

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

LYDIA ROLDAN

v.

PHILADELPHIA HOUSING
AUTHORITY, et al.

95-CV-6649

MEMORANDUM

BRODERICK, J.

DECEMBER 7, 1999

Plaintiff Lydia Roldan ("Plaintiff"), a tenant of Defendant Philadelphia Housing Authority ("PHA"), originally filed the instant action in October, 1995 pursuant to 42 U.S.C. §§ 1437 and 1983, seeking enforcement of two grievance awards requiring PHA to make repairs to her rental unit and providing her a rent abatement. On September 19, 1996 the parties entered into a settlement agreement providing this Court with continuing jurisdiction to enforce the settlement. By Memorandum dated April 2, 1997, this Court awarded Plaintiff's counsel, Michael Donahue, Esq. of Community Legal Services ("CLS"), \$6006.00 in attorney's fees at his request hourly rate of \$210.00 for his work on Plaintiff's behalf. The parties entered into an amended settlement stipulation in October, 1997. However, Plaintiff was not satisfied with PHA's compliance with the amended settlement and filed a motion before this Court to enforce the settlement agreement on December 7, 1998. The parties entered into a stipulation resolving the motion to enforce the settlement agreement which was approved by this Court on August 26, 1999.

Presently before the court is Plaintiff's motion for attorney's fees in connection with enforcement of the settlement agreement, Defendants' response thereto, and Plaintiff's reply.

Plaintiff seeks an hourly rate of \$265.00 for the services of her counsel, Michael Donahue, Esq. of CLS. Defendants contest the hourly rate sought by Mr. Donahue as well as the reasonableness of the number of hours claimed. The Court held a hearing on these matters on November 15, 1999. For the reasons stated below, the court finds that \$265.00 is a reasonable hourly rate for Mr. Donahue's services in this § 1983 civil rights action and that the hours expended by him were reasonable.

A prevailing party in an action brought pursuant to 42 U.S.C. § 1983 may recover attorney's fees as provided by 42 U.S.C. § 1988. In order to recover an award of attorney's fees under 42 U.S.C. § 1988, a party must demonstrate that: (1) it prevailed, (2) the hourly rate upon which the request is based is reasonable, and (3) the hours expended were reasonable. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Under the "lodestar" formula, the court will multiply the number of attorney hours reasonably expended on the litigation by a reasonable hourly rate for the attorney. "The result of this computation is called the lodestar" and "is strongly presumed to yield a reasonable fee." Washington v. Philadelphia County Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996).

PHA initially contends that Plaintiff is not entitled to an award of attorney's fees because the only relief Plaintiff obtained was relief to which she was already entitled. The Court finds this argument to be without merit. PHA admits that Plaintiff was the prevailing party and yet contends that Plaintiff is not entitled to an award of attorney's fees. There is no support in the record of this case or in the applicable law for such a contention. The repairs that Plaintiff sought have now been made to her home and Plaintiff has received the rent abatement to which she was

entitled. The fact that PHA refused to make these repairs in a timely fashion or to pay Plaintiff the rent abatement to which PHA now freely admits she was entitled, preferring instead to litigate this matter for more than four years and breach two separate settlement agreements, does not suggest that Plaintiff's latest litigation, which was necessary to achieve these ends, was any less successful. Plaintiff has obtained all the relief which she sought in her motion to enforce the settlement agreement and is therefore entitled to a reasonable attorney's fee.

PHA next challenges the amount of attorney's fees sought by Plaintiff. PHA contends that the hourly rate claimed by Mr. Donahue is excessive. In Smith v. PHA, Nos. 96-1370 & 96-1379 (3d Cir. Feb. 26, 1997), the Third Circuit addressed the exact issue before this court -- determining the reasonable hourly rate for the services of Michael Donahue, Esq. in connection with a § 1983 civil rights case seeking enforcement of a PHA tenant's grievance award. In Smith the Third Circuit set forth the proper framework for the district court to follow in determining an attorney's reasonable hourly rate:

Generally, 'a reasonable hourly rate is calculated according to the prevailing market rates in the community. [A] district court may not set attorney's 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 of evidence. In the absence of such evidence, the plaintiff must be awarded attorney's fees at her requested rate. If hourly rates are disputed, the district court must conduct a hearing to determine the reasonable market rates.

