



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

James K. Brown
Complainant,
v.

Tam Khuong An Nguyen and Liz Nguyen
Respondents.

Case No.: 15-H-07

Date of Ruling: June 8, 2017

FINAL RULING ON ATTORNEY FEES AND COSTS

I. INTRODUCTION

On January 12, 2017, the Chicago Commission on Human Relations issued a Final Ruling in favor of Complainant James K. Brown on his claims that Respondents Tam Khuong An Nguyen and Liz Nguyen subjected him to housing discrimination based on race and source of income in violation of Chapter 5-8 of the Chicago Municipal Code. The Commission awarded Complainant damages in the total amount of \$25,000, 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 his reasonable attorney fees and costs. *Brown v. Tam Khuong An Nguyen and Liz Nguyen*, CCHR No. 15-H-07 (Jan. 12, 2017).

Following that Final Ruling, in a timely petition filed February 24, 2017, Complainant requested \$18,240 in attorney fees. Respondents did not file any objections to the petition with the Commission. The hearing officer issued a recommended ruling on the petition on March 13, 2017. 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.

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. 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).

III. APPROPRIATE 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 *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. 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 (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.

Here, Complainant's attorney, Justin Leinenweber, is seeking fees at the rate of \$400 per-hour. He states in his affidavit that he has been practicing law in Illinois since 2006, with the majority of his practice focused on prosecuting and defending discrimination and civil rights claims. No other supporting affidavits were filed, nor has Attorney Leinenweber submitted any documentation showing that he has actually billed and been paid at the rate of \$400 per hour.

The starting point for determining an attorney's reasonable hourly rate is the rate actually billed by that attorney in other similar matters. *Alexander v. 1212 Restaurant Group, et al.*, CCHR No. 00-E-110 (Apr. 15, 2009), *aff'd* Cir.Ct. Cook Co. No.09-CH-16337 (Feb.19,

2010), aff'd Ill. App. Ct. No. 1-20-0797(1st Dist., Aug. 25, 2011), PLA denied Ill. S.Ct. No. 113274 (Jan. 25, 2012) ("The attorney's actual billing rate for comparable work is considered to be the presumptive market rate.") Since no documentation of that rate has been submitted, we must look to what a reasonable hourly rate in the Chicago area is for an attorney with similar experience handling a housing discrimination case such as the one at bar. In *Pierce and Parker v. New Jerusalem Christian Development Corp.*, CCHR No. 07-H-12/13 (May 16, 2012), attorneys in practice since 2002 and 2006 respectively, were awarded \$330 and \$325 per hour in a housing discrimination case. The Commission found that these rates were consistent with the range of hourly rates held reasonable in other similar matters. *Flores v. A Taste of Heaven et al.*, CCHR No. 06-E-32 (Jan. 19, 2011); *Gray v. Scott*, CCHR No. 06-H-10 (Nov. 16, 2011); and *Montelongo v. Azarpira*, CCHR No. 09-H-23 (Feb. 16, 2012).

The Commission has awarded attorney fees at rates ranging between \$350 and \$425 per hour for attorneys with much more experience than Attorney Leinenweber. See *Jones v. Lagniappe—A Creole Cajun Joynt, LLC, et al.*, CCHR No. 10-E-40 (May 15, 2013) (rate of \$375 per hour held reasonable for attorney with 28 years' experience); *Gray v. Scott*, CCHR No. 06-H-10 (Nov. 16, 2011) (\$350 per hour found reasonable rate for attorney with 25 years' experience); *Gilbert and Gray v. 7355 South Shore Condominium et al.*, CCHR No. 01-H-18/27 (June 27, 2012) (\$425 per hour rate found reasonable for attorney with 27 years' experience in civil rights). The hearing officer found that \$375 per hour is a reasonable market rate for an attorney with Leinenweber's experience in a housing discrimination case where liability has been determined by default. The Commission agrees with the hearing officer's approach and adopts the recommendation.

IV. REASONABLE HOURS

Complainant seeks compensation for a total of 45.6 hours of work performed by his attorney in furtherance of his claims. Attorney Leinenweber has represented Complainant during the hearing and post-hearing processes. Upon review of the time records, the hearing officer took issue with one set of entries. Counsel billed five hours of time related to drafting and editing the pre-hearing memorandum on July 31, 2016, and August 1, 2016. The pre-hearing memorandum submitted to the hearing officer consisted of a two-page form with approximately one paragraph of information inserted and 30 documents attached. Since this document was submitted without any consultation with opposing counsel, the hearing officer found it unreasonable that this amount of time was spent on such a routine submission and recommended a reduction of four hours related to the submission of the pre-hearing memorandum. The hearing officer found that all other time spent by Attorney Leinenweber, as detailed in his time records, was reasonable. The Commission agrees and approves the recommendation.

V. CONCLUSION

For the reasons discussed above, the Commission approves and adopts the hearing officer's recommendations and orders Respondents to pay to Complainant his reasonable attorney fees of \$15,600.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: *Mona Noriega*
Mona Noriega, Chair and Commissioner
Entered: June 8, 2017