

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

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
The Leadership Council for
Metropolitan Open Communities,

HUDALJ 05-91-0969-1
Date: February 10, 1994

Charging Party,

and

The Leadership Council for
Metropolitan
Open Communities and Marsha Allen,

Intervenors

V.

Stanley Jancik,

Respondent.

**INITIAL DECISION AND ORDER ON
APPLICATION FOR ATTORNEY FEES**

Background

On November 30, 1993, Intervenors, the Leadership Council for Metropolitan Open Communities ("the Council") and Marsha Allen, a Council employee, filed a Petition for Attorney Fees. The Council is a non-profit organization dedicated to promoting equal opportunities in housing in the metropolitan Chicago area. Intervenors seek \$23,842.50 in attorney fees. Respondent, Stanley Jancik, filed a Response to the Petition on December 6, 1993.' I find that Intervenors are entitled to the amount of fees requested.

On October 1, 1993, I issued an Initial Decision and Order finding that Respondent had discriminated against Intervenors in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.* I awarded damages to the Council and Ms. Allen, exclusive of legal fees, and imposed a civil penalty and an injunctive order on Respondent. On December 6, 1993, Respondent filed an appeal of the Initial Decision with the United States Court of Appeals for the Seventh Circuit. That appeal is still pending.

Intervenors seek fees for Edward Voci, the Council's General Counsel and Legal Director, and for Mark Freedman, Mr. Voci's law clerk who was a second year law student at the time of the hearing. Mr. Voci filed an affidavit stating, that he expended 95.25 hours of work on the case at a rate of \$210 per hour, the asserted prevailing, market rate, for a total of \$20,002.50; Mr. Freedman filed an affidavit stating that he expended 120 hours at the current reasonable market, rate for second year law students of \$32 per hour, for a total of \$3,840. In support of their statements, affiants also submitted complete, itemized work schedules with dates, time expended, and work performed.

Respondent contends that Intervenors are not entitled to fees because they did not pay compensation to affiants, salaried employees of the Council. Further, he asserts that Intervenors failed to provide documentation or offer testimony to support their claims of the time expended and the reasonableness of the hourly rates. Respondent filed a Motion for Oral Hearing on Intervenors' Application, requesting that the hearing be held after a determination of his appeal by the United States Court of Appeals for the Seventh Circuit.'

Applicable Law

The Fair Housing Act, as amended 42 U.S.C. §§ 3601, *et seq.* ("the Act"), provides that a prevailing party in an administrative proceeding is entitled to recover attorney fees. 42 U.S.C. § 3612(p); see 24 C.F.R. § 104.940. A prevailing party is one whose success on significant issues achieves sought after benefits. See *Busche v. Burkee*, 649 F.2d 509, 521 (7th Cir.), *cert. denied*, 454 U.S. 897 (1981); see also *Dixon v. City of Chicago*, 948 F.2d 355, 357-58 (7th Cir. 1991),.

The burden of establishing the reasonableness of the requested rate, as well as the number of hours expended on litigation, is on the applicant. *Hensley v. Eckerhart*, 461 U.S. 424, 4--13, 437 (1983). A reasonable rate is the prevailing market rate in the relevant legal community. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). An attorney's expertise is a consideration in determining the rate. See *id.* at 898; *Buffington v. Baltimore County, Md.*, 913 F.2d 113, 130 (4th Cir. 1990), *cert. denied*, 499 U.S. 906 (1991). Accordingly, 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." *Blum*, 465 U.S. at 895 n.11.

An applicant must submit an accounting of the time expended on litigation, ordinarily including an affidavit describing the facts and the nature of the work performed. See *Calhoun v. Acme Cleveland Inc., Corp.*, 801 F.2d 55.8 (1st Cir. 1986). The applicant's counsel need not "record in great detail how each minute of the time was expended. But at least counsel should identify the general subject matter of the time expenditures." *Hensley*, 461 U.S. at 4--17 n.12. The application for fees must be sufficient to ascertain that the applicant's attorney worked on all issues upon which applicant prevailed, that the work did not constitute an unwarranted duplication of effort, and that the time involved was not excessive. See *id.* at 4--17, 4--17; *Tchima, et al. v. Sheedy*, 804 F.2d 90, 97 n.5 (7th Cir. 1986).

Discussion

Entitlement

Respondent was found to have violated the Act and he was assessed damages. Accordingly,

Intervenors are prevailing parties and Respondent is liable for reasonable

attorney fees. See 24 C.F.R. § 14.940(b').

