

CITY OF CHICAGO
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, Third Floor, Chicago, Illinois 60610
(312) 744-4111 (Voice) (312) 744-1088 (TDD)

IN THE MATTER OF:

Cezary Lapa,)	
)	
<i>Complainant,</i>)	
v.)	Case No. 02-PA-27
)	
Polish Army Veterans Association,)	Date of Order: February 20, 2008
Henryk Zygmunt, Stanislaw Jarosz,)	Date Mailed: March 11, 2008
Krzysztof Pawlowski, & Marian Prusek,)	
<i>Respondents.</i>)	

FINAL ORDER ON ATTORNEY FEES

To: Urszula Czuba-Kaminski & Associates, P.C.	Martin Y. Joseph, Attorney at Law
7015 Archer Avenue	1541 W. Chicago Ave.
Chicago, IL 60638	Chicago, IL 60622

YOU ARE HEREBY NOTIFIED that, on February 20, 2008, the Chicago Commission on Human Relations issued a final order and ruling in favor of Complainant in the above-captioned matter. The Commission ordered Respondents to pay attorney fees to Complainant in the total amount of \$2,874, apportioned among the Respondents as follows:

Henryk Zygmunt	\$1,257.37
Stanislaw Jarosz	\$ 484.99
Polish American Veterans Association (PAVA)	\$ 718.50
Krzysztof Pawlowski	\$ 341.29
Marian Prusek	\$ 71.84

The findings and specific terms of the ruling are enclosed.

Pursuant to Commission Regulations 100(14) 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 shall occur no later than 31 days from the later of the date of this order.¹ Reg. 250.210.

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

Payments of attorney fees are to be made to the Complainant through his attorney of record. See Reg. 250.220 for information on seeking enforcement of an award of relief.

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FINAL RULING ON ATTORNEY FEES

I. INTRODUCTION

On March 21, 2007, the Commission issued a Final Ruling in favor of Complainant Cezary Lapa on his claim that he was subjected to a hostile environment by Respondents concerning his full use of a public accommodation based on his sexual orientation. The Commission found against Lapa on his claim that he was evicted from his rental premises by Respondents because he is gay. The Commission awarded Lapa damages in the total amount of \$8,000 plus interest, apportioned against the Respondents as follows:

<u>Respondent:</u>	<u>Compensatory Damages:</u>	<u>Punitive Damages:</u>	<u>Fine:</u>	<u>Total:</u>
Zygmunt	\$1,000	\$2,000	\$500	\$3,500
Jarosz	\$ 500	\$ 600	\$250	\$1,350
PAVA	\$ 500	\$1,000	\$500	\$2,000
Pawlowski	\$ 300	\$ 400	\$250	\$ 950
Prusek	\$ 100	---	\$100	\$ 200

The Commission also awarded Lapa his attorney fees and costs for his prevailing claim. *Lapa v. PAVA et al.*, CCHR No. 02-PA-27 (Mar. 21, 2007).

In a petition filed March 19, 2007, Complainant requested \$4,220 (21.1 hours x \$200/hour) in attorney fees. Complainant did not request any costs. Respondents filed Objections to Complainant's Fee Application on March 22, 2007, seeking a reduction in the requested fees for two reasons¹. *First*, Respondents objected to the assertion of Ms. Czuba-

¹ On April 20, 2007, Respondents filed a document titled Respondents' Supplement to Their Objections to Complainant's Request for Attorney Fees. The Hearing Officer issued an Order dated April 23, 2007 stating that, because the Regulations did not permit such a filing, Respondent needed to file a motion for leave to file the document by May 2, 2007 showing good cause as to why leave should be granted. No such motion for leave was filed and Respondents' Supplemental Objections will not be considered.

Kaminski, Complainant's attorney, that she spent an equal amount of time working on Complainant's discriminatory eviction claim and harassment claim. *Second*, Respondents objected to some of the time spent by Ms. Czuba-Kaminski as being unnecessary or caused by Complainant's failure to comply with the Commission's orders. Respondents have not objected to the hourly rates asserted by Ms. Czuba-Kaminski. On April 12, 2007, Complainant filed an Answer to Respondents' Objection to Petition for Attorney Fees responding to Respondents' two objections.

