UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of John Cummings, Charging Party, v. Dedham Housing Authority, Respondent.	HUDALJ 01-90-0424-1

INITIAL DECISION AND ORDER ON APPLICATION FOR ATTORNEY FEES AND COSTS

The Intervenor, John Cummings, filed an application for attorney fees on December 20, 1991. The application attaches the affidavit of counsel for the Intervenor and a Statement of Time and Charges. Respondent filed an Opposition to Intervenor's Application on January 8, 1992, and a Memorandum in Support of its Opposition on April 7, 1992.[1] On April 10, 1992, the Intervenor filed a Revised Application. Respondent filed a Supplemental Opposition to the Revised Application on April 22, 1992 together with a revised affidavit and Revised Statement of Time and Charges.[2] The Intervenor seeks $8,745 in attorney fees based on a total of 58.3 hours spent working on the case at an hourly rate of $150 per hour, and $17 in costs.[3] While not disputing the Intervenor's entitlement to attorney fees and costs,

[1]On December 16, 1991, the Initial Decision and Order became final except for that part of the Initial Decision and Order which declined to award a civil penalty. This issue was remanded by the Secretary on December 13, 1991. The Initial Decision on Remand and Order became final on March 5, 1992.

[2]Counsel for the Intervenor conducted this litigation together with counsel for HUD. In his revised affidavit counsel for the Intervenor states that there were no duplicative pleadings, and that he coordinated with HUD counsel to avoid duplication. He further states that he did the vast majority of pre-trial preparation.

[3]Respondent does not dispute the claim for $17 in costs.

Respondent asserts that both the claimed hourly rate and the number of hours are excessive.

Governing Legal Framework

Under the Fair Housing Act as amended, 42 U.S.C. Sec. 3601, et seq. ("Fair Housing Act" or "Act") a prevailing party is entitled to recover reasonable attorney fees and costs. 42 U.S.C. Sec. 3612(p); *see also*, 24 C.F.R. Sec. 104.940. The United States Supreme Court has stated that "the most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Blum v. Stenson*, 465 U.S. 886, 888 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).[4] *See also, Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). The burden of establishing both the reasonableness of the hourly rate and the number of hours expended on the litigation is on the applicant. *Hensley, supra* at 437. Applicants are required to submit "full and specific accountings of their time, that is, to submit affidavits that are based upon contemporaneous time records and that give specifics such as dates and the nature of the work performed." *Hall v. City of Auburn*, 567 F.Supp. 1222, 1227 (D. Me. 1983). The affidavits must be sufficient for the tribunal to ascertain whether or not there has been work on an issue performed by the applicant upon which the applicant did not prevail, that took an excessive amount of time, or that involved an unwarranted duplication of effort. *Id*.; *see also, Hensley, supra*.

The hourly rate should be "calculated according to the prevailing market rates in the relevant community." *Blum, supra* at 895. Thus, the applicant must establish that the claimed rate is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Id*. at 896 n. 11. "Compensable time includes the total number of hours related to the case, including travel, appellate work, monitoring post-decrees and other compliance matters, pursuing the fee award and work in agency or other ancillary proceedings if this work is "useful and of a type ordinarily necessary to secure the final result obtained from the litigation." Schwemm, *Housing Discrimination: Law and Litigation*, para 25.3(5)(c) at 25-64. (citations omitted).

Discussion

I. Hourly Rate

[4]These decisions interpret the Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. Sec. 1988). Similar language is found in 42 U.S.C. 3612(p).

In his affidavit counsel for the Intervenor states that, although he is an experienced litigator with over twenty years of experience, he is not experienced in housing discrimination cases. He is however, familiar with real property and landlord-tenant law. He further states that $150 is his usual and customary hourly rate. Respondent has submitted affidavits of three Massachusetts attorneys. One of the attorneys worked on this matter and billed at a rate of $110 per hour. The other two attorneys devote a significant amount of their practice to civil rights matters and are associated with firms other than the firm representing Respondent. One of these attorneys bills at a rate of $110 per hour; the other bills at a rate of $120 per hour.

