



City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Karl Warren, Corey Elbert, and Ebonii Warren
Complainant,
v.
Lofton & Lofton Management d/b/a McDonald's,
Shaki Rodriguez, and Gordon Martin, Jr.
Respondent.

Case No.: 07-P-63, 63, & 92

Date of Ruling: May 19, 2010

Date Mailed: May 25, 2010

TO:

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FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on May 19, 2010, the Chicago Commission on Human Relations issued a Final Ruling on Attorney Fees and Costs in favor of Complainants in the above-captioned matter. The findings and specific terms of the ruling are enclosed. Pursuant to the ruling, the Commission orders Lofton & Lofton Management and Gordon Martin, Jr., jointly and severally, to pay attorney fees and costs in the total amount of \$10,596.50, apportioned as follows: (1) to Attorney Sylvia Coulon a total of \$9246.50; (2) to Attorney Sheila S. York a total of \$1,350.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law at this time. Compliance with this Final Order and the Final Order on Liability and Relief entered on July 15, 2009, shall occur no later than 28 days from the date of mailing of this order.¹ Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

¹ **COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. CCHR Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220. **Payments of attorney fees and costs** are to be made to Complainant's attorneys as named.



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IN THE MATTER OF:

Karl Warren, Corey Elbert, and Ebonii Warren
Complainants,
v.
Lofton & Lofton Management d/b/a McDonald's, Shaki Rodriguez, and Gordon Martin, Jr.
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FINAL RULING ON ATTORNEY FEES AND COSTS

I. Introduction

On July 15, 2009, the Commission on Human Relations issued a Final Order on Liability and Relief in favor of Complainants Karl Warren, Corey Elbert, and Ebonii Warren, finding liability against Respondents Lofton and Lofton Management d/b/a McDonald's ("Lofton") and Gordon Martin on Complainants' claims of sexual orientation discrimination. The Commission held that: (1) Lofton and Martin are jointly and severally liable to Karl Warren and ordered to pay him \$3,500 for compensatory damages along with interest on that amount from June 16, 2007, in accordance with Regulation 240.630; (2) Lofton and Martin are jointly and severally liable to Corey Elbert and ordered to pay him \$1,500 for compensatory damages along with interest on that amount from June 16, 2007, in accordance with Regulation 240.630; (3) Lofton is liable to Ebonii Warren and ordered to pay Ebonii Warren \$1,000 in compensatory damages along with interest on that amount from June 16, 2007, in accordance with Regulation 240.630; (4) Martin is also ordered to pay punitive damages to Karl Warren in the amount of \$1,500 and to Corey Elbert in the amount of \$1,500; and (5) Lofton is ordered to pay to the City of Chicago a fine of \$100 and Martin is ordered to pay to the City a fine of \$500. The Final Order also granted Complainants an award of their reasonable attorney's fees and costs to be determined in accordance with Regulation 240.630.

On August 20, 2009, Complainants filed and served a timely Petition for Attorney's Fees seeking \$9,750 in fees for their former attorneys Sylvia Coulon and Sheila York and \$846.50 in costs, for a total of \$10,596.50. Although attorneys Coulon and York were granted leave to withdraw by the Commission's Orders dated June 16 and July 8, 2009, respectively, the Commission held that "[d]espite their withdrawals, Complainants' former attorneys may petition for an award of reasonable attorney fees for work on the case, and any Complainant may petition to recover fees and associated costs paid to a former attorney." *Warren et al. v. Lofton & Lofton Management, et al.*, CCHR Nos. 07-P-62/63/92, Final Order at 2 (July 15, 2009). Respondents did not file any response or objection to Complainants' Petition.

