

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

CATHLEEN JAMES, et al. : CIVIL ACTION  
: :  
v. : :  
: :  
SOUTHEASTERN PENNSYLVANIA :  
TRANSPORTATION AUTHORITY : NO. 93-CV-5538

MEMORANDUM AND ORDER

J. M. KELLY, J.

, 1997

Presently before the Court is Plaintiffs' Motion for Award of Attorneys' Fees, Litigation Expenses and Costs. Defendant Southeastern Pennsylvania Transportation Authority ("SEPTA") opposed Plaintiffs' motion and an evidentiary hearing was held on October 14 and 16, 1997.

BACKGROUND

The Plaintiffs filed this suit against Defendant SEPTA to compel compliance with the transportation provisions of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. The complaint alleged that SEPTA failed to maintain its wheelchair lifts and supervise its drivers in accordance with regulations promulgated by the Department of Transportation. As a result, Plaintiffs claimed, individuals who use wheelchairs were often unable to use public buses.

On March 18, 1994, I approved the parties' Settlement Agreement.<sup>1</sup> The agreement imposed maintenance and reporting

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<sup>1</sup> At the parties request, I retained jurisdiction over this matter after the Settlement Agreement.

obligations, a protocol for drivers to follow when a lift did not function, a requirement that SEPTA take inaccessible buses out of service and a complaint procedure. The parties subsequently agreed that SEPTA would pay approximately \$18,000 in attorney's fees.

After the settlement, Plaintiffs' counsel actively monitored SEPTA's compliance. On December 19, 1996, Plaintiffs filed a Motion to Find Defendants in Contempt, alleging that SEPTA was regularly violating the terms of the Settlement Agreement. The contempt motion sought court appointed monitoring and financial sanctions to ensure compliance. After SEPTA denied that it was in contempt, the Plaintiffs engaged in extensive discovery.

The Court held a hearing on the contempt motion on May 1, 1997. During a recess, the parties agreed to resolve the motion by negotiating a Supplemental Settlement Agreement. The Supplemental Agreement required SEPTA to retain an independent monitor and imposed financial sanctions for noncompliance with the original Settlement Agreement and the ADA.

The Plaintiffs now seek an award of \$80,246.57, for attorneys' fees and costs from the time of the original Settlement Agreement until the time of the Supplemental Settlement Agreement. SEPTA argues that the Plaintiffs are not entitled to any fees because they are not a "prevailing party." Alternatively, SEPTA claims that Plaintiffs' hourly rates are excessive and that the number of hours spent on this litigation are unreasonable.

## DISCUSSION

42 U.S.C. § 12205 provides: "In any action . . . commenced pursuant to this chapter, the court . . . in its discretion, may allow the prevailing party . . . a reasonable attorney's fee, including litigation expenses, and costs."<sup>2</sup> The Plaintiffs here are a prevailing party. They request \$80,246.57 in fees and costs. For the reasons stated below, I will award Plaintiffs \$69,323.59 as reasonable fees and costs.

### I. Prevailing Party

A plaintiff is a "prevailing party" for attorney's fees purposes when "relief on the merits of his [or her] claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." Farrar v. Hobby, 506 U.S. 103, 111-12 (1992). There is no requirement of a victory at trial, a plaintiff "prevails" if they vindicate significant rights though settlement. Hewitt v. Helms, 482 U.S. 755, 760-61 (1987); Baumgartner v. Harrisburg Housing Auth., 21 F.3d 541, 544 (3d Cir. 1994). Further, a prevailing party is entitled to compensation for reasonable post-settlement monitoring and enforcement work. See Pennsylvania v. Delaware Valley Citizens'

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<sup>2</sup> "[T]he standards used in section 1988 cases are 'generally applicable in all cases in which Congress has authorized an award of fees to a prevailing party'" Disabled in Action of Pennsylvania v. Pierce, 789 F.2d 1016, 1018 (3d Cir. 1986)(quoting Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)).

Council for Clean Air, 478 U.S. 546, 559-61; Duran v. Caruthers, 885 F.2d 1492, 1495 (10th Cir. 1989).