This evidence establishes that the prevailing market rate for litigation of this type in the relevant community (Boston, Massachusetts) is $110 per hour for an experienced civil rights attorney. The Intervenor cannot meet his burden to prove the prevailing rate merely by relying upon his own counsel's affidavit. *Blum, supra* at 896 n. 11; *Bordanaro v. McLoed*, 871 F.2d 1151, 1167-1168, (1st Cir. 1989). Thus, Respondent's affidavits are uncontradicted by the Intervenor's submission. Accordingly, the Intervenor has failed to meet his burden to establish an hourly rate of $150 as the prevailing market rate in the relevant community. Although counsel for the Intervenor is not an experienced civil rights attorney, his background as an experienced litigator in real property and landlord-tenant cases establishes to my satisfaction that he is entitled to be compensated at a rate equal to the prevailing rate of an experienced civil rights attorney practicing in Massachusetts. Accordingly, I conclude that an hourly rate of $110 is appropriate in this case.

II. Number of Hours Reasonably Expended on the Litigation

Counsel claims time for reviewing filings and the decision in connection with the Initial Decision and Order on Remand. *See* note 1, *supra*. Respondent contends that, since the remand dealt with the award of a civil penalty and had no effect on the Intervenor, these items were not "useful and ordinarily necessary to reach the final result obtained." Respondent's Supplemental Opposition, p. 2., *citing Pennsylvania v. Delaware Valley Citizen's Counsel for Clean Air*, 478 U.S. 546 (1986); *Webb v. Dyer County Board of Education*, 471 U.S. 234 (1985). I disagree. Time spent "monitoring" post-judgment matters is compensable. Schwemm, *supra* at 25-64. Based on counsel's explanations, I am satisfied that his activities in connection with the remand were limited to reviewing these documents, ascertaining their import, and explaining them to his client. He was entitled to spend time reading them in order to protect his client's interests. *Id*. at

558.

Counsel claims 1.3 hours for work performed on September 3rd and 4th of 1991, pertaining to Intervenor's yearly eligibility recertification for public housing. Respondent asserts that the claim is unrelated to this litigation. Counsel has failed to demonstrate how the recertification matter related to the instant case despite having had the opportunity to do so.[5] Therefore, these 1.3 hours are not compensable.

Counsel also claims he spent a total of .5 hours receiving documents on May 21, 1991, and May 31, 1991, reading three deposition notices on May 29, and June 5, 1991, and sending documents to counsel on June 18, 1991. Based upon common experience, I conclude that these tasks could have been performed in .2 of an hour. Accordingly, .3 hours shall be subtracted for these items.

[5]In his initial application, the Intervenor included claims totalling 6 hours for what Respondent asserts are related to "yearly eligibility recertification for public housing as well as an application for transfer to a new apartment." Respondents Opposition to Application for Attorney Fees. The Intervenor's Revised Application eliminates all but 1.3 hours relating to the yearly recertification and fails to take issue with Respondent's contention that the yearly recertification is unrelated to this litigation.

A total of .5 hours has been claimed for placing phone calls on June 27, 1991, and July 3, 1991, to an individual who was unavailable to receive the call. Counsel left a message to return them. Again, based on common experience, I conclude that .1 hours was sufficient to ascertain that the individual was absent and to leave a message. Thus, .4 hours shall be subtracted for these items.

I have reviewed the other items claimed and find that the record establishes that the time was reasonably spent, and that the claimed work involves no unwarranted duplication of effort.

CONCLUSION AND ORDER

In conclusion, the Intervenor is entitled to attorney fees at a rate of $110 per hour for 56.3 hours (58.3 - (1.3 + .3 + .4)). Accordingly, within 45 days of the date this decision becomes final, Respondent is hereby ORDERED to pay the Intervenor $6,193 in attorney fees and $17 in costs.

/s/

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WILLIAM C. CREGAR
Administrative Law Judge

Dated: May 26, 1992