



STATE OF NEW JERSEY
 OFFICE OF THE ATTORNEY GENERAL
 DEPARTMENT OF LAW & PUBLIC SAFETY
 DIVISION ON CIVIL RIGHTS
 OAL DOCKET NO. CRT 5188-04
 DCR DOCKET NO. EV09HB-43181

 LOTTIE WILLIAMS,)
)
 Complainant,)
)
 v.)
)
 STATE SHUTTLE/TOP TEN)
 LEASING, Inc.,)
)
)
 Respondent.)

ADMINISTRATIVE ACTION
 SUPPLEMENTAL ORDER FOR
 ATTORNEY'S FEES AND COSTS

APPEARANCES:

Brian O. Lipman, Deputy Attorney General (Stuart Rabner, Attorney General of New Jersey, attorney) for the complainant

Michael L. Kingman, Esq. for the respondent

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 and costs filed by the Deputy Attorney General (DAG) who prosecuted this matter on behalf of the Division. By order dated August 17, 2006, the Director ordered Respondent to cease and desist violating the LAD, awarded lost wages and damages for emotional distress to Complainant, and imposed a statutory penalty. The Director also ordered counsel to attempt to stipulate to the amount of attorney's fees and costs incurred by the attorney for the Division pursuant to N.J.S.A. 10:5-27.1, and if no stipulation could be reached, the attorney for the Division would submit a fee application and certification.

THE FEE APPLICATION

DAG Brian O. Lipman, who prosecuted this matter, submitted an application for \$47,805.00 in counsel fees and \$446.25 for the cost of hearing transcripts. His application was supported by certifications from himself and two other DAsG who worked on this prosecution, as well as invoices/payment vouchers for the hearing transcripts. In addition, the fee application was supported by a July 21, 2005 memorandum from the Acting Director of the Division of Law, establishing uniform hourly rates of compensation for DAsG to be used for fee applications, based on their years of legal experience.

The LAD permits the award of reasonable attorney's fees to a prevailing party, including fee awards to an attorney who presented the case for the Division. N.J.S.A. 10:5-27.1; N.J.S.A. 34:11B-12. See also, Rendine v. Pantzer, 141 N.J. 292 (1995). Fees should ordinarily be awarded unless special circumstances would make a fee award unjust. Hunter v. Trenton Housing Authority, 304 N.J. Super. 70, 74-75 (App. Div. 1997).

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, supra, 141 N.J. at 334-35. Counsel requests \$155 per hour for his work in prosecuting this matter, and \$175 per hour for the work of two other DasG, with the fees for each DAG being set based on their years of experience. The Director finds these hourly rates to be reasonable, as they are less than the prevailing rates in the relevant community for attorneys of comparable skill and experience. Id. at 337. To compensate for the delay in payment, it is appropriate to determine the hourly fee based on current rates rather than the prevailing rates at the time the services were performed. Ibid.

If the hours expended exceed the time that competent counsel reasonably would have expended to achieve a comparable result, excessive hours should be excluded from the lodestar calculation. Rendine v. Pantzer, supra, 141 N.J. at 336. In evaluating the results achieved, the

decisionmaker should consider not only the monetary relief sought as compared to the monetary award, but also the interests vindicated and the statutory objectives. Ibid; Szczepanski v. Newcomb Medical Center, 141 N.J. 346, 366-367 (1995).

In furtherance of the LAD's public interest objectives, counsel fees need not be proportional to the amount of monetary relief awarded to the prevailing party. Szczepanski v. Newcomb Medical Center, supra, 141 N.J. at 366-367. Nevertheless, determining the appropriate fee award generally requires careful examination of counsel's submissions to verify that the attorney's hours were reasonably expended, and the decisionmaker's responsibility to do so is heightened in cases in which the fee requested is disproportionate to the monetary relief awarded. Ibid.

To be compensable, a certification of services must be sufficiently detailed to allow meaningful review and scrutiny. Rendine v. Pantzer, 141 N.J. at 335. In this case, the DAG has submitted fairly detailed billing summaries showing the hours expended and services rendered commencing with DAG Lipman receiving the case for prosecution. After careful review, the Director finds that, with the exceptions discussed below, the hours expended are reasonable and necessary in light of both the nature of the litigation and the results achieved.