A First Recommended Decision on Attorney's Fees was issued on October 5, 2007. On November 5, 2007, Respondents filed timely objections to the First Recommended Decision pursuant to Regulation 240.630. Complainant did not file any objections to the First Recommended Decision nor did he file a response to Respondents' objections.²

Respondents presented two main objections to the First Recommended Decision: *first*, if not excluded altogether, the time spent on preparation of the attorney fee petition should be adjusted to account for the 12 items found to be non-recoverable; and *second*, the First Recommended Decision improperly apportioned the attorney fees spent on the prevailing and non-prevailing claims. Specifically, Respondents reject the idea that the claims were so intertwined that the time spent by Ms. Czuba-Kaminski should be apportioned equally between the two claims.

II. METHOD OF CALCULATION

The Commission uses the lodestar method of calculating attorney fees. See, e.g., *McCutchen v. Robinson*, CCHR No. 95-H-84 (Oct. 21, 1998). In using the lodestar method, "the Commission multiplies the number of hours reasonably expended on the case by the hourly rate customarily charged for individuals for whom compensation is sought." The Commission is under no requirement to award attorney fees in "an amount proportional to the amount of damages received." See also *Wright v. Mims*, CCHR No. 93-H-12 (Sept. 17, 1997).

III. APPROPRIATE HOURLY RATES

Complainant seeks fees for the services of Ms. Czuba-Kaminski at a rate of \$200 per hour. The Commission bases its awarded rates on a number of factors, including experience, expertise in the subject matter at issue, and the reasonable market rates typically charged by the attorney. See, e.g., *Ordon v. Al-Rahman Animal Hosp.*, CCHR No. 92-E-139 (Nov. 17, 1993) and *Barnes v. Page*, CCHR No. 92-E-1 (Jan. 24, 1994).

Ms. Czuba-Kaminski's requested rate is a reasonable rate in light of her 15 years of American legal experience. This rate is also in line with previous Commission decisions awarding \$200 per hour, including *Salwierak v. MRI of Chicago, Inc. et al.*, CCHR No. 99-E-107 (Apr. 21, 2004) (Commission approved a rate of \$200 per hour for an attorney with 15 years' experience).

² On November 13, 2007, Complainant filed a Motion to Extend Time to File an Answer to Respondents' Objections to Order for Attorneys Fees requesting an extension until December 17, 2007 to respond to Respondents' Objection. That Motion was granted. However, Complainant did not file any response.

As already noted, Respondents did not object to Ms. Czuba-Kaminski's requested hourly rate. The requested rate is consistent with previous Commission decisions. The Commission finds, therefore, that the rate requested is reasonable.

IV. REASONABLE HOURS

Complainant's Petition for Attorney's Fees and Costs seeks compensation for a total of 21.1 hours performed by his attorney in furtherance of his prevailing hostile environment claim. That number represents half of the total number of hours Ms. Czuba-Kaminski spent working on Lapa's two claims. Respondents argue that the requested number of hours should be reduced.

After reviewing the First Recommended Decision on Attorney's Fees, the Hearing Officer determined that the number of hours expended by Ms. Czuba-Kaminski, as reported in Exhibit B to Complainant's Petition for Attorney's Fees and Costs, was incorrectly calculated. The Hearing Officer found that the time listed in Exhibit B actually totals 48.7 hours, not 42.2 hours as stated by Complainant and reflected in the First Recommended Decision. Thus, Complainant is actually seeking compensation for half of that time, or a total of 24.35 hours, not 21.1 hours. The Commission adopts the Hearing Officer's findings and bases its attorney fees award on the starting number of 48.7 hours.

A. Objections to Specific Items in the Time Log

Respondents have several objections to specific items listed in Ms. Czuba-Kaminski's time log as being either unnecessary or a result of Complainant's failure to comply with the Commission's orders.

First, Respondents object to the 0.7 hours Ms. Czuba-Kaminski spent preparing and filing a motion to reset the hearing date and then subsequently reviewing the ruling on that motion. Respondents argue that they were prepared to proceed with the hearing on the date that it was originally scheduled and that they should not be required to pay for Complainant's delay in retaining an attorney. Complainant responds, in his Answer, that he had a right to postpone the hearing as he had just retained counsel. Complainant further argues that Respondents' November 2005 motion to reset the hearing date indicates that Respondents were not ready for the hearing to proceed in October.

Respondents' objection is warranted. Respondents' November motion to reset the hearing does not support an inference that Respondents were not prepared for the hearing originally scheduled in October 2005. Respondents' motion was necessitated because of a planned vacation by Respondents' attorney. Additionally, although the hearing officer allowed Complainant a continuance of the hearing date because he had just retained counsel, that does not mean that Respondents should be required to pay for Complainant's last-minute decision to retain counsel. Accordingly, 0.7 hours is stricken from the time log.

