

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

JACLYN KRATZER, et al., : CIVIL ACTION
 :
 Plaintiffs : NO. 04-05889
 :
 v. :
 :
 WEGMAN'S RESTAURANT, LLP, :
 :
 Defendant. :

Stengel, J.

October 27, 2005

MEMORANDUM AND ORDER

This case involves a motion for the award of attorneys' fees and litigation expenses under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101-12213. Plaintiffs Jaclyn Kratzer, William Ross, and Ralph Trainer filed this lawsuit against Defendant Wegman's Restaurants, LLP for allegedly discriminating against Plaintiffs and other persons with disabilities by denying them equal access in violation of the ADA. The parties subsequently entered into a court-approved consent decree, but left the award of attorneys' fees and litigation expenses to the Court. After reviewing the fee petition submitted by Plaintiffs' attorney, I find that the number of hours requested by Plaintiffs is reasonable and that Plaintiffs are entitled to attorneys' fees in the amount they have requested. I also find that Plaintiffs' request for litigation expenses is appropriate for the reasons described infra.

I. BACKGROUND

On December 17, 2004 Plaintiffs filed this lawsuit under the ADA alleging that Defendant discriminated against them and failed to provide equal access at Defendant's place of business.¹ On April 30, 2005 the parties entered into a settlement agreement requiring a number of building modifications to be performed at Defendant's place of business. The parties did not, however, resolve the amount of attorneys' fees and litigation expenses that Plaintiffs would recover from Defendant. Instead, the parties drafted a consent decree which specifically leaves the issue of attorneys' fees and litigation expenses to the discretion of the Court. The Court approved the parties' consent decree on May 24, 2005.

II. DISCUSSION

A. Recovery of Attorneys' Fees

Plaintiffs seek to recover \$5,188.50 (22.90 hours multiplied by \$225 per hour) in total attorneys' fees from Defendant. Defendant argues that this Court need not award any attorneys' fees under the language of the ADA. In the alternative, Defendant argues that the amount sought by Plaintiffs is unreasonable and disputes the number of hours reasonably billed by Plaintiffs' counsel Joel R. Zuckerman.

¹Plaintiffs filed 58 similar lawsuits in the Eastern District of Pennsylvania between July 15, 2003 and October 20, 2005.

The ADA allows district courts to award attorneys' fees and litigation expenses to a "prevailing party." 42 U.S.C. § 12205. Specifically, section 12205 provides in pertinent part that: "the court . . . in its discretion, may allow the prevailing party [in an ADA action] . . . a reasonable attorney's fee, including litigation expenses, and costs" Id. The Supreme Court has held that a party is "prevailing" under a statute allowing the award of attorneys' fees when: (1) a court has entered an enforceable judgment on the merits in the party's favor, or (2) a settlement agreement has been enforced through a court-ordered consent decree. Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Res., 532 U.S. 598, 603-04 (2001). In this case, the parties entered into a consent decree approved by the Court on May 24, 2005. Accordingly, Plaintiffs are a "prevailing party" under the second prong of Buckhannon and for purposes of the ADA.

A "lodestar" calculation is the starting point for determining an award of attorneys' fees under the ADA. See Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). The lodestar amount is calculated by multiplying the number of hours an attorney reasonably expended on the litigation by a reasonable hourly rate. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); Rode, 892 F.2d at 1183 (internal citations omitted). The lodestar is presumed to be a reasonable fee, but district courts have discretion to adjust the amount downward if it is "excessive, redundant, or otherwise unreasonable" in light of the results obtained. Id.

To determine the reasonable hourly rate used in the lodestar calculation, courts refer to the prevailing market rates of the community. Blum v. Stenson, 465 U.S. 886, 895-96 n.11 (1984). The party seeking an award of attorneys' fees bears the burden of establishing that its proposed hourly rate meets the community rate by way of satisfactory evidence and the attorney's own affidavit. See Washington v. Philadelphia County Ct. of Com. Pl., 89 F.3d 1031, 1035 (3d Cir. 1996). Once the moving party meets its burden, the opposing party must produce record evidence contesting the proposed hourly rate. See id. at 1036.

In this case, the parties have stipulated that the reasonable hourly rate for attorney Zuckerman is \$225 per hour. See Pl.'s Memo. in Supp. of Mot. for Attys' Fees, pp. 5; Def.'s Am. Resp. to Pl.'s Mot. for Attys' Fees, pp. 2. As a result, I need not examine the reasonableness of the hourly rate when calculating the lodestar amount.

