

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARING

2009 AUG 20 P 4: 22

DOROTHY J. CUMMINGS,
Tenant/Petitioner,

v.

ROSWELL TAYLOR,
Housing Provider/Respondent.

Case No.: RH-TP-08-29345
In re: 327 17th Street, NE

ORDER ON PETITIONER'S MOTION FOR ATTORNEYS' FEES

At issue is a May 7, 2009, Motion from Petitioner Dorothy Cummings to Set Reasonable Attorney's Fees (the Motion), which followed a April 29, 2009, Final Order awarding her \$2,852.50 in rent refunds, and ordering that her rent be rolled back to \$700 per month. Petitioner seeks an award of \$12,511. The motion is supported by a memorandum and sworn timesheets from Attorney Bronwen Blass and Attorney Jennifer Berger. On May 18, 2009, Respondent filed its Response, opposing the award of attorney's fees and the amount sought by Petitioner. Respondent moves for denial of the Motion or that the Motion be held in abeyance. Respondent's request is denied. Petitioner is awarded \$6,158.67 in attorneys' fees.

I. Respondent's Request for Denial of Motion or for Motion to be Held in Abeyance

I begin with Respondent's request that I deny the Motion or not consider it at this juncture because an appeal is pending with the Rental Housing Commission (RHC). Attorney fees are awarded for legal services performed before the tribunal making the

award, in this case the Office of Administrative Hearings (OAH). *See Reid v. Sinclair*, TP 11,334 (RHC Sept. 1, 1999). In *Reid*, the issue of attorney's fees for the legal services provided before the Office of Adjudication (a predecessor of the OAH) or the D.C. Court of Appeals could not be decided by the Rental Housing Commission. *Id.* (citing *Alexander v. Lenkin*, HP 11,831 (RHC July 30, 1989)). OAH, therefore, is the proper body to decide the issue of attorney's fees in this matter. The decision is most appropriately made at this time. The Motion, therefore, will not be held in abeyance until the appeal before the Rental Housing Commission is decided. *See Wedderburn v. Thomas*, TP 23,970 (RHC Oct. 22, 1996).

II. Petitioner as a Prevailing Party

The Rental Housing Act of 1985 (the Act) provides for the award of attorney's fees to the prevailing party in any action under the Act, except actions for eviction. D.C. Official Code § 42-3509.02. "A presumption of entitlement to an award of attorney's fees is created by a prevailing tenant, who is represented by an attorney." 14 DCMR 3825.2. A prevailing party is a party who has "succeed[ed] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). When a party does not prevail on all of the issues presented to the court, the court must scrutinize the hours and the rate of the attorney's fees requested to avoid compensation for legal work on issues where the party did not prevail. *Dey v. L.J. Dev.*, TP 26,119 (RHC Nov. 17, 2003).

In her tenant petition, Petitioner alleged that: (1) that the building where her rental unit is located was not properly registered with the Rental Accommodations Division,

(2) that a rent increase was larger than the increase allowed by any applicable provision of the Rental Housing Act, and (3) that a rent increase was made while her unit was not in substantial compliance with DC Housing Regulations.

Petitioner succeeded in proving that the building was not properly registered and, as a result, proved that a rent increase was larger than the increase allowed by the Rental Housing Act. Hence she is a prevailing Petitioner even though she did not sustain her burden of proving the second basis for challenging the rent increase — that her unit was not in substantial compliance with DC Housing Regulations.

III. Supporting Documents

An award of attorney's fees shall be based on an affidavit executed by the attorney of record itemizing the attorney's time for the legal services and providing the applicable information. 14 DCMR 3825.7. Calculation shall be based on case law with lodestar as the starting point. Lodestar means the number of hours reasonably expended on a task multiplied by a reasonable hourly rate. 14 DCMR 3825.8.

Documentation submitted in support of an attorney's fees application "must be sufficiently detailed to permit the District Court [or agency] to make an independent determination whether or not hours claimed are justified." *Hampton Courts Tenants Ass'n v. D.C. Rental Hous. Comm'n*, 599 A.2d 1113, 1117 (D.C. 1991) (citing *Nat'l Ass'n of Concerned Veterans v. Sec'y of Defense*, 219 U.S. App. D.C. 94, 102 (D.C. Cir. 1982)).