Smith, slip op. at 4 (citations omitted).

To support her contention that \$265.00 is a reasonable hourly rate for Mr. Donahue's services Plaintiff submits an affidavit from Mr. Donahue as well as a list of approximately 200

cases involving federal housing regulations that Mr. Donahue has successfully prosecuted. In addition, Plaintiff submits an affidavit from Alan White, Esq. a staff attorney at CLS and the Chairperson of the Attorneys Fees Committee at CLS as to the methods used by CLS in setting attorney's fees.

At the hearing, Plaintiff also presented the testimony of Jonathan M. Stein, Esq., General Counsel for CLS, and a member of the attorney's fees committee at CLS for more than 20 years. Mr. Stein testified as to the procedure employed by CLS for setting attorney's fees. Mr. Stein also testified regarding a 1996 Philadelphia Law Firm Litigation Rate Survey prepared at the request of CLS by the independent firm of Altman Weil Pensa, Inc. ("Altman Weil survey") as well as a 1998 update to that survey. The Altman Weil survey included responses from forty Philadelphia litigation law firms employing more than 700 attorneys. Of those forty firms, almost seventy-eight percent indicated that attorney's billing rates were based on years of experience rather than litigation specialty. Firms which practice insurance defense and personal injury were not included in the survey. The 1998 Altman Weil survey reported that attorneys admitted to the bar between 1977 and 1981 and practicing in the Philadelphia area billed an average hourly rate of \$272.00. Mr. Donahue was admitted to the bar in 1977.

In support of its contention that \$265.00 is an excessive hourly rate for Mr. Donahue's services PHA submits an affidavit by Julianne M. Donnini, Esq. of Legalgard which asserts, based on her company's survey, that \$150.00 per hour is a reasonable rate for attorney's in landlord-tenant disputes. Ms. Donnini also testified at the hearing on behalf of PHA. Ms. Donnini questions the validity of the Altman Weil survey because, inter alia, it excludes insurance defense firms whose rates are usually lower, it does not take into account the

complexity of the services performed by the attorneys, and "the CLS hourly rate schedule does not reflect differences in areas such as rent, equipment, furnishings, client acquisition and entertainment, and other operating expenses that exist between CLS and firms in the private sector." Donnini Aff. at 6. Ms. Donnini testified that a survey was performed by her company at PHA's request in order to determine what the prevailing market rate was for the type of services performed by Mr. Donahue. In order to conduct that survey, Legalgard sent letters to firms in Pennsylvania, New Jersey, Maryland and Delaware whose law firm listing with Martindale-Hubbell indicated that they handle landlord-tenant cases. Legalgard sought information on rates charged by attorneys who handle landlord-tenant cases under color of the civil rights statute. Legalgard received three responses to their request from Pennsylvania firms. Two of those firms were in Philadelphia and the other was in Pittsburgh. Those firms had a combined total of approximately ten attorneys. No information was sought as to the years of experience of the attorneys at the responding firms. Based upon the information provided by those three firms, Ms. Donnini testified that in her opinion \$150.00 is a reasonable hourly rate for Mr. Donahue's services because the nature of this litigation was not complex and was essentially a routine landlord-tenant dispute rather than a complex civil rights matter, irrespective of how much experience or expertise Mr. Donahue has in litigating these matters.

In further support of its assertion that \$150.00 is the appropriate hourly rate, PHA submits an affidavit dated March 9, 1999 from David H. Denenberg, Esq. This affidavit asserts that Mr. Denenberg charges \$150.00 per hour for his services on landlord-tenant cases. However, Mr. Denenberg did not testify at the hearing. To the contrary, Plaintiff submitted at the hearing a second affidavit from Mr. Denenberg, dated November 4, 1999, which asserts that Mr.

Denenberg has never represented a party in federal court in a case involving a landlord-tenant dispute or a civil rights matter. Mr. Denenberg's second affidavit further asserts that he charges \$150.00 per case for Municipal Court landlord-tenant disputes because the cases can be resolved in less than one hour.