Initially, the certification of services rendered by DAG Lipman is in large part sufficiently detailed and shows that the services were reasonable and necessary, with one exception. DAG Lipman's entry for services on July 14, 2006 lists 4.9 hours for "appearance at hearing," however, the hearing transcript for that date shows that the hearing, in Newark, began at 1:00 p.m. and concluded at 2:30 p.m. Although the remaining 3.4 hours billed may well have been justified due to waiting time, witness preparation or relevant post-testimony discussions, the certification provides insufficient information to justify the time expended. Because the certification fails to explain how the additional time was spent or otherwise explain the contradiction in the record, Respondent will not be liable for the additional 3.4 hours. As noted above, in a case such as this one, in which fees are disproportionate to Complainant's damage award, the Director has a duty

to carefully scrutinize the hours billed to determine whether the hours expended are reasonable in relation to the results achieved. Szczepanski v. Newcomb, *supra*, 141 N.J. at 366-367.

The remainder of the billing entries for DAG Lipman are sufficiently detailed to permit adequate review, and the Director finds the time expended to be reasonable and necessary. After deducting 3.4 hours from DAG Lipman's billings, Respondent shall be liable for 264.6 hours of his services on this matter.

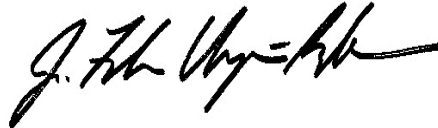
After reviewing the certification of DAG McGee, the Director finds that Respondent should not be liable for fees for his attendance at the July 8 and July 14, 2005 hearings, as the certifications fail to justify the appearance of two attorneys at those hearings. In some circumstances it may be appropriate to award fees for the work of more than one attorney participating in a hearing, especially where each attorney takes an active role in presenting argument or taking testimony, or a non-lead attorney justifies the hours expended by providing specific information about his role in assisting lead counsel. Lockley v. Turner, 344 N.J. Super. 1, 28-29 (App. Div. 2001), *aff'd* 177 N.J. 413 (2003). In this case, DAG McGee's certification gives no information about what he did at the hearings, and review of the hearing transcripts gives no indication that he actively participated in the proceedings. Accordingly, the Director concludes that Respondent should not be liable for the 7 hours billed for DAG McGee's attendance at the July 8 and July 14, 2005 hearings, and deletes them from the lodestar. The Director concludes that the remaining 18.4 hours expended by DAG McGee were reasonable and necessary.

After reviewing the certification of Acting Section Chief Charles S. Cohen, the Director concludes that the 10.4 hours he expended on this matter were reasonable and necessary.

In concluding that the remainder of the hours these counsel expended were reasonable in relation to the results achieved,¹ the Director notes that, in addition to the back pay and emotional distress damages awarded, the complaint and prosecution in this matter resulted in an order for

¹Respondent has filed no opposition to the attorney fee request, and has thus not objected to any specific billing entries or services rendered.

Respondent to cease and desist discriminatory employment practices. The Director has considered that the Complainant's back pay and emotional distress damage awards are relatively small in relation to the counsel fee award, and the back pay award is less than requested in Complainant's exceptions. Nevertheless, the Director concludes that the amount of time spent, and the specific legal work performed were not excessive and were necessary to redress the LAD violations in this case, and to secure the level of monetary relief Complainant received.



After deleting the billings discussed above, the fees for the 28.8 hours expended at \$175 per hour total \$5040, and the fees for the 264.6 hours expended at \$155 per hour total \$ 41,013. Accordingly, the lodestar based on all hours reasonably expended in this case totals \$ 46,053. The Director also finds it appropriate to award Complainant the \$446.25 for transcript costs, as they were reasonable and necessary to the litigation of this case. Thus, the attorney's fees and costs awarded total \$ 46,499.25.

CONCLUSION AND ORDER

Based on all of the above, the Director concludes that Respondent shall be liable for the reasonable attorneys' fees and costs for the Deputy Attorneys General who participated in the prosecution of this matter for the Division. Therefore, the Director orders Respondent, within 45 days from the date of this order, to forward to the Division a certified check payable to Treasurer, State of New Jersey, in the amount of \$ 46,499.25. Respondent shall also remit within 45 days any outstanding payments from the Director's August 17, 2006 Order, plus any interest accrued pursuant to the terms of that Order. All payments shall be forwarded to Richard Salmastrelli, New Jersey Division on Civil Rights, P.O. Box 089, Trenton New Jersey 08625. Any late payments will be subject to post-judgment interest calculated as prescribed by the Rules Governing the Courts of New Jersey.

Date: October 30, 2006

J. Frank Vespa-Papaleo, Esq., *Director*
New Jersey Division on Civil Rights

