



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:

Anthony Cotten
Complainant,
v.
CCI Industries, Inc.
Respondent.

Case No.: 07-P-109

Date of Ruling: May 19, 2010

Date Mailed: May 25, 2010

TO:

Matthew P. Weems
Law Office of Matthew P. Weems
180 N. Stetson St., Suite 3500
Chicago, IL 60610

Peter Ordower
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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 Complainant in the above-captioned matter. The findings and specific terms of the ruling are enclosed. Pursuant to the ruling, the Commission orders Respondent to pay attorney fees and costs in the total amount of \$4,549.61 to Complainant's counsel, Matthew P. Weems.

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 December 16, 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 attorney/s as named.

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FINAL RULING ON ATTORNEY FEES AND COSTS

Procedural Background

On December 16, 2009, the Commission on Human Relations issued its Final Order on Liability and Relief, which found for Complainant and ordered relief including reasonable attorney fees and costs pursuant to Section 2-120-510(l) of the Chicago Municipal Code. On February 2, 2010, Complainant filed a timely petition for attorney fees and costs. On February 8, 2010, Respondent filed objections to Complainant's petition.

Complainant filed a reply to Respondent's objections. However, because the Commission's Final Order on Liability and Relief, consistent with Commission Regulation 240.630(a), expressly provided that replies would be permitted only on leave of the hearing officer and Complainant failed to seek leave to file his response, the hearing officer *sua sponte* struck Complainant's response. Thereafter, Complainant filed a motion to amend the petition for attorney fees and a supplemental petition for attorney fees. Respondent objected to the motion to amend and to the supplemental petition. The motion to amend sought to correct two obvious typographical errors in the original fee petition. It was filed before the deadline of March 4, 2010, for filing the fee petition set in the Commission's Final Order on Liability and Relief. The motion was granted by the hearing officer. The supplemental fee petition sought fees for time spent by Complainant's counsel on Complainant's response to Respondent's objections to the fee petition. However, that reply had already been struck by the hearing officer because Complainant did not seek leave to file it. Accordingly, the hearing officer determined that no fees for work performed on the response were appropriate.

On March 1, 2010, Complainant filed a request for leave to file a reply to Respondent's objections. The hearing officer noted that this is what Complainant should have done weeks earlier rather than just file his response without leave of the hearing officer. The hearing officer denied belated request for leave to reply, noting that it was filed while the hearing officer was in the middle of drafting the recommended ruling.

The hearing officer issued his Recommended Ruling Regarding Complainant's Fee Petition on March 2, 2010, and issued an amended version on the same date to include instructions for filing objections. Neither party filed any objections to the Recommended Ruling.

Standards for Awarding Attorney Fees

Section 2-120-510(l) of the Chicago Municipal Code (the Commission on Human

Relations Enabling Ordinance) provides that a successful complainant may be awarded “reasonable attorney fees...incurred in pursuing the complaint before the commission.” Commission Regulation 240.630(a)(1) requires that a fee petition be supported by affidavit and argument, and that it reflect the number of hours for which compensation is sought, in quarter-hour increments or less, itemized by date and including a description of the work performed and the individual who performed it. Reg. 240.630(a)(2) allows fees at the rates “customarily charged” by a complainant’s attorney. The Commission uses the lodestar method of calculating reasonable attorney fees, determining the number of hours reasonably expended on the case and multiplying by the customary hourly rate for attorneys with the level of experience of the complainant’s attorney. See, e.g., *Cotten v. Addiction Sports Bar and Lounge*, CCHR No. 08-P-68 (Feb. 17, 2010); and *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (Sept. 16, 2009).

Appropriate Hourly Rate

In *Cotten v. Eat-A-Pita*, *supra*, the Commission determined that an appropriate rate for the same attorney representing the same Complainant was \$125 per hour. The Commission based its determination on the relatively straightforward nature of the case and counsel’s having only been recently admitted to the practice of law in Illinois. In the instant case, Complainant’s counsel’s affidavit states, among other things:

Attorney time spent on this matter: 43 hours, 45 minutes
Attorney hourly rate: \$125 for matters up to 12/06/09 (38.25) = \$4781.25,
\$140 for time thereafter (5.5 hours) = \$770....

My usual hourly rate for these types of matter is \$125 prior to 11/06/09. If billed on a “full-fee” basis my requested attorney fees for this case would have been in the amount of \$125/hr. Thereafter, \$140.00/hr as Complainant then became a second year associate with significant experience in this area of law.

