

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OAL DOCKET NO. CRT 8121-98
DCR DOCKET NO. EL11WB-42243-E
DECIDED: JULY 24, 2002

_____)	
DAVID BRONNER,)	
)	
Complainant,)	ADMINISTRATIVE ACTION
)	
v.)	SUPPLEMENTAL ORDER FOR
)	COUNSEL FEES
WW TENDERCARE ENTERPRISES)	
NURSING INC., AND ALEYAMMA)	
P. JOSEPH,)	
)	
Respondents.)	
_____)	

APPEARANCES:

James P.A. Cavanaugh, Esq., for the complainant (Ian Stuart, attorney)

No appearance by or on behalf of Respondents.

BY THE DIRECTOR:

INTRODUCTION

This matter is before the Director of the New Jersey Division on Civil Rights (Division) pursuant to an application for attorney's fees filed by the complainant, David Bronner (Complainant).

On February 13, 2002, the Director issued an order finding that Respondent subjected Complainant to unlawful discrimination in violation of the LAD. The Director awarded Complainant back pay with interest and compensation for his pain and

humiliation. The Director also assessed the maximum statutory penalty and granted Complainant 45 days to submit an application for reasonable attorney's fees in accordance with N.J.S.A. 10:5-27.1. Complainant submitted an application for attorneys fees on March 15, 2002, and supplemented his application on May 10, and June 21, 2002. Respondent did not file opposing papers.

THE DIRECTOR'S FINDINGS AND DETERMINATIONS

The LAD provides for the award of "a reasonable attorney's fee" to a prevailing party in an action under statute. N.J.S.A. 10:5-27.1. A prevailing plaintiff entitled to recover reasonable attorney's fees is one who has succeeded on "any significant issue in litigation which achieves some of the benefit the part[y] sought in bring the suit." Blakey v. Continental Airlines, Inc., 2 F. Supp. 2d 598, 601-602 (D.N.J. 1998) quoting Hensley v. Eckerhart, 461 U.S. 414, 433, 103 S.Ct. 1933 (1983).

Applying these principles to the present case, the Director concludes that Complainant is a prevailing party for the purpose of determining his entitlement to an award of counsel fees. In this instance, the Director determined that Respondent's refusal to hire Complainant because of his sexual orientation and perceived handicap violated the LAD. The Director's order required Respondent to pay Complainant \$8,772.05 for back pay with interest and \$10,000 to compensate him for suffering the indignity and emotional injury of being denied employment illegally. Accordingly, the resolution of the complaint materially altered the legal relationship of the parties in furtherance of a purpose contemplated by the Legislature in providing for awards of counsel fees to prevailing parties in LAD claims, namely the elimination and remedying of unlawful employment

practices. Texas State Teachers Assoc. v. Garland Independent School District, 489 U.S. 782, 793 (1989). For these reasons, the Director concludes that Complainant is a prevailing party. Counsel is, therefore, entitled to recover a reasonable fee for the services rendered in establishing a basis for the Director's determination that Respondent violated the LAD .

The New Jersey Supreme Court has determined that the starting point for calculating a reasonable attorney's fee is computation of the "lodestar," which is derived by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Rendine v. Pantzer, 141 N.J. 292, 334-35 (1995); Szczepanski v. Newcomb Medical Center, 141 N.J. 346, 354 (1995). In determining a reasonable fee, the lodestar may then be adjusted taking into account "the hours expended, the lawyer's customary hourly rate, the success achieved, the risk of nonpayment, and other material factors." Szczepanski, *supra*, 141 N.J. at 359, citing Rendine, *supra*, 141 N.J. at 334-35.

The determination of an appropriate award of fees requires careful and close examination of counsel's submissions "to verify that the attorney's hours were reasonably expended" with respect to the successful claim. Szczepanski, *supra*, 141 N.J. at 366-367. Accordingly, in determining a reasonable number hours of professional services to be awarded, a reviewing court "must undertake a review of the hours claimed and cannot passively accept the submissions of counsel in determining the ultimate lodestar amount." The ARC of New Jersey v. Township of Voorhees, 986 F. Supp. 261, 268 (D.N.J. 1997). However, although the Supreme Court of New Jersey has expressed a strong preference for the production of contemporaneously recorded time records to verify hours expended

by counsel in connection with a counsel fee application, an exact accounting of the precise number of minutes spent of detailed descriptions of the attorney's activities is unnecessary. Rendine, supra, 141 N.J. at 337; see also Szczepanski, supra, 141 N.J. at 367, citing Webb v. Board of Education, 471 U.S. 234, 238 n.6 (1985).

Mr. Cavanaugh seeks compensation for 124.92 unreimbursed hours expended in this matter. In support of his claim, he submits time records that chronologically identify various activities and the time expended by counsel on each such activity. Based upon a review of the time records submitted, the Director concludes that the number of hours expended in litigating this case is reasonable.