Once a party has provided an affidavit in support of a request for attorney's fees, "the determination of the reasonableness of attorney's fee amounts is clearly 'a matter within the trial judge's discretion.'" *Id.* at 1115 (citing *District of Columbia v. Jerry M.*, 580 A.2d 1270, 1280 (D.C. 1990)). The same discretionary standard applies to attorney's fees determinations by an administrative agency. *Id.* (citing *Alexander v. District of Columbia Rental Hous. Comm'n*, 542 A.2d 359, 361 (D.C. 1988)). The adjudicator may exercise discretion to decrease the number of compensable hours in the lodestar calculation "where the documentation of hours is inadequate" and to "exclude from the initial fee calculation hours that were not reasonably expended" or "that are excessive, redundant, or otherwise unnecessary." *Hampton Courts Tenants Ass'n*, 599 A.2d at 1116 (citing *Hensley* at 433-34). Against these standards is this guidance:

[I]t is important that attorneys who are willing to take on civil rights and other public interest work are adequately compensated, or it will be difficult to find competent counsel to handle this important job. The goal is to attract competent counsel for these cases, but not to provide them with windfalls.

Lively v. Flexible Packaging Ass'n, 930 A.2d 984, 988 (D.C. 2007).

Petitioner filed a memorandum and timesheets in support of her fee request for two attorneys, which meet the standard for documentation needed to support a request for attorney's fees as required by 14 DCMR 3825.6. The memorandum provides details about the activities that the attorneys conducted on Petitioner's behalf. Moreover, Ms. Blass and Ms. Berger affirmed the truth of the time recorded in the timesheets and the timesheets provide a list of the tasks performed, the dates on which they were performed, and the time spent on each task. Petitioner states that the "time reflects hours devoted to

client interviewing and hearing preparation, research, actual time in hearing, and preparing post-trial pleadings.” The individual attorney requests are considered in turn.

A. Attorney Bronwen Blass

In support of her claim for fees based on Ms. Blass’s legal services, Petitioner cites the factors in 14 DCMR 3825.8, which she argues “militate strongly in favor of the reasonableness of the time spent pursuing [Petitioner’s] claims.” Contributing to the complexity of the representation, Petitioner contends, are Respondent’s failure “to provide written notices of rent increases from 2005 through 2008,” “fail[ure] to appear at scheduled Court hearing,” and Petitioner’s status as “elderly.” For Ms. Blass’s legal services, Petitioner requests 15.8 hours between June 1, 2007, and May 31, 2008, at \$255.00 per hour (\$4,029) and 21 hours after June 1, 2008, at \$270.00 per hour (\$5,670), for a total of \$9,699.

Attorney’s fees shall be paid only for services performed after the filing of the petition and after the party notified the tribunal that the party is represented by an attorney, except that fees are allowable for a reasonable period of time prior to notification of representation for any services performed in reaching a determination to represent the party. 14 DCMR 3825.6.

Not all hours listed on Ms. Blass’s time sheet coordinate with progress of this matter at OAH. Petitioner filed the tenant petition at issue on July 1, 2008. A case management order was issued on August 7, 2008, scheduling the first hearing in this matter for September 8, 2008, at 9:30 a.m. Ms. Blass filed her entry of appearance in this

matter August 29, 2008.¹ Ms. Blass's timesheet began to log time related to this case beginning on April 7, 2008, where she noted that she "reviewed case file" and "prepared motion papers." From April 18, 2008, to May 18, 2008, Ms. Blass recorded that she "phoned client," "researched exemptions," "filed subpoenas," "prepared, filed and served witness and exhibit lists," and "prepared for a hearing." Further, she recorded that on May 19, 2008, she "attended OAH hearing" and "conferred with opposing counsel."