It is not clear whether Complainant’s counsel is claiming the \$140 per hour rate after November 11, 2009, or after December 11, 2009. This is just one example of counsel’s sloppiness. Counsel’s sloppiness also compelled him to file a motion to amend the fee petition to correct typographical errors. Moreover, counsel filed a response to Respondent’s objections to the fee petition without leave of the hearing officer in direct contravention of the Commission’s express regulations and instructions and, after the hearing officer struck the response *sua sponte*, then filed a supplemental fee petition seeking compensation for time spent on the response that had been struck. Counsel’s conduct in handling this fee petition does not reflect any maturation in his development as an attorney practicing before the Commission that would warrant any increase in the rate beyond the \$125 per hour awarded by the Commission in *Eat-a-Pita*, *supra*. The Commission adopts the hearing officer’s recommendation that to continue to calculate the attorney fees for Complainant’s counsel at \$125 per hour.

The Fee Petition and Respondent’s Objections

As indicated above, Complainant seeks \$4,781.25 for 43.75 hours at \$125 per hour and \$770.00 for 5.5 hours at \$140 per hour. Complainant also seeks \$39.27 in expenses. Respondent has raised numerous objections, each of which was considered by the hearing officer. The Commission has reviewed the hearing officers recommendations adopts them as explained below, with only one modification regarding the calculation of mileage costs.

- **Respondent's General Objections**

Respondent objects that Complainant was awarded only \$1.00 in damages and Respondent was ordered to pay a fine to the City of only \$100.00. Respondent's objection, however, ignores the fact that the Commission also ordered substantial injunctive relief. Moreover, Respondent's objection also ignores a well-established line of Commission precedent that "makes it clear that a fee award need not be proportional to a damage award." *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 at 4 (Jan. 20, 2010) and cases cited therein. Furthermore, in *Cotten v. Addiction Sports Bar and Lounge, supra*, the Commission awarded \$2,208.83 in attorney fees and costs even though it awarded Complainant damages of only \$1.00.

Respondent objected that "this case and *Eat-a-Pita* proceeded in tandem, and the Complainant already was awarded substantial attorney's fees in that case, it would be unnecessary for the same counsel to research the same issues at the same time for both cases, and inequitable to be fully compensated for such research twice." Respondent has made no showing beyond its naked assertion that Complainant is seeking compensation for the same work performed in *Eat-a-Pita*. Indeed, a major legal issue in the instant case concerned whether Respondent was a public accommodation. There is no showing that such an issue was present in *Eat-a-Pita*. Additionally, in the instant case, Respondent raised an undue hardship defense. There is no showing that *Eat-a-Pita* had identical or even comparable evidence and argument of undue hardship.

Respondent objected that Complainant offered no evidence that he actually paid any fees to his attorney. The Commission rejected a similar contention in *Lockwood, supra*:

Nothing in Reg. 240.630 or Commission precedents regarding the proof of prevailing counsel's billing rates *requires* evidence of actual billing to the complainant or evidence that the complainant paid the claimed fees to counsel. Although such evidence might be useful in a particular case to resolve an evidentiary dispute about the appropriate billing rate, it is not necessary here, where Respondent has come forward with no evidence whatsoever that calls into question Complainant's evidence of the fees customarily charged by her counsel

Reg 240.630 allows the award of fees "customarily charged" regardless of whether the fees were contracted for or actually paid. As the hearing officer pointed out, characteristic of discrimination cases is that the injured parties often are unable to pay their lawyers in advance or as the work is being performed. Lawyers such as Complainant's counsel frequently enter into contingent-fee arrangements, under which they are paid for their work only if and when their client prevails. It makes no difference whether Complainant entered into a fee agreement with her attorney to pay the fees, whether she was billed, or whether the bill was paid. Fees are awarded either to pay the attorney for work that has not been paid or to reimburse the successful complainant for fees already paid....

Id. at 3 [emphasis in original, footnote omitted]. In accordance with *Lockwood*, the hearing officer correctly overruled this objection.

- **Reasonableness of Specific Entries**

The remainder of Respondent's objections go to specific entries in Complainant's fee petition, which are addressed in conjunction with other specific entries in the petition.