The Court finds that Plaintiff has made out a prima facie case that \$265.00 per hour is the prevailing market rate for attorney's with experience in litigation comparable to Mr. Donahue's. The Court finds the Altman Weil surveys to be reliable because the rates provided are based on a significant number of lawyers practicing in the Philadelphia area. The Court finds that PHA has not produced sufficient reliable evidence to rebut Plaintiff's prima facie case. The Court finds the testimony of Ms. Donnini as to the rates charged by ten attorneys in the entire state of Pennsylvania insufficient to discredit the evidence presented by Plaintiff. The Court also rejects PHA's suggestion that the instant matter is akin to a Municipal Court landlord-tenant dispute which can be disposed of in less than one hour. The Court finds that this suggestion is insulting to the value of the services provided to Plaintiff by Mr. Donahue and is not supported by law. See, e.g. Jones v. Philadelphia Housing Authority, No. Civ. A. 99-0067, 1999 WL 972006 at * 2 (E.D.Pa. Oct. 19, 1999). Although the issues in the instant case may not be complex, Plaintiff was forced to spend more than four years litigating this matter in federal court in order to obtain the relief she sought. "The poor and ignorant are entitled to- and must receive- the same quality of legal service as those who are more affluent." Jones, 1999 WL 972006 at *2. The relief obtained by Plaintiff was valuable to her and her counsel is entitled to receive a reasonable attorney's fees based upon his experience and expertise, just as any other attorney. The Court also rejects outright PHA's suggestion, contained in Ms. Donnini's affidavit and her testimony at

the hearing, that Mr. Donahue is entitled to a lower hourly rate because he works for a legal services organization rather than a large law firm. It is well established that "'reasonable fees' under § 1988 are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or nonprofit counsel." Blum v. Stenson, 465 U.S. 886, 896 (1984). The prevailing market rate is the rate "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum, 465 U.S. at 886 n. 11.

Based upon the record before the Court, the Court finds that Plaintiff has met her burden of demonstrating that \$265.00 is a reasonable hourly rate for Mr. Donahue's services. See, e.g. Jones v. PHA, No. Civ. A. 99-0067, 1999 WL 972006 at *2 (E.D.Pa. Oct. 19, 1999) (awarding Mr. Donahue an hourly rate of \$265.00 under the CLS fee schedule, supported by the Altman Weil survey); Cooper v. PHA, No. 99-1853, (E.D.Pa. Sept. 4, 1999) (same); Bryant v. PHA, No. 97-7478 (E.D.Pa. Feb. 18, 1999) (same); Wesby v. PHA, No. 97-7403 (E.D.Pa. Feb. 17, 1999) (same). The evidence presented by Plaintiff has demonstrated that the fee of \$265.00 per hour sought by Mr. Donahue is consistent with the prevailing rate for attorney's with comparable skill, expertise and experience in the community. The Court also notes that it awarded Mr. Donahue his then-sought hourly rate of \$210.00 when it awarded Mr. Donahue attorney's fees in 1997 for his work in this case. Memorandum Dated Apr. 2, 1997. The Court cannot say that an increase of \$55.00 in Mr. Donahue's hourly rate over a period of more than two and one-half years strikes this Court as unreasonable. Therefore, this Court will award Mr. Donahue attorney's fees at an hourly rate of \$265.00.

In addition to challenging the hourly rate sought by Plaintiff for Mr. Donahue's services,

PHA also challenges the amount of time spent by Mr. Donahue in litigating the instant matter. PHA asserts that the instant matter is a simple landlord-tenant dispute where Plaintiff's entitlement to relief was clear and was not disputed by PHA. Thus, PHA challenges the amount of time Mr. Donahue spent communicating with Plaintiff and with PHA personnel, as well as the amount of time spent on pleadings which PHA characterizes as "boilerplate." PHA also asserts that much of the work performed by Mr. Donahue could have been performed by a paralegal, secretary or student, and thus, should not be charged at Mr. Donahue's higher rate.

