

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

<p>The Secretary, United States Department of Housing and Urban Development, on behalf of Xiong Lee,</p> <p style="padding-left: 40px;">Charging Party,</p> <p style="padding-left: 40px;">and</p> <p>Xiong Lee,</p> <p style="padding-left: 40px;">Complainant/Intervenor,</p> <p style="padding-left: 40px;">v.</p> <p>Jean Weber,</p> <p style="padding-left: 40px;">Respondent.</p>	
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HUDALJ 05-91-0819-1

Decided: July 7, 1993

Michael J. Bonovich, Esq.
For the Respondent

Michael E. Rudolph, Esq.
For the Complainant

Steven J. Sacks, Esq.
For the Secretary

Before: PAUL G. STREB
Administrative Law Judge

INITIAL DECISION AND ORDER
ON PETITION FOR ATTORNEY'S FEES

STATEMENT OF THE CASE

This matter concerns a petition for attorney's fees filed by Xiong Lee in

conjunction with a complaint of discrimination that he filed pursuant to the Fair Housing Act of 1968, as amended ("the Act"). On February 18, 1993, I issued an Initial Decision and Order finding that Jean Weber violated the Act by coercing, intimidating, threatening, and interfering with Mr. Lee in conjunction with his effort to secure rental housing. The Initial Decision became the final decision of the Department of Housing and Urban Development (HUD) on March 22, 1993. See 24 C.F.R. § 104.930(b).

On March 30, 1993, Mr. Lee filed a Petition for Attorney's Fees and Costs. Mr. Lee seeks a total of \$2,593.75 for 20.75 hours of services performed by his attorney, Michael E. Rudolph, at a rate of \$125.00 per hour. On April 6, 1993, I issued an Order providing that any response to the Petition must be filed no later than April 19, 1993, and that the record would close on April 30, 1993. Ms. Weber has not responded to the Petition for Attorney's Fees. Upon consideration of the record in this matter, I find that Mr. Lee is entitled to the requested amount of \$2,593.75 for payment of his attorney's fees.

ANALYSIS AND FINDINGS

The Act provides that "[i]n any administrative proceeding brought under [the Act], the administrative law judge . . . in [his or her] discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs." 42 U.S.C. § 3612(p). HUD regulations provide that, "Following the issuance of the final decision, . . . any prevailing party, except HUD, may apply for attorney's fees and costs." The regulations provide further that, "To the extent that an intervenor is a prevailing party, the respondent will be liable for reasonable attorney's fees unless special circumstances make the recovery of such fees and costs unjust." 24 C.F.R. § 104.940(b). "[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).¹

A prevailing party is one who succeeds on "any significant issue in litigation which achieves some of the benefit the [party] sought in bringing suit." *Id.* at 433. I find that Mr. Lee is a prevailing party. Although the charge was filed on Mr. Lee's behalf by HUD, he later became a party when his motion to intervene was granted. His allegations against Ms. Weber were established during the hearing, and he was awarded substantial compensatory damages.

¹This and other cases cited in this decision are cases interpreting the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988 ("CRAFA"). Those cases provide guidance because Congress amended the Act's attorney's fees' language in 1988 with the intent to "bring [the language] closer to the model used in other civil rights laws." H. Rep. No. 711, 100th Cong., 2d Sess. 13, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2174. Moreover, other tribunals have applied cases interpreting the CRAFA in adjudicating attorney's fees' petitions in Fair Housing Act cases. See, e.g., *Cabrera v. Fischler*, 814 F. Supp. 269, 285-92 (E.D.N.Y. 1993).

As Ms. Weber did not respond to the fee petition, there is no assertion that special circumstances make a fee award unjust. Moreover, no such circumstances are apparent. Accordingly, Mr. Lee is entitled to a reasonable fee.

"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." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). When a fee applicant has met the burden to show that the claimed rate and number of hours are reasonable, the resulting product is presumed to be a reasonable fee. *Blum v. Stenson*, 465 U.S. 886, 897 (1984). Although other considerations may lead the tribunal to adjust the fee upward or downward, *id.* at 897 & n.14, neither party has sought such an adjustment and there appears no reason to make one in this case.

To be considered reasonable, an attorney's hourly rate must be consistent with the prevailing market rate in the relevant legal community. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). "For private counsel with fee-paying clients, the best evidence [of the prevailing market rate] is the hourly rate customarily charged by counsel or by [the] law firm." *Tomazzoli v. Sheedy*, 804 F.2d 93, 98 (7th Cir. 1986). The experience of the attorney should also be considered. See *Cabrera v. Fischler*, 814 F. Supp. 269, 288-89 (E.D.N.Y. 1993).

Mr. Rudolph has submitted uncontested evidence that the \$125 hourly rate charged in this case is his and his firm's normal rate for civil rights cases, and that it is comparable to or less than the rates charged by other attorneys in the area for similar cases. The evidence also shows that Mr. Rudolph is an experienced trial attorney in civil rights cases. He is a partner in a two-person firm specializing in discrimination cases. During his 10 years of practice, he has represented approximately 20 plaintiffs in such cases. In view of those factors, I find the \$125 hourly rate to be reasonable.

In order to justify the number of hours claimed, a fee applicant must submit a complete accounting of the time expended on the litigation, ordinarily including an affidavit stating the dates and nature of the work performed. See *Calhoun v. Acme Cleveland Corp.*, 801 F.2d 558 (1st Cir. 1986). The application for fees must be sufficient to ascertain that the applicant's attorney worked on an issue upon which applicant prevailed, that the work did not constitute an unwarranted duplication of effort, and that the time involved was not excessive. See *Hensley*, 461 U.S. at 434, 437; *Tomazzoli*, 804 F.2d at 97 n.5 (7th Cir. 1986).

Mr. Rudolph has submitted an affidavit and a detailed accounting of his services and time expended in this matter. This evidence shows that he spent 20.75 hours on the case between July 1992 and March 1993. This time was spent in meetings with Mr. Lee to discuss legal options and explain the proceedings, consultations with HUD counsel,

correspondence preparation, witness interviews, depositions, performing a title search of Ms. Weber's property, appearance and participation at the hearing, and reviewing briefs and other documents prepared by HUD counsel.

I find the number of hours expended on the case to be reasonable and supported by Mr. Rudolph's accounting. The services that he provided were neither duplicative of HUD counsel's efforts nor excessive.

CONCLUSION AND ORDER

I find that the hourly rate and hours expended by Mr. Rudolph on this case are reasonable. Accordingly, Mr. Lee is entitled to attorney's fees in the amount of \$2,593.75. Within 35 days of the date that this initial decision becomes final, Respondent is **ORDERED** to pay Mr. Lee \$2,593.75 for his attorney's fees.

This order is entered pursuant to 42 U.S.C. § 3612(p) and 24 C.F.R. § 104.940. It will become final upon the expiration of 30 days or the affirmance, in whole or in part, by the Secretary of HUD within that time.

/s/

PAUL G. STREB
Administrative Law Judge