Respondent objects to any work performed by Complainant's counsel prior to his entry of an

appearance in this case. However, preliminary work that an attorney would reasonably undertake for a client seeking assistance in pursuing claims before the Commission is compensable as long as it is reasonably related to the successful claims. Cf. *Lockwood, supra* at 8-9. This objection is overruled.

Complainant seeks 1.5 hours of time for counsel's meeting with Complainant and review of the case file. This amount of billable time appears reasonable. However, Complainant seeks an hour for preparing an appearance and a motion for a continuance. As Respondent observes in its objections, the appearance and motion are simple forms that counsel completed by hand. They process should not take an hour but, at most, 15 minutes. Accordingly, the Commission adopts the hearing officer's recommended reduction for this task to .25 hour.

Complainant seeks 3 hours on December 11, 2008, for "Review Case law re: public accommodation discrimination." In addition to objecting that this work was performed before counsel's appearance, Respondent objects that "it has no context since it apparently relates to the Pre-Hearing Memorandum prepared the next day which cites no case law at all," and because "the issue is the same as that raised in the *Eat-a-Pita* case, which has already been compensated." Respondent has made no showing other than a naked assertion that the issues in the instant case were identical to those in *Eat-a-Pita*. Furthermore, as discussed below, Respondent's attack on Complainant's claim for time spent on the pre-hearing memorandum and brief ignores the four-page memorandum of law Complainant filed contemporaneously with his pre-hearing memorandum, which contains detailed citation to Commission case law. The three hours billed is reasonable for that work; hence this objection is overruled.

Complainant seeks 2.5 hours for drafting a pre-hearing memorandum and brief on December 12, 2008. Respondent objects that the pre-hearing memorandum was only six sentences long. If that were the only pleading Complainant filed, Respondent's objection would carry weight, but Respondent's objection ignores the memorandum of law that Complainant also filed contemporaneously. Hence this objection is overruled.

Complainant seeks .25 hour for December 12, 2008, for "Draft Theory of the case." Respondent objects. It is impossible to tell from this entry what counsel was doing. No theory of the case appears in Complainant's pre-hearing memorandum or memorandum of law. The Commission adopts the hearing officer's recommendation and disallows this claim.

Complainant seeks .25 hour for December 20, 2008, for reviewing Respondent's pre-hearing memorandum. On its face this is reasonable and it is allowed.

Complainant seeks 2.5 hours for "Research cases re: undue burden," on January 9, 2009. Respondent objects on the ground that there is no context for such research and that it was never incorporated into any pleading. Similarly, Complainant seeks 1.25 hours for research on "Rehab code, Minch, Mikush, etc." on February 27, 2009, and 1.75 hours on the same day for drafting a supplemental pre-hearing memorandum. Respondent objects that no such document exists and that the claimed research is unexplained and was never used. Respondent is mistaken. Complainant did file a supplemental memorandum which dealt with issues of undue hardship and exemption based on the City's "rehab" ordinance when Respondent was represented by prior counsel. The research for which Complainant claims billable time was directly related to that memorandum. The time claimed appears reasonable. The objection is overruled.

Complainant seeks .25 hour on February 27, 2009, to review Respondent's supplemental memorandum. On its face, this is reasonable and Respondent has not objected to it. Similarly

reasonable and not objected to are Complainant's claim of .75 hour for the pre-hearing conference on April 7, 2009, and his review of the "order," which the hearing officer interpreted to mean the notice of potential default, and "good cause," totaling .33 hour on April 9, 2009.

Complainant seeks one hour for research and drafting an amended complaint on April 20, 2009. Respondent objects that Complainant's motion to amend the complaint was denied. Although work on unsuccessful motions or other portions of the case may be compensable where it is shown to have advanced the successful claims, the motion at issue sought to add a respondent to the case. There is no showing that the work on this motion in any way advanced the claim on which Complainant prevailed. Accordingly, the Commission adopts the hearing officer's recommendation that Respondent's objection be sustained.

Complainant seeks .25 hour for reviewing the order of default on April 28, 2009. On its face, this is reasonable and is allowed.

Complainant seeks 2.0 hours on May 26, 2009, for "Review Respondent's Motion to Vacate and Cite Check," and .25 hour on May 29, 2009, for "Draft Motion for Costs." Respondent objects that Complainant never opposed the motion to vacate the default and never filed a motion for costs. The hearing officer agreed. Certainly Complainant is entitled to a reasonable time to read the motion to vacate, but Complainant's failure to oppose the motion and failure to file a motion for costs even though such a motion was invited by the order of default were factors in the decision to vacate the default. The time sought certainly did not further Complainant's successful claim. Accordingly, the Commission adopts the hearing officer's recommendation and allows only .5 hour for reviewing the motion to vacate.