II. Applicable Legal Standards

Section 2-120-510(l) of the Commission on Human Relations Enabling Ordinance

provides that a successful complainant may be awarded “all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees, and duplicating costs, incurred in pursuing the complaint before the Commission.” The three Complainants here are unquestionably prevailing parties. The Commission follows the lodestar method of calculating the amount of attorney fees to be awarded. See, e.g., *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 at 2 (Feb. 24, 1999); *Soria v. Kerns*, CCHR No. 95-H-13 at 2 (Nov. 20, 1996). Under the lodestar method, the Commission determines the number of hours which were reasonably expended on the case and then multiplies that number by the hourly rate customarily charged for the attorneys for whom compensation is sought. *Id.*

In addition, Reg. 240.630(a) requires that Complainants’ fee petition include the following statements and documentation in order for fees and costs to be awarded:

- (1) A statement showing the number of hours for which compensation is sought in segments of no more than one-quarter hour, itemized according to the date performed, the work performed and the individual who performed the work;
- (2) A statement of the hourly rate customarily charged by each individual for whom compensation is sought; and
- (3) Documentation of costs for which reimbursement is sought.

The Commission notes that it has an independent duty to review the Complainants’ Petition for reasonableness and conformance to the Commission’s Regulations notwithstanding that Respondents did not file a response to the Petition. See *Sellers v. Outland*, CCHR No. 02-H-37 at 2 (March 17, 2004).

III. Complainants’ Fee Petition

In their Petition, Complainants seek recovery for 56 hours of work by attorney Coulon and 9 hours of work by attorney York at the rate of \$150 per hour for each attorney. In addition, Complainants seek to recover the cost they incurred for purchasing a copy of the transcript from the Administrative Hearing (\$846.50). In support of their Petition, Complainants submitted their executed retainer agreements with counsel, invoices from their counsel to them in the amount of the attorney fees and costs that are sought, an itemized billing statement detailing the work performed by counsel and the costs incurred, the resumes of their counsel, and affidavits from attorneys Coulon and York.

Complainant’s Petition is roughly in compliance with Regulation 240.630(a). In their Petition and attached exhibits, Complainants have documented the number of hours worked by each of their attorneys, the specific tasks that they performed, their hourly rates, and the costs that Complainants incurred. Petition, Exhibits B and D. However, although the retainer agreements specified that counsel would bill in “ten-minute increments” which conforms to the Commission’s requirement, each entry on counsels’ itemized billing statement is in an hourly increment (Compare Exhibit A at 1 with Exhibit B). It is not clear whether counsel performed their work in hourly increments or whether they rounded their time (up or down) to the nearest whole hour. Consequently, the Commission cannot determine with certainty whether Complainants have complied with the letter of Regulation 240.630(a)(1)’s billing standard.

Nonetheless, this uncertainty does not adversely affect Complainants' fee request for two reasons. First, Respondents have made no objection to the manner in which Complainants documented the time spent by their attorneys. Second, the documentation submitted by Complainants is sufficient to enable the Commission "to determine whether, as a whole, the amount of time [counsel] spent on each task described was reasonable or excessive." *Nuspl v. Marchetti*, CCHR No. 98-E-207 at 4-5 (Mar. 19, 2003).

IV. Appropriate Hourly Rate

Attorneys Coulon and York, who are 2006 law school graduates and were licensed to practice in 2006 and 2007 respectively, seek an award of fees at the hourly rate of \$150 per hour. Exhibits A and C. Complainants' counsel have attached retainer agreements and an amended invoice in which they state the \$150 per hour rate and charge that rate to Complainants for their hours of work. Exhibits A and B. Such evidence "of actual billing to the complainant[s]" provides some substantiation for counsels' claimed hourly rates. See, e.g., *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 at 3 (Jan. 20, 2010). Moreover, in determining reasonable hourly rates, the Commission considers evidence of fee awards in other proceedings and it has held that "rates awarded in similar cases are clearly evidence of an attorney's hourly rate." *Hanson, supra*, at 3, quoting *People Who Care v. Rockford Board of Education*, 90 F.3d 1307, 1312 (7th Cir. 1996); *Soria, supra* at 3.