Respondent contends that Intervenor are not entitled to fees because their attorneys are salaried employees of a non-profit organization. I disagree. Intervenor are entitled to attorney fees regardless of whether they retained private counsel or were represented by a public interest group or non-profit organization. See *Oldham v. Ehrlich*, 617 F.2d 16 (8th Cir. 1980); *Levin v. TVaisi*, 670 F.2d 674 (9th Cir. 1980). See also Senate Judiciary Comm., *The Civil Rights Attorney's Fees Awards Act of 1976*, S. Rep. No. 1011, 94th Cong., 2d Sess. 6 [hereinafter 1976 Senate Report], reprinted in 1976 U.S.C.A.N. 5908, 5913; Blup-4 165 U.S. 895 ("In determining the amount of fees to be awarded, it is not legally relevant that... counsel... are employed by... a privately funded non-profit interest law (quoting *Davis v. County of Los Angeles*, 8 EPD 9444, at 5048-49 (C.D. Cal. 1981)).

Moreover, the amount awarded should not be decreased because attorneys are employed by the non-profit organization which is also a party. Rather, Intervenor are entitled to compensation at a rate comparable to that charged in the private sector. See Blum, 465 U.S. at 895-96; see also, 1977(1) *Seizure Report* at 6 ("In computing the fee, counsel for prevailing parties should be paid, as is traditional with attorneys compensated by a fee-paying client...."). The notion that fee awards should be reduced where they are to be paid to not-for-profit organizations has been rejected by every court of appeals to consider it. *Gautreaux v. Chicago Housing Authority*, 790 F.2d 601, 613 (7th Cir. 1982), cert. denied, 461 U.S. 961 (1983). See also *Reuter v. New York City Housing Authority*, 777 F. Supp. 1185, 1188 (S.D. N.Y. 1991), *aff'd in part, rev'd in part*, 908 F.2d 1188 (2d Cir. 1992).

2 Numerous cases recognize the courts' authority to make interim awards for attorney fees in civil rights cases. See, e.g., *James v. Stockham Valves & Fittings Co.*, 559 F.2d 310, 358-59 (5th Cir. 1977), cert. denied, 434 U.S. 1034 (1978); *Grubbs v. Butz*, 548 F.2d 973, 976-77 (D.C. Cir. 1976).

3 These and numerous cases cited in this decision are cases interpreting the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988 ("CRA Fees Act"). Cases interpreting the CRA Fees Act also apply to the Fair Housing Act. See 42 U.S.C. § 3602(o); see also House Judiciary Comm., *Fair Housing Amendments Act of 1988* H. Rep. No. 711, 100th Cong., 2d Sess. 13, reprinted in 1988 U.S.C.A.N. 2173, 2174 (amendments to the Act make its fee provision similar to those in other civil rights statutes).

Hourly Rates and Time Expended

Respondent contests the rates and the number of hours claimed by Intervenor because the attorneys' affidavits are unsupported by either additional testimony or documentation, and he requests an oral hearing on these issues. Respondent, however, fails to assert any specific basis, raise any particular factual dispute, or provide any reason to question Intervenor's attorneys' detailed

submissions. I find that Intervenor's affidavits are sufficient to prove the reasonableness of the rates and hours claimed, and accordingly, an evidentiary hearing is not required.

An evidentiary hearing, on an attorney fees application is not an automatic right. See *Imprisoned Citizens Union v. Shapp*, 473 F. Supp. 1017, 1021 (E.D. Pa. 1979). To the contrary, where the attorneys' affidavits are sufficiently detailed to enable the trial judge to make a determination on a fee award, a full evidentiary hearing is unnecessary. See *American Constitutional Party v. Munro*, 650 F.2d 184, 186 (9th Cir. 1981); *Williams v. Alioto*, 625 F.2d 845, 849 (9th Cir. 1980), cert. denied, 450 U.S. 1012 (1981); see also *Coop v. City of South Bend*, 635 F.2d 652, 655 (7th Cir. 1980). Because affiants' written testimony is sufficiently detailed to support the claimed rates and hours as reasonable, Respondent's request for an oral hearing is denied.

Mr. Voci states in his affidavit that the \$210 rate is the current reasonable market rate for attorneys with his experience, expertise, and skill in fair housing cases. He has been in private practice since 1977. He specializes in civil rights cases, including plaintiffs' housing discrimination cases. He has tried or is presently litigating over 50 fair housing cases in federal district court and has appeared in approximately 100 fair housing cases before the federal district and appellate courts, state courts, this tribunal, and state and city commissions. Moreover, he has been the General Counsel and Legal Director at the Council since 1991. In this position he is currently appearing in approximately 50 fair housing proceedings. He also has participated in and supervised various academic seminars and training clinics on housing discrimination and is an Adjunct Professor of Law at John Marshall Law School.

