



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:

Anthony Cotten
Complainant,
v.
162 N. Franklin, LLC d/b/a/
Eppy's Deli and Café
Respondent.

Case No.: 08-P-35

Date of Ruling: December 16, 2009

Date Mailed: January 7, 2010

TO:

Matthew P. Weems
Law Office of Matthew P. Weems
1652 W. Ogden Ave.
Chicago, IL 60612

Owner or Manager
Eppy's Deli and Café
162 N. Franklin
Chicago, IL 60606

FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on December 16, 2009, the Chicago Commission on Human Relations issued a Final Ruling on 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 \$2,520.83 and costs in the total amount of \$82.61, for a total award of \$2,603.44. 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 September 16, 2009, shall occur no later than 28 days from the date of mailing of this order.¹ Reg. 250.210.

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

¹ **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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FINAL RULING ON ATTORNEY FEES AND COSTS

I. PROCEDURAL HISTORY

On September 16, 2009, the Commission on Human Relations issued its Final Ruling on Liability and Relief in this matter, finding that Respondent had violated the Chicago Human Rights Ordinance and ordering relief including reasonable attorney fees and costs pursuant to pursuant to Section 2-120-510(1), Chicago Municipal Code, and Commission Regulation 240.620. On October 21, 2009, Complainant filed and served a timely Petition for Attorney's Fees pursuant to Reg. 240.630, to which Respondent did not respond. On November 5, 2009, the hearing officer issued his Recommended Decision on Attorneys' Fees and Costs. Neither Complainant nor Respondent submitted objections. Having considered Complainant's petition and the hearing officer's recommendation, the Board of Commissioners now rules as follows:

II. LODESTAR METHOD OF CALCULATING FEES

The Commission follows the lodestar method of calculating reasonable attorney 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.*, CCHR No. 92-H-128 (Dec. 6, 2000).

II. APPROPRIATE HOURLY RATE

In determining an attorney's appropriate hourly rate for fee award purposes, the Commission in *Sellers v. Outland*, CCHR No. 02-H-73 (Mar. 17, 2004), adopted the reasoning of the U.S. Court of Appeals for the Seventh Circuit as set forth in *Small v. Richard Wolf Medical Instruments Corp.*, 264 F.3d 702,707 (7 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.

Complainant's counsel, Matthew P. Weems, seeks fees at the rate of \$125 per hour. He submitted an affidavit attesting that this is his usual hourly rate for this type of matter. The Commission adopts the recommendation that this rate is reasonable given Atty. Weems' skill and experience. This rate was recently approved for him in *Cotten v. Eat-a-Pita*, CCHR No. 07-P-108 (Sept. 16, 2009).

III. REASONABLE TIME EXPENDITURES

Atty. Weems submitted time sheets seeking compensation for 22 hours and 55 minutes of attorney time and \$82.61 in out-of-pocket expenses. He recorded his time in fifteen-minute increments so that one hour of work researching an issue, for example, will result in four individual time entries, each of which will have the same date and identify the same task.

The hearing officer found several time sheet entries required modification. First, attorney travel time may be compensable. See, e.g., *Matter of Maurice*, 69 F.3d 890 (7 Cir. 1995), noting, "Attorneys customarily charge their clients for time on an opportunity-cost basis. Statutes authorizing compensation for attorneys' fees therefore permit compensation for travel time." Accord, *Stark v. PPM America Inc.*, 354 F.3d 666 (7 Cir. 2004); *Hall v. Becovic*, CCHR No. 94-H-39 (Jan 10, 1996). However, the Commission accepts the hearing officers recommendation that the ordinary commuting time billed by Atty. Weems is not compensable. Specifically, he billed 30 minutes respectively in entries stating, (1) "Return home" on February 20, 2009; and (2) "Travel to Daley Center" on June 8, 2009. The latter date was subsequent to the recommended decision on liability and relief, with no indication how this travel is related to the case. *Hall v. Becovic, supra*. These charges totaling 1 hour are disallowed.

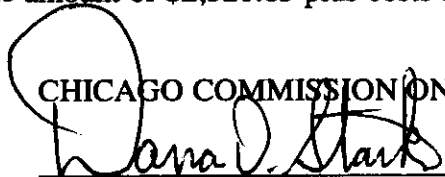
Second, counsel billed for time researching and drafting a Motion to Reconsider on July 26, 2009. This motion was unsuccessful and unwarranted, and Complainant will not be awarded fees for time on an unsuccessful claim. *Byrd v. Hyman*, CCHR No. 97-H-2 (July 17, 2002). The hearing officer recommended disallowing 45 minutes of time. In reviewing Atty. Weems' time sheet, the Board of Commissioners finds that he actually billed 1.5 hours of time for both researching and drafting this motion (items numbered 79-84 on the time sheet). Therefore, the Commission disallows 1.5 hours of charges related to this unsuccessful motion.

Finally, Atty. Weems billed 15 minutes for "Get notarization" on October 21, 2009. This is administrative time not customarily billed to paying clients. See, e.g., *Matias v. Zachariah*, CCHR No. 95-H-110 (Feb. 19, 1997); *Collins & Ali v. Magdenovski*, CCHR No. 91-FHO-70-5655 (Mar. 19, 1997). Therefore, it is disallowed, for total disallowed time of 2.75 hours.

The hearing officer assessed the balance of counsel's time reflected in his fee petition as reasonable and the Commission adopts the recommendation.

IV. CONCLUSION

Therefore, recalculating the disallowed time as stated above, the Commission awards attorney fees to Complainant in the amount of \$2,520.83 plus costs in the amount of \$82.61, for a total award of \$2,603.44.

CHICAGO COMMISSION ON HUMAN RELATIONS


By: Dana V. Starks, Chair and Commissioner
Entered: December 16, 2009