The Commission finds that the \$150 per hour rate claimed by Complainants' counsel is manifestly reasonable in view of its recent fee award in *Lockwood* and its knowledge of prevailing rates for attorneys with comparable experience in the Chicago area. See *Lockwood, supra* at 2-7, awarding fees to three 2007 bar admittees at the rate of \$150 per hour; *Nuspl, supra* at 4, citing the Commission's "knowledge of prevailing rates for attorneys with comparable experience in the Chicago area" as a consideration in determining the reasonableness of claimed hourly rates.

V. Time Reasonably Spent

Complainants' counsel are to be compensated at their approved hourly rate for all time that they have reasonably expended on this case. See, e.g., *Hanson, supra* at 4; *Soria, supra* at 5. "In determining the amount of time reasonably spent on a given case, the Commission considers the specific facts of the case." *Nuspl, supra* at 6. "In addition, the hearing officer may use his or her own experience, knowledge and expertise to determine the amount of time reasonably required for such work." *Id.*

As documented in Exhibit B, Complainants' counsel engaged in the following activities in the course of their successful representation of Complainants:

- (1) Prepared motions for leave to file appearances, to reschedule the administrative hearing, and for leave to add additional parties and to amend the complaints (16 hours inclusive of time spent drafting proposed amended complaints);
- (2) Performed legal research (8 hours);
- (3) Reviewed the Commission's investigative files and prepared pre-hearing materials (5 hours);
- (4) Prepared for and represented Complainants at the administrative hearing (18



hours of preparation and 12 hours for the administrative hearing); and

- (5) Prepared the Post-Hearing Brief (4 hours) and the Petition for Fees (2 hours).

The Commission finds that these activities were reasonably and necessarily incurred to successfully prosecute this case. The Commission's finding specifically encompasses counsels' preparation of Complainants' unsuccessful motion for leave to add additional parties and to amend their complaints regarding additional claims and allegations.¹ Consistent with its precedent, the Commission finds that that the time counsel spent on this motion and the underlying legal research is "compensable" because it was a "reasonable" although and "unsuccessful effort[] spent in pursu[it] of an ultimately successful claim." *Lockwood, supra* at 8 (citing cases). This case raised complex issues of vicarious liability. The Commission will not penalize Complainants for their efforts to assert alternative legal theories that arguably fit the facts of this case or for trying to add the employer of Respondent Martin—whose willful and wanton discriminatory actions inflicted harm upon Complainants—as an additional respondent.

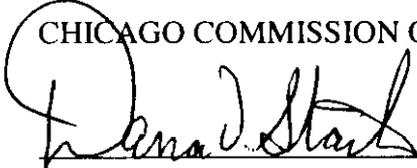
The Commission further finds that the amount of time spent by counsel on these activities was reasonable given the complexity of this case and the fact that they had to prepare three Complainants to testify at the administrative hearing. See, e.g., *Nuspl, supra* at 6, finding that 16 hours of time to prepare the case for hearing was "very reasonable, if not low"; *Sellers, supra* at 7 (finding that 3 hours to prepare a simple fee petition was reasonable). Finally, the Commission finds that Complainants are entitled to recover the costs incurred to purchase the transcript of the Administrative Hearing. See *Sellers, supra* at 9, allowing recovery of hearing transcript costs.

VI. Conclusion

For the reasons stated above, the Commission hereby awards to Complainants the requested sum of \$9,750 in attorney's fees and \$846.50 in costs for a total of \$10,596.50. Respondents Lofton and Martin are jointly and severally liable for this award of attorney fees and costs. See *Warren et al. v. Lofton & Lofton Management, et al*, CCHR Nos. 07-P-62/63/92, at 24 (July 15, 2009).

Based on the itemization of charges provided in Exhibit B of the Petition as well as the affidavits of each of Complainants' attorneys, \$9246.50 is to be paid to Sylvia Coulon and \$1,350 is to be paid to Sheila York.

CHICAGO COMMISSION ON HUMAN RELATIONS


By: Dana V. Starks, Chair and Commissioner
Entered: May 19, 2010

¹ The Commission denied this motion by its Order dated July 30, 2008.