In addition. Mr. Voci has received fees in various cases at the \$210 rate or greater. See, e.g., *Village of Bellwood v. Raj Realty*, (N.D. M., Feb. 26, 1991) (\$250 hourly rate awarded); *Fulgem v. Pence*, No. 91-FHO-65-5650 (1992) (\$200 hourly rate awarded); *Finley v. Baird & Wamer*, No. 90 C 7116 (N.D. Ill. 1992) (settlement of \$200 hourly rate reached); *BUD v. Simpson*; 2 Fair Housing-Fair Lending (P-H) 1 25,044 (HUDALJ Apr. 16, 1993) (\$210 hourly rate awarded). Therefore, I find that his experience and expertise, as well as the fees he has received in other fair housing cases, corroborates his written testimony that \$210 is the prevailing market rate. Further, I find that his experience and expertise do, in fact, warrant an hourly rate of \$210.

Mr. Freedman claims a \$32 hourly rate. Awards to law students and clerks are authorized. *Berman v. Schweiker*, 713 F.2d 1290, 1293 n.11 (7th Cir. 1983), affg, 531 F. Supp. 1149, 1154-55 (N.D. Ill. 1982). I find Mr. Freedman's rate reasonable based on the prevailing rate for second year law students employed by Chicago area law firms. Further, the rate is comparable to other awards made to law students. See *Proulx v. Citibank, NA.*, 709 F. Supp. 396, 399-400 (S.D. N.Y. 1989) (law student's hourly rate of \$30); *Bolden v. Pennsylvania State Police*, 491 F. Supp. 958, 965 (E.D. Pa. 1980) (law student's hourly rate of \$35).

Respondent also contests the hours claimed by Intervenor's attorneys because Intervenor's attorneys failed to submit supporting documentation along with their affidavits and he has not had the opportunity to cross examine the affiants. Neither of these professed deficiencies, however, defeats Intervenor's entitlement to fees because the affidavits are sufficiently detailed to allow me to conclude that the hours claimed are neither duplicative nor excessive. Accordingly, Intervenor's are entitled to compensation for the total amount of time claimed. See *Hensley*, 461 U.S. at 434, 437; *Tomazzoli* 804 F.2d at 97 n.5.

Mr. Voci's affidavit claims a total of 95.25 hours. He lists entries of time expended in hourly fractions, with dates and the actual work performed. The entries include 2.75 hours to determine

whether a complaint was warranted, and to draft and file it; six minutes to read correspondence; 1.5 hours to confer with HUD counsel; 8.5 hours to prepare for direct examinations, draft a motion, outline the evidence for hearing, discuss strategy, and review various documents; and 35 hours to research case law, review a draft of the posthearing brief, and write the final brief for submission to this tribunal. All other entries are equally detailed and reasonable.

Mr. Freedman's affidavit asserts that he expended 120 hours on the case. His entries include 5.25 hours to prepare a hearing file and organize various documents; 7.5 hours to review the pleadings, confer with HUD counsel, supervise research performed by other legal interns, and discuss hearing strategy with Mr. Voci;-- and 84.5 hours to review pleadings, affidavits, and hearing exhibits, to draft the posthearing brief and read the hearing transcript. The remainder of the entries are similarly specific and supportable. Both detailed accounts substantiate that the hours were expended on issues upon which Intervenor prevailed, and that the hours were not duplicative or excessive.

4Mr. Freedman's rate is based on an average of the salaries for second year law students in Chicago area firms as reported in the 1993 National Association of Legal Placement Directory of Legal Employers. Intervenor is entitled to compensation for Mr. Freedman's services based on the pay scales for law clerks in private law firms. See *supra* p. 3.

Conclusion and Order

Because Intervenor's have supported both the hourly rate and the time expended on the case with detailed un rebutted affidavits, I find that a hearing on the application is not warranted. Therefore, Respondent's Motion for Oral Hearing on the petition for attorney's fees is denied.

Intervenor's as prevailing parties are entitled to an award of attorney fees at the prevailing market rate ordinarily charged by private counsel. Intervenor's are entitled to payment for attorney fees at the rate of \$210 per hour for Mr. Voci's 95.25 hours of work, or \$20,002.50; and at the rate of \$32 per hour for Mr. Freedman's 120 hours of services, or \$3,840.

Accordingly, within 45 days of the date this initial decision becomes final, Respondent is ORDERED to pay Intervenor Leadership Council for Metropolitan Open Communities \$23,842.50 in attorney fees.

Respondent's Motion for a Hearing is DENIED.

/s/

WILLIAM C. CRAGGIER
Administrative Law Judge

Dated: February 10, 1994.