Second, Respondents object to the 3.2 hours that Ms. Czuba-Kaminski expended in answering Respondents' discovery requests. Respondents argue that Complainant's discovery responses were due well before Complainant hired his attorney and that Respondents had to file a motion to compel and for sanctions before Complainant answered the discovery requests. Respondents further argue that since their motion for sanctions, which requested attorney fees for the time expended in bringing the motion, was denied, it would be "grossly unfair" to require

Respondents to now have to pay Complainant for the time spent in answering those discovery requests. Complainant responds that the discovery responses were necessary to prevent sanctions against Complainant and, therefore, are compensable.

Again, Respondents' objection is valid. Complainant's discovery responses were approximately two months late. Due to the untimeliness of the discovery responses, Respondents were forced to expend additional time in drafting and filing a motion to compel. Because an award of attorney fees was denied to Respondents for their time spent filing that motion, it would be inappropriate to now award Complainant fees for his late discovery responses. Accordingly, 3.2 hours is deducted from the time log.

Third. Respondents object to the 0.5 hours Ms. Czuba-Kaminski asserts were spent on November 2, 2005 in a telephone discussion with Respondents' attorney regarding rescheduling the hearing. Respondents object to that time because on the date of the alleged conversation, Respondents' attorney was on vacation in Hawaii and did not "have any telephone conversation with anyone in the Chicago area...except for members of his own law firm." In his Answer, Complainant admits that the date of the entry may be wrong, but points out that Respondents' attorney did not deny that the conversation took place. However, Complainant has the burden of outlining the requested fees with enough specificity to allow the Commission to determine the nature of the work involved for each hour expended. See, e.g., *Leadership Council v. Souchet*, CCHR No. 98-H-107 (May 17, 2001). Because Complainant has not indicated the correct date of the telephone conversation or otherwise offered an explanation for this entry, Respondents' attorney's assertion stands unrefuted. Therefore, the November 2 entry of 0.5 hours is deducted from the time log.

Fourth, Respondents object to the 3.0 hours Ms. Czuba-Kaminski expended preparing Complainant's post-hearing memorandum and 1.1 hours she spent responding to Respondents' motion to strike that post-hearing memorandum. Respondents object to these entries because Complainant's post-hearing memorandum was stricken and not considered by the Hearing Officer, as it was not timely filed. Complainant responds to this argument by stating that the post-hearing memorandum was prepared and served and was stricken only because of Respondents' motion to strike it. Complainant's response lacks any merit. Although the memorandum was stricken as a result of Respondents' motion, if Complainant had timely filed the memorandum, it would not have been stricken. Complainant should not be rewarded for failure to comply with the Commission's regulation establishing the time limit for filing a post-hearing brief. Accordingly, 4.1 hours will be deducted from the time log.

Fifth, Respondents object to the 1.0 hour Ms. Czuba-Kaminski expended preparing the Petition for Attorney's Fees. Respondents argue that awarding attorney fees for the time spent in preparing the petition for attorney fees would amount to "double dipping," and that they had never seen an instance where such fees were awarded. Complainant did not respond to Respondents' objection. Generally, time spent preparing an attorney fee petition is compensable. *Sellers v. Outland*, CCHR No. 02-H-37 (Mar. 17, 2004). Complainant's request is not unreasonable. Despite Respondents' argument (Resp. Obj., p. 1) that "most courts do not allow fees for this time," Respondents have failed to specifically point to any decision denying such an award.

Respondents alternately argue (Resp. Obj., p. 1) that the time spent preparing the Petition for Attorney's Fees should be reduced to account for the 12 items (half of the total requested) for

which attorney fees were denied in the First Recommended Decision. Complainant did not respond to that argument. Complainant has requested one hour for the time spent preparing the Petition. Because the Complainant's Petition was only successful on half of the requested attorney fees items, Complainant should only be awarded half of the time spent on that Petition. Accordingly, 0.5 hours is deducted from the time log.

Sixth, Respondents object to the 2.5 hours Ms. Czuba-Kaminski expended in preparing an objection to the Hearing Officer's First Recommended Decision on Liability. Respondents object to that entry because Complainant's objection was rejected by the Hearing Officer and subsequently by the Commission. Complainant argues that "a zealous representation of the client requires" an attorney to pursue all avenues available to her including requests for reconsideration and/or objections to the rulings. However, Complainant is being awarded attorney fees only for his prevailing claim. Because Complainant's objection addressed only Complainant's failed discriminatory eviction claim, the objection was not work performed in furtherance of Complainant's prevailing claim. Accordingly, 2.5 hours is deducted from the time log.