A reasonable hourly rate "is to be calculated according to the prevailing market rates in the relevant community." Rendine, supra, 141 N.J. at 337, quoting Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3rd Cir. 1990); Blum v. Stenson, 465 U.S. 886, 895 (1984). In most circumstances, the State of New Jersey is considered a single market for purposes of determining a reasonable prevailing rate in the community. See Public Interest Research Group of New Jersey v. Windall, 51 F.3d 1179, 1186-88 (3rd Cir. 1995).¹ In addition, the Supreme Court of New Jersey has also declared that, in order to compensate for the delay in payment, the calculation of a reasonable hourly rate should be based on the market rate at the time of the fee application, rather than the rates in effect at the time the services were rendered. Rendine, supra, 141 N.J. at 337.

Generally, "[e]vidence of rates may be adduced through direct evidence of charges

¹Although the Division is not bound by federal precedent when interpreting the LAD, New Jersey courts have consistently "looked to federal law as a key source of interpretive authority in construing the LAD." Grigoletti v. Ortho Pharmaceutical Corp., 118 N.J. 89, 97 (1990).

by lawyers under similar circumstances or by opinion evidence.” Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292, 1299 (11th Cir. 1988). The applicant bears the burden of demonstrating that his requested rate is comparable to rates charged for similar services by lawyers possessing similar skills, experience and reputation. Ibid.

In this instance, Mr. Cavanaugh asks to be compensated for services rendered at an hourly rate of \$200.00. However, Mr. Cavanaugh does not provide information regarding his years of experience or submit affidavits regarding fees charged by other attorneys possessing similar skills, experience and reputation.

Ordinarily, proof of a prevailing market rate requires more than the submission of an affidavit by the attorney who performed the work. Ibid. Nevertheless, the Director notes that in 1998, a federal court concluded, based on a review of judicial opinions and certifications from counsel, that \$300.00 constituted a reasonable hourly rate for experienced employment law attorneys in New Jersey’s legal community. Blakey v. Continental Airlines, Inc., 2 F. Supp. 2d 598, 603 (D.N.J. 1998). In addition, the Director recently awarded an hourly rate of \$225.00 to a partner in a law firm with 18 years of legal experience. Anand v. Caesars Atlantic City Resort, OAL Dkt. No. CRT 6059-97, Supplemental Order on Attorney’s Fees (July 20, 1999). See also, Hurley v. Atlantic City Police Department, 174 F.3d 95 (3rd Cir. 1999)(affirming award of \$200/hour to experienced attorney); The ARC of New Jersey v. Township of Voorhees, supra, 986 F. Supp. at 271 (finding that \$250/hour is “well within the range charged by civil rights plaintiff’s counsel in the District of New Jersey”).

Based on the foregoing legal standards and in consideration of the foregoing comparisons, the Director concludes that the hourly fee of \$200.00 currently charged by Mr. Cavanaugh represents a reasonable hourly rate of compensation for his services in this case. Accordingly, the number of reasonable hours expended multiplied by the reasonable hourly rate establishes the lodestar. In the present case, the lodestar totals \$24,984.00 (124.92 x \$200.00).

Fee Enhancement

The Supreme Court of New Jersey has also established that an enhancement of the reasonable fee is sometimes appropriate because “[i]n many cases, a client will be unable to pay for counsel or will be unwilling to assume the risk of liability for attorney’s fees, even if the public interest may be significantly aided by the private litigation.” *Id.* at 340, quoting Pennsylvania v. Delaware Valley Citizens Council, 483 U.S. 711, 749 (1987)(Blackman, J., dissenting). Thus, the case for enhancement is more compelling when it helps ensure the availability of representation to parties with public interest claims who cannot afford to pay for legal services. The Supreme Court of New Jersey has directed that the decision to enhance fees, as well as the amount of an enhancement, should be determined based on the actual risks or burdens that are borne by the attorney, the extent to which counsel has been able to mitigate the risk of nonpayment, and the extent to which other factors may have aggravated the risk of nonpayment in a particular case. Rendine, 141 N.J. at 339-40. In the present case, counsel assumed the risk of nonpayment by representing Complainant on a contingency basis. Accordingly, the Director finds good cause to grant a 5% fee enhancement in this matter, bringing the total award of counsel fees to

\$26,233.20.

V. ORDER

Having given careful and independent consideration to the record, the Director orders as follows:

1. Within forty-five days of the date of this Order, Respondent shall forward to the Division a certified check made payable to Law Offices of Ian Stuart and James P.A. Cavanaugh, Esq., in the amount of \$26,233.20 for counsel fees;

2. Any late payments will be subject to post-judgment interest at such amount as prescribed by the Rules Governing the Courts of New Jersey, from the due date until such time as payment is received by the Division.

Dated: _____

J. FRANK VESPA-PAPALEO, Esq.
DIRECTOR
DIVISION ON CIVIL RIGHTS

JFVP:SSG:KCB/