



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.

La Luce Restaurant
Respondent.

Case No.: 08-P-34

Date of Ruling: October 20, 2010

Date Mailed: October 27, 2010

TO:

Matthew P. Weems
Law Office of Matthew P. Weems
180 N. Stetson St., Suite 3500
Chicago, IL 60601

Anthony Ruggiero
Attorney at Law
1438 N. Lathrop Ave.
River Forest, IL 60305

FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on October 20, 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 Commission orders Respondent to pay attorney fees in the total amount of \$2,915. The findings and specific terms of the ruling are enclosed.

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 April 21, 2010, 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 of record.

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FINAL RULING ON ATTORNEY FEES AND COSTS

I. PROCEDURAL HISTORY

On April 21, 2010, the Commission on Human Relations issued its Final Order on Liability and Relief in this matter, in favor of Complainant Anthony Cotten on his claim that Respondent La Luce Restaurant discriminated against him based on his disability by failing to ensure that the wheelchair users receive equivalent service to the extent possible without undue hardship. The Commission ordered payment of \$800 plus interest in emotional distress damages, plus a \$500 fine for violation of the Chicago Human Rights Ordinance.¹ The Commission also ordered injunctive relief to bring Respondent into compliance with the Human Rights Ordinance. Finally, the Commission awarded Complainant his reasonable attorney fees and costs subject to the petition process set forth in CCHR Reg. 240.630.

On May 24, 2010, Complainant's attorney, Matthew P. Weems, submitted a timely fee petition including his affidavit and statement of time spent on the case. Respondent did not file a response. The hearing officer issued her Recommended Ruling on Attorney Fees and Costs on July 27, 2010. Respondent submitted a one-page statement of objections.

Atty. Weems seeks \$3,115 in attorney fees for a stated total of 23 hours and 45 minutes of time expended. No costs were requested. Weems requested an award at the rate of \$125 per hour for 14.75 hours expended up to November 6, 2009, and \$140 per hour for 9.75 hours expended after that date. This totals 24.50 hours; a discrepancy in calculations is discussed below.

II. DISCUSSION

1. APPLICABLE STANDARDS

Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to include in its orders for relief "reasonable" attorney fees incurred in pursuing the complaint before the Commission or at any stage of review. Commission Regulation 240.630(a) requires that an attorney fee petition establish the number of hours for which compensation is sought in segments of no more than one-quarter hour itemized according to the date performed, work performed, and individual who performed the work. It also must establish the rate customarily charged by each

¹ In addition, Respondent's attorney was ordered to pay a \$500 fine as a procedural sanction for failure to comply with discovery requirements.

individual for whom compensation is sought, or in the case of a public or not-for-profit law office which does not charge market rate fees, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise.

The Commission has long utilized a lodestar method of calculating attorney fees. See, e.g., *Leadership Council for Metropolitan Open Communities v. Souchet*, CCHR No. 98-H-107 (May 17, 2001). That is, the Commission determines whether the hours spent on a matter were reasonable, then multiplies the number of hours by the hourly rate customarily charged by attorneys with the level of experience of Complainant's attorney. See *Nash v. Sallas Realty et al.*, CCHR No. 92-H-128 (Dec. 7, 2000). The Commission is not required to award attorney fees in an amount proportional to the amount of damages awarded. *Id.*; see also *Wright v. Mims*, CCHR No. 93-H-12 (Sept. 17, 1997) and *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010). The party seeking attorney fees has the burden of presenting evidence from which the Commission can determine whether the fees requested are reasonable. *Brooks v. Hyde Park Realty Co.*, CCHR No. 02-E-116 (June 16, 2004).

2. HOURLY RATE

In determining an attorney's appropriate hourly rate for fee award purposes, the Commission has been guided by decisions of the U.S. Court of Appeals for the Seventh Circuit regarding a fee applicant's burden and the evidentiary requirements to prove the appropriate hourly rate. For example, in *Sellers v. Outland*, CCHR No. 02-H-73 (Mar. 17, 2004 and Apr. 15, 2009), followed the reasoning of the Seventh Circuit as set forth in *Small v. Richard Wolf Medical Instruments Corp.*, 264 F.3d 702, 707 (7 Cir 2001):

The fee applicant bears the burden of proving the market rate. The attorney's actual billing rate for comparable work is considered to be the presumptive market rate. If, however, the court cannot determine the attorney's true billing rate—such as when the attorney maintains a contingent fee or public interest practice—the applicant can meet his or her burden by submitting affidavits from similarly experienced attorneys attesting to the rates they charge paying clients for similar work, or by submitting evidence of fee awards that the applicant has received in similar cases. Once the fee applicant has met his or her burden, the burden shifts to the defendants to demonstrate why a lower rate should be awarded.

Here, Complainant's counsel is seeking fees at \$125 per hour for work up to November 6, 2009, then \$140 per hour thereafter. Atty. Weems stated in his affidavit that these were his usual hourly rates for these types of matters during those time periods. Respondent has not opposed these hourly rates. The Commission finds the requested rates to be reasonable and, as the hearing officer noted, has approved them for Atty. Weems in prior Cases. See *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (Sept. 17, 2009), approving the rate of \$125 per hour for work Weems performed between December 2008 and June 2009. In a more recent ruling, *Hutchison v. Iftekaruddin*, CCHR No. 08-H-21 (June 16, 2010), the Commission approved the rate of \$140 per hour for work performed in 2010, explaining that Weems' requested rates of \$125 and \$140 per hour "are not atypical or unreasonable given market rates in the city of Chicago" for relatively new lawyers.