To determine the number of hours reasonably expended by an attorney in a litigation, the party seeking an award of attorneys' fees must establish that the proposed number of hours billed is reasonable. See Hensley, 461 U.S. at 434. The moving party's fee petition must be specific enough to allow the court to determine that the hours claimed are reasonable for the work performed. Washington, 89 F.3d at 1037. The petition should therefore provide fairly detailed information for the time spent on each activity. Rode, 892 F.3d at 1190. The fee petition's specificity, however, need only show that the hours

claimed are not unreasonable.² See Rode, 892 F.3d at 1190. The court may exclude from the lodestar calculation any hours that are "excessive, redundant, or otherwise unnecessary," as well as hours that lack proper documentation. See Hensley, 461 U.S. at 433-34.

In this case, Defendant argues that a significant amount of the time expended by Zuckerman was "excessive, redundant or otherwise unnecessary" and is therefore unrecoverable. After reviewing attorney Zuckerman's fee petition, I find that the number of hours requested by Plaintiffs is reasonable and that Plaintiffs are entitled to attorneys' fees in the amount requested.

B. Recovery of Expenses

Plaintiffs also seek to recover \$1,609.27 in total litigation expenses, including *inter alia*: (1) photocopying costs, (2) filing fees, (3) travel expenses for attorney Zuckerman and Plaintiff's expert Steve Mason, and (4) expert fees. Defendant argues that a number of Plaintiffs' travel costs are unreasonable expenses. Defendant also argues that the \$950.00 Plaintiffs seek to recover for expert fees and costs is an unreasonable amount.

Section 12205 of the ADA provides that a prevailing party may recover "litigation expenses . . . and costs." 42 U.S.C. § 12205. Furthermore, prevailing parties in civil rights cases are generally entitled to recover any reasonable costs associated with litigating their

²The Third Circuit has noted that "[I]t is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney." Rode v. Dellarciprete, 892 F.2d 1177, 1190 (3d Cir. 1990) (internal quotations omitted). Thus, a fee petition need include only "fairly definite information as to the hours devoted to various general activities." Id.

claims, provided that the costs are necessary and properly documented. See Becker v. ARCO Chem. Co., 15 F. Supp. 2d 621, 635 (E.D. Pa. 1998). District courts have broad discretion to award any costs deemed reasonable in such cases. See In re Paoli R.R. Yard PCB Litig., 221 F.3d 449, 454 (3d Cir. 2000). After reviewing the litigation costs listed in attorney Zuckerman's affidavit, I find that the costs requested by Plaintiffs are reasonable and adequately documented. Accordingly, I award Plaintiffs litigation costs in the amount they request.

Plaintiffs also seek to recover \$950.00 in expert fees and costs from Defendant. Defendant argues that Mason's fee rate of \$200 per hour is unreasonable, and notes that its own expert charged only \$68 per hour for similar services. Defendant, however, has not cited any authority for the proposition that a prevailing party's recovery of expert fees should be decreased because another expert could have provided his or her services for a lower amount.³ Nor has Defendant presented any legal authority providing the Court with a reason to second-guess Plaintiffs' choice in experts. Accordingly, Defendant has failed to carry its burden of showing that Plaintiffs' expert fees are unreasonable, and I award expert fees and costs in the amount requested.

³To the contrary, in Bjorklund v. Philadelphia Hous. Auth., No. Civ. A. 98-CV-2338, 2003 WL 22988885, at *6 (E.D. Pa. Nov. 20, 2003), the Eastern District of Pennsylvania held that an affidavit describing the prevailing party's expert fees and costs was sufficient to support a request for reimbursement. Specifically, the court granted the prevailing party's request for expert fees and costs because the affidavit "included the necessary time sheets and documentation supporting the request." Id. In this case, Plaintiffs' affidavit includes a *curriculum vitae* of its expert. Plaintiffs' affidavit also provides an invoice detailing Mason's: (1) activities related to this case, (2) hours spent on this case, and (3) hourly rate charged. Accordingly, Bjorklund supports Plaintiffs' recovery of expert fees and costs.

III. CONCLUSION

For the reasons described above, I award Plaintiffs attorneys' fees and litigation costs, including expert fees and costs, in the amount of \$6,797.77. An appropriate order follows.

ORDER

AND NOW, this day of October, 2005, upon consideration of Plaintiffs' Motion for Attorneys' Fees (Doc. No. 7), and all responses thereto, it is hereby **ORDERED** that the motion is **GRANTED**.

BY THE COURT:

LAWRENCE F. STENGEL, J.