The Plaintiffs are the "prevailing party" in the post-settlement phase of this litigation. Plaintiffs' monitoring and enforcement activities were reasonable and necessary to vindicate the rights secured in the original Settlement Agreement.

Further, the Plaintiffs prevailed on their contempt motion by securing a Supplemental Settlement Agreement that accomplished much of their goals.

The relief obtained in the Supplemental Settlement Agreement is very similar to the relief sought in the contempt motion, and the motion was a "material contributing factor" prompting the Defendant to afford this relief. See Metropolitan Pittsburgh Crusade for Voters v. City of Pittsburgh, 964 F.2d 244, 250 (3d Cir. 1992). The Plaintiffs sought, and the Defendants opposed, independent monitoring and financial sanctions. After discovery and the beginning of an evidentiary hearing, SEPTA agreed to independent monitoring and financial sanctions. Reasonable hours expended to obtain this result are compensable. I now turn to an examination of the reasonableness of Plaintiffs' requested fee.

## II. Reasonable Attorney's Fees

A party seeking attorneys' fees has the burden of proving that its request is reasonable. Rode v. Dellaciprete, 892 F.2d 1177, 1183. The opposing party must challenge the reasonableness of the requested fee with specificity, and the fee may not be

reduced sua sponte. Bell v. United Princeton Properties, 884 F.2d 713, 719-20 (3d Cir. 1989). Once the party opposing the fees objects, however, the Court "has a great deal of discretion to adjust the fee in light of the objections." Rode, 892 F.2d at 1183. (citing Bell, 884 F.2d at 721).

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley, 461 U.S. at 433. The result, known as the "lodestar," is presumed to represent a reasonable award of attorney's fees. Id.

Plaintiffs seek approval of the following hours and billing rates:

	<u>Hours</u>	<u>Hourly Rate</u>	<u>Fee</u>
Stephen F. Gold	128.02	\$334	\$42,758.68
Thomas H. Earle	116.45	\$165	\$19,214.25
Grace Munoz	87.25	\$130	\$11,342.50
Robin Resnick	10.80	\$200	\$ 2,160.00
Tanya A. Alverado	5.00	\$135	\$ 675.00
Robin Rasco (Paralegal)	4.00	\$ 70	\$ 280.00
TOTAL	351.52		\$76,430.43

Plaintiffs have submitted contemporaneous time records to support their claimed hours and affidavits from colleagues that attest to the reasonableness of their hourly rates. In response, SEPTA argues that Mr. Gold's hourly rate is excessive and that Plaintiffs' counsel wasted time, engaged in "double billing," and

staffed the case inefficiently.

A. Reasonable Rates

Reasonable rates are determined by the prevailing market rates in this community. Blum v. Stenson, 465 U.S. 886, 895 (1984); Washington v. Philadelphia Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996). "The hourly rate charged by the attorney must be reasonable in comparison with rates actually billed and paid in the marketplace for similar services rendered by lawyers of comparable skill, experience and reputation." Kraemer v. Franklin & Marshall College, 1997 WL 89422, at \*3 (E.D.Pa. 1997).

Mr. Earle, Ms. Munoz, Ms. Resnick, Ms. Alvarado and Ms. Rasco were employed by the Disabilities Law Project ("DLP") and their rates are based on a fee schedule created by Community Legal Services in Philadelphia. SEPTA did not object to these billing rates, so they are approved. SEPTA only objects to Mr. Gold's claimed hourly rate of \$334 dollars per hour.

Both parties submitted a published survey that lists hourly rates charged by a number of Philadelphia law firms. The survey shows rates for partners ranging from \$100 to \$395 dollars per hour. Mr. Gold also submitted affidavits from colleagues who attest that \$334 dollars per hour is a reasonable rate. An affidavit from a client who actually paid this rate would be far more persuasive.

While Mr. Gold is an experienced and specialized litigator,

he is not entitled to charge SEPTA a fee at the highest end of the market range. A reasonable attorneys' fee is "one that is 'adequate to attract competent counsel, but that does not produce windfalls to attorneys.'" Black Grievance Comm. v. Philadelphia Elec. Co., 802 F.2d 648, 651 (3d Cir. 1986) (quoting Blum v. Stenson, 465 U.S. 886, 897 (1984)); see also Daggett v. Kimmelman, 811 F.2d 793, 798 (3d Cir. 1987) (affirming reduction of hourly rate stating "§ 1988 uses the words 'reasonable fees' not 'liberal' fees."). Considering the evidence adduced at the hearing on this matter, a reasonable base rate for services that required Mr. Gold's expertise is \$285 dollars per hour. This is adequate to attract highly competent counsel to represent persons who claim that their civil rights were violated.