For the reasons stated above, a total of 11.5 hours is deducted from the time log, reducing the total number of compensated hours to 37.2 hours.

B. The Number of Hours Spent on Lapa's Prevailing Claim

The time log Ms. Czuba-Kaminski submitted in support of Complainant's Petition for Attorney's Fees does not delineate which claim she was working on for each entry. Ms. Czuba-Kaminski claims that she spent an equal number of hours working on Lapa's discriminatory eviction claim and hostile environment claim. Ms. Czuba-Kaminski suggests that since Lapa only prevailed on the hostile environment claim, the total number of hours should simply be split in half to determine the number of hours she worked on the hostile environment claim.

Respondents disagree with Ms. Czuba-Kaminski's suggestion. Respondents argue that the main focus of the hearing for both parties was the multiple eviction cases filed against Complainant and that the alleged name calling was merely a side issue. Respondents suggest that a distribution of 80% of time spent on the discriminatory eviction claim and 20% spent on the hostile environment claim is more fair and accurate.

Respondents further argue (Resp. Obj., p. 2) that Complainant's claims were not substantially intertwined and that very little of the evidence from either side really dealt with both claims. Respondents argue (Resp. Obj., p. 3) that if the losing discriminatory eviction claim had never been filed, the evidence of Complainant's poor performance as a tenant would not have been presented, and that it was this evidence which constituted the bulk of the time spent on this case.

The Commission adopts the Hearing Officer's conclusion that Complainant's claims for discriminatory eviction and hostile environment were substantially intertwined throughout the litigation of this matter. Complainant alleged that he was discriminated against because of his sexual orientation. In support of that claim, he introduced evidence that he was addressed by the individual Respondents in various vulgar and pejorative terms referring to his sexual orientation in an effort to end his tenancy. That same evidence was also the basis for his hostile environment allegations. While Complainant prevailed on his hostile environment claim, his

discriminatory eviction assertion failed because Respondents presented sufficient evidence that they would have evicted Complainant even if they had not considered his sexual orientation.

However, not all of the evidence presented went equally toward both claims. A large portion of the time at the hearing was spent covering the multiple evictions by Respondents in asserting their affirmative defense. Respondents are correct (Resp. Obj., p. 4) that they are entitled to pursue a vigorous defense. The time Ms. Czuba-Kaminski spent at the hearing should be reduced to account for the amount of time spent on the non-prevailing claim. Complainant's Petition requests a total of 32.5 hours for time spent at the hearing. After reviewing the transcript, Complainant's case-in-chief and rebuttal were presented over 4 days (26.0 hours) and Respondents' case-in-chief was presented over 1 day (6.5 hours). Respondents did not present a sur-rebuttal case. One entire day of Complainant's case-in-chief was spent examining Complainant, much of which was spent on testimony regarding the multiple evictions. Therefore, it is most accurate to apportion the time spent by Ms. Czuba-Kaminski at the hearing as follows: 60% (15.6 hours) of Complainant's case-in-chief and rebuttal was spent on the non-prevailing claim; 40% (10.4 hours) of Complainant's case-in-chief and rebuttal was spent on the prevailing claim; 75% (4.88 hours) of Respondents' case-in-chief was spent on the non-prevailing claim; and 25% (1.62 hours) of Respondents' case-in-chief was spent on the prevailing claim. The total number of compensable hours for time spent at the hearing, therefore, is 12.02 hours.

The recoverable hours not spent at the hearing (4.7 hours), however, are apportioned equally between the two claims. The 4.7 hours not spent at the hearing are divided in half for a total of 2.35 compensable hours. Adding that number to the compensable hours for time spent at the hearing, the total number of compensable hours is 14.37 hours. At the \$200 hourly rate previously determined to be appropriate, the total amount of attorney fees awarded to Complainant is \$2,874.

C. Attorney Fees To Be Apportioned Among the Respondents

The award of \$2,874 in attorney fees must be apportioned among all Respondents. The attorney fees are apportioned among the Respondents at the same percentages the compensatory and punitive damages were, *i.e.*, based generally on who inflicted the harm. The attorney fees are therefore apportioned as follows: \$1,257.37 against Zygmunt; \$484.99 against Jarosz; \$718.50 against PAVA; \$341.29 against Pawlowski; and \$71.85 against Prusek.

V. CONCLUSION

For the reasons discussed above, the Commission awards Complainant attorney fees in the total amount of \$2,874, apportioned among the Respondents as set forth above.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:



Dana V. Starks, Chair and Commissioner