vague, the hearing officer recommended a percentage reduction in the amount of fees awarded of 15% or \$9,267.60.

⁴ This date is incorrectly marked as “.06” hours, but the hourly amount corresponds to .6 hours.

The Board of Commissioners disagrees with the hearing officer's recommendation as to the percentage reduction to the fee award. The Board does not find that an across-the-board percentage reduction is warranted in this case. Complainant's attorneys submitted detailed timesheets documenting the work performed, supported by sworn affidavits, which the Board finds is sufficient evidence of the work performed. The hearing officer extensively reviewed the detailed timesheets submitted by Complainant's attorneys and made line-item deductions for duplicative entries as well as deductions for services that are not reimbursable. These recommended reductions were well reasoned, and the Commission agrees with the hearing officer's analysis regarding these reductions. The Commission finds that adopting the recommended line-item deductions as mentioned above is the appropriate approach to the fee award in this case.

Accordingly, the Commission approves and adopts the recommendations of the hearing officer as to line-item reductions of counsels' time entries and approves a total fee award of \$53,865.50.

VII. COSTS

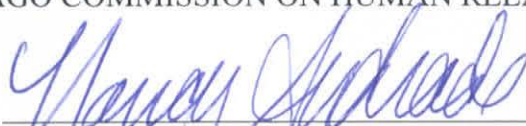
Complainant seeks an award of \$348.14 in expenses. Expenses include transportation, postage, delivery fees, and the cost of copying the investigation file, all of which are compensable. The hearing officer did not recommend approving the following expenses: \$13.80 for cab fees to a Commission hearing on June 10, 2021, as there was no hearing on that date in this matter, and \$184.30 for unidentified "service fees," listed on May 29, 2021, long after the hearing was completed. The Commission approves the hearing officer's recommendation and \$150.04 is awarded in costs.

VIII. CONCLUSION

For the reasons discussed above, the Commission orders Respondents to pay to Complainant reasonable attorney fees of \$53,865.50 and costs of \$150.04, for a total of \$54,015.54.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:



Nancy Andrade, Chair and Commissioner
Entered: April 14, 2022