Plaintiffs requested fee must be reduced further because of improper staffing. The Plaintiffs' bill to their adversary must be prepared with the same type of discretion that a private attorney uses when billing a private client. Hensley, 461 U.S. at 434 ("Hours that are not properly billed to one's client are also not properly billed to one's adversary pursuant to statutory authority."). High priced attorneys should only bill their clients, or adversaries, for services that require their special skill and expertise, and not for matters that are delegable to less experienced attorneys or non-attorneys. Halderman v. Pennhurst State Sch., 49 F.3d 939, 942 (3d Cir. 1995); In Re Fine Paper Antitrust Litigation, 751 F.2d 562, 591 (3d Cir. 1984); Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir. 1983) ("A

Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn.").

The major inefficiency in this case is in the document discovery phase. Mr. Earle, a \$165 per hour attorney, spent approximately 51 hours reviewing and summarizing documents produced by SEPTA. Ms. Munoz, a \$130 per hour attorney, spent approximately 84 hours on the same type of work. While defendants argue that a paralegal could have performed this work, the use of a mid-level attorney and a contract attorney is not unreasonable.

Mr. Gold's bills for this part of the case are, however, unreasonable. Considering the hours billed by Mr. Earle and Ms. Munoz, and the many hours that Mr. Gold billed for conferences with co-counsel, Mr. Gold cannot also charge SEPTA his \$334 dollar per hour rate for work that could have been performed by a mid-level associate. Mr. Gold reports that he spent approximately twenty-five hours reviewing and summarizing documents.<sup>3</sup> This type of staffing is not appropriate. A \$285

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<sup>3</sup>While the billing records do not allow me to count counsel's hours exactly, the determination that Mr. Gold spent twenty-five hours on associate-type work is based on the following entries:

<u>Date</u>	<u>Entry</u>	<u>Hours</u>
1/6/97	Drafted request for production of documents.	0.72
2/1/97	Reviewed documents to prepare answers to defendant's interrogatories.	4.40
2/4/97	Reviewed SEPTA's computer files to answer interrogatories and prepare for hearing.	6.19

dollar per hour attorney must be aware of their billing rate and only charge for time spent on tasks that require their expertise. Mr. Earle and Ms. Munoz were reviewing and summarizing factual documents and Mr. Gold should have relied on their summaries. That is what a reasonable private client would demand, and an adversary is entitled to nothing less.

Mr. Gold responds that he could not staff this case efficiently because he is a solo practitioner. Plaintiffs rely on cases that have held that a solo practitioner will not be penalized for unavoidable inefficiencies in staffing. Poston v. Fox, 577 F. Supp. 915 (D.N.J. 1984); Thomas v. Cooper Indus., Inc., 640 F. Supp. 1374, 1380 (W.D.N.C. 1986). These decisions are distinguishable, however, because while Mr. Gold is technically a solo practitioner, he had the resources of DLP at his disposal in this case. DLP employs attorneys and paralegals of varying experience and billing rates that Mr. Gold could, and to some extent did, utilize. Therefore, Mr. Gold's twenty-five

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2/19/97	Prepared for inspection, traveled to Luzerne Depot to review records.	4.88
4/17/97	Reviewed discovery to begin preparing for hearing; met with Tom Earle and then [witness] to develop trial strategies.	3.37
4/26/97	Prepared for contempt hearing. Reviewed admissions and put into table format. Began to review depositions.	3.37
4/29/97	Reviewed dep of [witnesses], excerpted points for cross exam.	2.17
	Total:	25

hours spent reviewing and summarizing documents will be compensated at the rate of \$165 dollars per hour - representing the rate of a mid-level associate.