The Court finds that the amount of time spent by Mr. Donahue in litigating the motion to enforce the settlement agreement and in bringing about the settlement of that dispute was not excessive. The Court finds that it was PHA's own unwillingness to perform the repair work to Plaintiff's home and pay Plaintiff the rent abatement, as PHA readily admits it was obligated to do, for more than four years which precipitated the need for Plaintiff's attorney to spend the hours claimed on seeking discovery, moving for sanctions, and negotiating with PHA to resolve this matter. See Bryant v. PHA, No. 97-7478 (E.D.Pa. Feb. 12, 1999) at n.1 (rejecting PHA's argument that amount of hours spent were excessive because Plaintiff was clearly entitled to the relief sought). The Court has reviewed the amount of time claimed by Mr. Donahue and finds that the amounts claimed are not unreasonable in this case. Mr. Donahue has adequately supported the time spent in this case.

Further, the Court rejects PHA's argument that the work should have been performed at a lower rate by a student, paralegal or less experienced attorney. See, e.g. Janjanin v. PHA, No. Civ. A. 98-4878, 1999 WL 643226 at *3 (E.D.Pa. Aug. 24, 1999) (slip op.); Jones v. PHA, No. Civ. A. 98-6262, 1999 WL 305519 at *2 (E.D.Pa. May 12, 1999) (slip op.). Mr. Donahue has

asserted that CLS is understaffed and no less experienced attorney was available to perform the services listed. The Court does not find that this constitutes overbilling under the circumstances. See, e.g. Wallace v. PHA, No. Civ. A. 95-4261, 1996 WL 273646 at *3 (E.D.Pa. May 21, 1996). In addition, "[t]here is no reason to require Plaintiff's counsel to delegate his authority." Shired v. PHA, Civ. A. No. 91-6652, 1992 WL 279355 at *3 (E.D.Pa. Sept. 30, 1992). And, while some of the challenged activities "could have been performed by a non-lawyer, and often are[,] ...[t]hey are essentially legal tasks, regularly undertaken by attorneys." Evans v. PHA, Civ. A. No. 93-5547, 1995 WL 154872 at*7 (E.D.Pa. March 31, 1995).

Finally, PHA argues that the amount of attorney's fees awarded should be reduced because Plaintiff was only partially successful. To be a prevailing party, a plaintiff must have "achieved some of the benefit the part[y] sought in bringing suit." Texas State Teachers Ass'n v. Garland Indep. School Dist., 489 U.S. 782, 791-92 (1989) (citation omitted). Attorney's fees are available even if the plaintiff vindicates her rights through settlement. Maher v. Gagne, 448 U.S. 122, 129 (1980). Plaintiff has obtained all the relief she sought and PHA's contention to the contrary need not be addressed further by the Court.

The Court will award Plaintiff attorney's fees for 15.8 hours of attorney work at an hourly rate of \$265.00 as sought by Plaintiff in her motion to determine the amount of attorney's fees. The Court declines, however, to award Plaintiff the supplemental attorney's fees sought in Plaintiff's reply memorandum. Counsel is entitled to be compensated for the time spent preparing the fee petition, to the extent that the time spent was reasonably necessary to obtain a reasonable fee award. Prandini v. National Tea Co., 585 F.2d 47, 54 (3d Cir. 1978). Plaintiff's original fee petition includes time spent in preparing that petition and the Court has previously

found that the time spent was reasonable. However, the Court finds that the additional 6.9 hours sought by Plaintiff in connection with the preparation of her reply memorandum in support of her fee request was not reasonably necessary to obtain a fee award.

Accordingly, the court will award attorney's fees in the amount of \$4,187.00 based on 15.8 attorney work hours compensated at an hourly rate of \$265.00.

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|
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ORDER

AND NOW, this day of December, 1999; Plaintiff having filed a motion seeking attorney's fees; Defendant having filed a response and Plaintiff having filed a reply thereto; the Court having held a hearing on November 15, 1999; for the reasons stated in this Court's Memorandum of this same date;

IT IS ORDERED that Plaintiff's motion to determine the amount of attorney's fees (Doc. No. 37) is **GRANTED** and Community Legal Services, Inc. is awarded attorney's fees in the amount of \$4,187.00 representing 15.8 attorney work hours compensated at an hourly rate of \$265.00.

RAYMOND J. BRODERICK, J.