3. HOURS EXPENDED

Atty. Weems stated that he spent a total of 23 hours and 45 minutes on this matter. He kept his time log in 15 minute increments, as allowed by Reg. 240.630(a)(1), listing each 15

minute segment separately even when he spent more than 15 minutes on one recorded task or activity. This required the hearing officer to add up these segments to determine the total time spent on a designated task or activity. Although Weems' affidavit states that he expended 14.75 hours up to November 6, 2009, and 9.75 hours thereafter, the submitted log documents only a total of 14.08 hours (14 hours and 5 minutes) for the period up to November 6, 2009. Thus that is the total hours figure recommended by the hearing officer for that period. In the absence of any objection from Complainant, the Commission approves 14.08 hours as recommended.

Atty. Weems documented reasonable time expended on meeting with Complainant, discussing the case, drafting discovery requests, attending the pre-hearing conference, reviewing motions, drafting the pre-hearing memorandum and motion to compel, preparing for the hearing, and appearing on two scheduled administrative hearing dates. The first scheduled hearing date of July 30, 2009, was continued at the request of Respondent, and at the next scheduled date of August 21, 2009, Respondent was not present and had not given proper notice; therefore, Respondent was held in default and Complainant was allowed to present his *prima facie* case on that date. Subsequently, Respondent established good cause for the absence on August 21, 2009, and the administrative hearing was completed on November 17, 2009. These multiple hearing dates necessitated additional work and time by Atty. Weems through no delay or fault on his part.

Atty. Weems' time logs document that he expended 9.75 hours on this matter after November 6, 2009. This time was incurred for reviewing file materials, ordinances, and Commission case law, participating in the pre-hearing conference, drafting discovery, preparing for and participating in the hearings, preparing a post-hearing brief, and preparing the fee petition. Based on all of the documented activity and the additional scheduled hearing date during this time period, the hearing officer found the number of hours incurred to be modest and reasonable with one exception. Atty. Weems claimed 2.0 hours for drafting the attorney fee petition. The hearing officer determined that, if time logs are kept contemporaneously as they should be, it should take no longer than 30 minutes to complete a record for submission to the Commission. Thus the hearing officer recommended deducting 1.5 hours from this particular request, resulting in a recommendation to allow 8.25 hours expended at the \$140 hourly rate. Complainant did not object to this modification and the Commission approves it. Maintaining time records is work of a clerical nature and part of the overhead of a law practice. Preparation of the straightforward fee petition submitted by Weems should not require much time. The Commission has regularly excluded charges for what amount to billing tasks. See, e.g., the recent fee rulings in *Lockwood*, *supra*, and *Cotten v. CCI Industries, Inc.*, CCHR No. 07-P-109 (May 19, 2010).

4. RESPONDENT'S OBJECTIONS

Respondent in its statement of objections reiterates its general opposition to the Commission's decisions as "not being based on the law and ignoring both law and facts." Admitting that "this respondent cannot determine or has had no opportunity to check the affidavit," Respondent asserts that the fees were generated "on an insufficient complaint and inadequate evidence," and further asserts that "this case is brought with the sole objection [*sic.*, presumably intended as 'objective'] to make money." These general objections are not germane to the determination of the proper amount of attorney fees. They were addressed in the Final Ruling on Liability and Relief and need not be revisited here.

Regarding the amount of fees, Respondent asserts without elaboration or citation of authority, "Travel to and from a case are not compensable." Apparently Respondent is referring

to 30 minutes billed for "Travel to Commission" on May 13, 2009, for the pre-hearing conference and again on July 30, August 21, and November 17, 2009, for the three scheduled administrative hearing dates—a total of two hours of travel time for four scheduled proceedings. Respondent had not filed any response opposing these charges, as permitted under Reg. 240.360(a). The Commission does not follow a firm rule about the billing of travel time but recognizes that some attorneys may not bill such time. Nevertheless, the travel time requested is not excessive and was reasonably and necessarily incurred to successfully prosecute this case. Moreover, no travel costs such as mileage or parking were requested, and the total time for this case, as modified in this ruling, is not unreasonable. Under these circumstances, the Commission allows the charges for travel time.

Respondent also asserts that Atty. Weems has "reported minutes for drafting, reading and reviewing documents on the same day for the same thing." Presumably Respondent is referring to the presentation by Atty. Weems' of his hours expended, in which he has apparently interpreted Reg. 240.630 (a)(1) to call for separately listing each quarter-hour segment for a particular task or activity rather than cumulating the segments into a stated subtotal. Although this method of presentation is unorthodox, as previously noted, it is nevertheless understandable and not duplicative. The cumulated amounts billed for each stated activity are reasonable with the exception of the time for drafting the fee petition, which the Commission has reduced as explained above.

III. CONCLUSION

Accordingly, the Commission accepts the recommendations of the hearing officer and awards to Complainant's attorney a total of \$2,915 in attorney fees. No costs were requested and none are awarded.

This award is based on a total of 22.33 approved hours: 14.08 hours at a rate of \$125 per hour for a subtotal of \$1,760 and 8.25 hours at a rate of \$140 per hour for a subtotal of \$1,155. The \$1,760 awarded for time expended up to November 6, 2009, is slightly higher than requested in the fee petition, in spite of the reduction of time, because the petition miscalculated the multiplication of hours times the rate requested.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: *Dana V. Starks (by PD)*
Dana V. Starks, Chair and Commissioner
Entered: October 20, 2010