Complainant seeks .25 hour on June 24, 2009, for reviewing the order vacating the default. On its face, this request is reasonable and it is allowed.

Complainant seeks 1.25 hours for attending the pre-hearing conference on June 30, 2000. The hearing officer's own time records showed that the conference and the hearing officer's time drafting a post-conference order totaled only 1.0 hour. Accordingly, the Commission adopts the hearing officer's recommendation to allow Complainant only .75 hour for the pre-hearing conference.

Complainant seeks a total of 3.5 hours of hearing preparation time, spread over July 5, 27, and 28, 2009. The amount of time on its face is reasonable. The only portion of it to which Respondent has objected is 0.5 hour for reviewing property records and Respondent's website. Yet, Respondent concedes that property records and print-outs from its website were replied to by Respondent at the hearing. They were also listed as exhibits in Respondent's pre-hearing memorandum. Respondent's objection is frivolous and is overruled.

Complainant seeks 5 hours for the hearing. Respondent's objection based on the typographical error initially listing the hearing as occurring on July 28, 2009, when it actually took place on July 29, 2009, is frivolous. Respondent is well-aware that Complainant's attorney spent time participating in the administrative hearing.

Complainant seeks 2.25 hours for reviewing the transcript, 3.25 hours for research, and 3.25 hours for drafting the post-hearing brief. The only objection Respondent raises is to the time spent reviewing the transcript. This objection, based solely on the typographical error, is frivolous. The time claimed appears reasonable and the Commission allows it.

Complainant seeks .75 hour for reviewing the recommended decision. This claim is not objected to and appears reasonable on its face. The Commission allows it.

Complainant seeks 2.75 hours to review and cite-check Respondent's objections to the recommended decision. Respondent objects that Complainant never filed a response to Respondent's objections. Respondent's objection to the claim of 2.75 hours has merit. Although Complainant should be allowed a reasonable time for reviewing Respondent's objections, the hearing officer found no indication that this cite-checking or any other research advanced Complainant's successful claim in this case. Therefore, the Commission adopts the hearing officer's recommendation and allows .75 hour for this task.

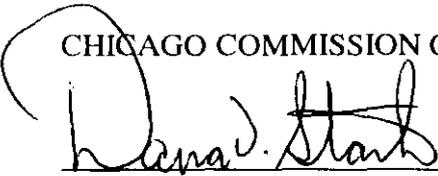
Complainant seeks 1.5 hours for reviewing the Commission's final order on liability and relief. Respondent objects that this is excessive. The hearing officer agreed. In light of the length of the Commission's order, the Commission agrees with the hearing officer's recommendation to allow Complainant .75 hour as a reasonable amount of time to read the final order.

Complainant seeks 1.25 hours for preparing the fee petition. Respondent asserts, without any citation to supporting authority, that such time is not compensable. Respondent is mistaken. However, the hearing officer recommended that the Commission find the claim of 1.25 hours for this task to be unreasonable, given that the fee petition was straightforward and most of the work involved was clerical in nature, merely transcribing Complainant's counsel's time sheets to a petition form. The Commission adopts the hearing officer's recommendation to allow Complainant .75 hour.

Altogether, the hearing officer recommended that the Commission award 36.33 hours of attorney time at \$125 per hour for a total fee of \$4541.25. The Commission adopts this recommendation.

Complainant also seeks 71.4 miles at \$.55 per mile for three trips to the Commission. Respondent objects that Complainant's office is 2.23 miles from the Commission's offices. The hearing officer agreed with Respondent's objection. Complainant offered no explanation in the fee petition for the excessive mileage charge. The hearing officer recommended that the Commission award costs of $2.23 \times 3 = 6.69$ miles at \$.55 per mile = \$3.68 in costs. The Commission agrees with the recommendation to base the mileage costs on a one-way trip of 2.23 miles. However, it appears that the hearing officer failed to account for the return trip on each of the three occasions. Therefore, the Commission modifies the recommendation to allow mileage for three return trips as well, thus doubling the allowed cost to \$7.36.

With this amount added to the fee award, the Commission awards \$4,549.61 to Complainant for his attorney fees and associated costs.

CHICAGO COMMISSION ON HUMAN RELATIONS


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