

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARZETTA TUCKER,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
PHILADELPHIA HOUSING	:	
AUTHORITY ET AL.,	:	
	:	
Defendants	:	NO. 05-CIV-0056
	:	

MEMORANDUM

Ms. Tucker filed this suit on January 10, 2005 to enforce a grievance arbitration award that had been entered on November 14, 2004 against the Pennsylvania Housing Authority (PHA). The arbitrator awarded her \$3,914.00 in reimbursement for a rent overcharge and \$1,101.00 in rent credit. The PHA failed to timely respond to the Complaint, and Ms. Tucker filed a motion for default judgment on April 1, 2005. The PHA filed its Answer and Affirmative Defenses on that same day. Ms. Tucker subsequently moved for summary judgment. The PHA did not respond the summary judgment motion.

The court scheduled a status conference for May 12, 2005. At the status conference, counsel for the PHA agreed that the grievance award was due and payable, and conceded that summary judgment in favor of the plaintiff was appropriate. The court entered an order at the conference directing the PHA to credit Ms. Tucker's rent account

and to pay the reimbursement amount plus six percent *per annum* interest for the period of time from November 14, 2004 until the date of receipt of the funds. The court also awarded Ms. Tucker reasonable attorney's fees and directed her to file a motion to determine the amount within thirty days in the event that the parties were unable to reach an agreement. The parties could not agree and she filed her motion on June 1, 2005.

Ms. Tucker is seeking \$4650.00 in attorney's fees. Her attorney, Michael Donahue of Community Legal Services, Inc. (CLS), submitted an affidavit with an exhibit detailing his hourly activities. See Pl.'s Motion to Determine Attorney's Fees, Aff. of Michael Donahue, Ex. C. He spent 15.5 hours litigating the matter. Id. Pursuant to CLS policies and procedures, Mr. Donahue's billing rate is \$300.00. The rate schedule for CLS attorneys is based on a comprehensive survey of attorneys' fees among a cross-section of more than forty solo-practitioners, small, medium, and large law firms in the Philadelphia market. See id., Decl. of Alan White, Esq., Ex. B. According to the survey, 77.5% of firms do not distinguish between litigation specialties in establishing hourly rates for individuals in a litigation practice. See id., Survey, Ex. B3. The rates are dependent upon an attorney's experience. See id., Survey, Ex. B4. Mr. Donahue is a staff attorney at CLS with twenty-seven years experience. See id., Aff. of Michael Donahue. At the time of this litigation, there were two other attorneys at CLS who represented subsidized housing tenants; neither of those attorneys was available to represent Ms. Tucker. Id.

PHA does not dispute that Ms. Tucker is entitled to attorney's fees or that the

number of hours Mr. Donahue spent on this litigation was reasonable, but rather contends that the hourly rate of \$300.00 is too high, given the simplicity of the case. This claim of “simplicity” is not enough to support PHA’s bald assertion that the hourly rate is too high.

According to the Third Circuit:

Generally, “a reasonable hourly rate is calculated according to the prevailing market rates in the community.” “[A] district court may not set attorneys’ fees based upon a generalized sense of what is customary or proper but rather must rely upon the record.” The plaintiff bears the burden of producing sufficient evidence of what constitutes a reasonable market rate for the essential character and complexity of the legal services rendered in order to make out a prima facie case. Once the plaintiff has carried this burden, defendant may contest that prima facie case only with appropriate record evidence. In the absence of such evidence, the plaintiff must be awarded attorneys’ fees at her requested rate. If hourly rates are dispute, the district court must conduct a hearing to determine the reasonable market rates.

Smith v. Philadelphia Housing Authority, 107 F.3d 223, 225 (3d Cir. 1997) (citations omitted) (emphasis added). PHA suggests that \$150.00 is a reasonable rate, and requests that the award be limited to \$2325.00. PHA does not provide a survey of rates or affidavits to support its position. The only “evidence” that PHA offers is two cases from 1999 in which judges from the Eastern District of Pennsylvania reduced Mr. Donahue’s rate from \$265.00 to \$150.00 per hour under similar factual circumstances. Case law from 1999 is not “appropriate record evidence” to prove what is a reasonable market rate for legal services provided in 2005, and I find it insufficient to rebut the plaintiff’s prima facie case. Mr. Donahue has made a clear and well-supported case for the hourly rate he

claims for the work he performed. PHA has done nothing to rebut this claim. Therefore, I will award CLS the attorney's fees for 15.5 hours at the requested rate of \$300 per hour.

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ORDER

AND NOW, this ____ day of July, 2005, upon consideration of Plaintiff's Motion to Determine Amount of Attorney's Fees and Defendant's Response thereto, it is hereby **ORDERED** that Community Legal Services, Inc. is awarded attorney's fees and costs in the amount of \$4650.00 for the successful prosecution of this matter.

Lawrence F. Stengel, J.