B. Hours Reasonably Expended

Reasonable hours are a function of the type of case presented. A party is entitled to compensation for work that is "useful and of a type ordinarily necessary to secure the final result obtained." Delaware Valley Citizens' Council, 478 U.S. at 561. "Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary." Hensley, 461 U.S. at 433.

In general, the hours claimed by Plaintiffs' counsel are reasonable. SEPTA's own evidence shows that after the Original Settlement, wheelchair lifts failed to work 30 to 50 per cent of the time a person using a wheelchair attempted to board a SEPTA bus. Based on these failures, Plaintiffs' counsel pursued a reasonable course of monitoring compliance and seeking improvement informally. After those efforts failed, Plaintiffs filed a contempt motion. They were then forced to engage in extensive discovery to collect the factual evidence required to prove their claim. The large amount of time spent collecting factual evidence was appropriate for this case. The evidence submitted by SEPTA generally does not support their claims that Plaintiffs' counsel regularly wasted time or engaged in "double billing." There is only one area where counsel's hours must be disallowed.

It is generally unreasonable to charge an adversary for the attendance of two attorneys at a deposition. See Halderman, 49 F.3d at 943; Schofield v. Trustees of the Univ. Of Penn., 919 F. Supp. 821, 829 (E.D. Pa. 1996). Mr. Earle spent ten hours preparing for and attending the depositions of witness. Mr. Gold spent over twenty hours preparing for and attending the same depositions. The ten hours billed by Mr. Earle are disallowed.

C. Adjustment to the Lodestar

While the lodestar is presumed to represent a reasonable fee, considerations such as the "results obtained" may require the court to adjust the fee upward or downward. Hensley, 461 U.S. at 434. The Plaintiffs' success in this case was neither extraordinary nor limited. The post-settlement phase of this case may have been labor intensive, but it was not legally complex. There are no special circumstances that compel upward or downward adjustment of the lodestar in this case.

III. Expenses

The Plaintiffs claim that they incurred \$3,816.14 in litigation expenses and costs. SEPTA objects to these costs as unsubstantiated, but they do not give any reason why the costs are unreasonable. Plaintiffs claim expenses of \$150 for a data consultant, \$1,476.15 for deposition transcripts, \$120 for witness fees, \$1,885 for copying, \$114 for postage, \$59.04 for telephone charges and \$11.75 for facsimile charges. The

expenses claimed are reasonable and are approved.

**CONCLUSION**

Plaintiffs are the prevailing party in the post-settlement phase of this litigation and thus are entitled to reasonable attorneys' fees and costs. For the reasons stated above, Mr. Gold's base hourly rate is reduced from \$334 to \$285 dollars per hour; 25 of Mr. Gold's hours will be compensated at the rate of \$165 dollars per hour; and ten hours of Mr. Earle's time is disallowed. The rest of the Plaintiffs' fee request is approved. Thus the lodestar is calculated as follows:

	<u>Hours</u>	<u>Hourly Rate</u>	<u>Fee</u>
Stephen F. Gold	103.02	\$285	\$29,360.70
Stephen F. Gold (reduced rate)	25.0	\$165	\$ 4,125.00
Thomas H. Earle	106.45	\$165	\$17,564.25
Grace Munoz	87.25	\$130	\$11,342.50
Robin Resnick	10.80	\$200	\$ 2,160.00
Tanya A. Alverado	5.00	\$135	\$ 675.00
Robin Rasco (Paralegal)	4.00	\$ 70	\$ 280.00
<b>TOTAL</b>	<b>341.52</b>		<b>\$65,507.45</b>

Plaintiffs' costs of \$3,816.14 are also approved. Thus, the total award of fees and costs is \$69,323.59.



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TRANSPORTATION AUTHORITY : NO. 93-CV-5538

**ORDER**

And NOW, this Day of November, 1997, upon consideration of Plaintiffs' Motion For Award Of Attorneys' Fees, Litigation Expenses and Costs and all responses thereto, it is hereby ORDERED that Plaintiffs' motion is granted and Judgment is entered in favor of Plaintiffs Cathleen James, Ken Zuber, Charles Homiller, Eric VonSchmetterling, Carla Laws, and Disabled in Action and against Defendant SEPTA in the amount of \$69,323.59.

BY THE COURT:

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JAMES MCGIRR KELLY, J.