Services related to "researching exemptions" were essential to making a determination to represent Petitioner in this matter. However, since this case was not scheduled for a hearing before this administrative court until September 8, 2008, I cannot find that she filed subpoenas and exhibit lists and prepared for a hearing in April. As a result, Ms. Blass can receive 2.8 hours in attorney's fees for researching exemptions, but not 9.8 hours in April for filing papers in a case for which she did not enter an appearance until August 29, 2008.

Ms. Blass's timesheet reflects additional time for legal services she provided to Petitioner before the filing of the tenant petition that were reasonably expended and within a reasonable period of time before she entered her appearance that are related to making a determination to represent Petitioner. Starting on May 22, 2008, Ms. Blass states that she "met with client" and "phoned client" and these conversations appear to be in preparation for the filing of the tenant petition. Two entries specifically mention preparing and finalizing the petition. The timesheet entries from May 22, 2008, to June

¹ Although there was no formal filing of an entry of appearance by Ms. Blass, Ms. Blass filed the Petitioner's Witness list on August 29, 2008. According to 1 DCMR 2807.2, "the filing of a pleading or paper in conformity with [the Housing Regulations] constitutes the entry of appearance by counsel."

30, 2008, the date Ms. Blass states that the petition was finalized, are hours expended for a reasonable period of time for services performed in reaching a determination to represent the party. The total number of hours for this time period before the filing of the tenant petition is 4.1 hours.

The hours expended on Petitioner's case beyond the date of the filing of the petition, July 1, 2008, were reasonably expended. These hours included preparing, filing, and serving witness and exhibit lists; preparing for hearing; meeting with Petitioner; conferring with opposing counsel; attending mediation; attending the OAH hearing; researching, drafting and filing the post hearing brief. These activities were essential to Ms. Blass's representation of Petitioner in this matter. The total number of hours for this time period is 18.3 hours.

Petitioner requests a reasonable hourly rate of attorney's fees for Ms. Blass based on the *Laffey* Matrix. The *Laffey* Matrix (Matrix) is a table of hourly rates for attorneys of varying experience levels prepared by the Civil Division of the United States Attorney's Office for the District of Columbia.² The District of Columbia Court of Appeals has approved the use of the *Laffey* Matrix for an award of attorney's fees where such fees are permitted by statute. *Lively*, 930 A.2d at 988-89. The Matrix is based on the number of years that an attorney has practiced and provides an hourly rate for June 1st of one year to May 31st of the following year. Ms. Blass has six years of legal experience. The rate for attorneys with four to seven years of experience for the period of June 1, 2007, to May 31, 2008 is \$255 per hour. The rate for attorneys with the same

² The *Laffey* Matrix can be found at http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html.

level of experience for the period of June 1, 2008, to May 31, 2009 is \$270 per hour. Ms. Blass has completed legal work on behalf of Petitioner within both years – 4.2 hours of work between June 1, 2007 and May 31, 2008, and 21 hours of work between June 1, 2008, and May 31, 2009. The use of these rates results in an award of \$6,741, (which is calculated as follows: $4.2 \times \$255 = \1071.00 ; $21 \times \$270 = \5670.00 ; $\$1071 + \$5670 = \$6,741$) for all of the time devoted to Petitioner’s case.

The lodestar amount is the starting point for an award of attorney’s fees, but the lodestar can be reduced or increased based on thirteen factors. 14 DCMR 3825.8(b). A “precise analysis” of each factor is not required³ but the following factors can be considered:

1. the time and labor required;
2. the novelty, complexity, and difficulty of the legal issues or questions;
3. the skill requisite to perform the legal service properly;
4. the preclusion of other employment by the attorney, due to acceptance of the case;
5. the customary fee or prevailing rate in the community for attorneys with similar experience;
6. whether the fee is fixed or contingent;
7. time limitations imposed by the client or the circumstances;
8. the amount involved and results obtained
9. the experience, reputation, and ability of the attorney;
10. the undesirability of the case;
11. the nature and length of the professional relationship with the client;
12. the award in similar cases.
13. the results obtained, when the moving party did not prevail on all issues.

14 DCMR 3825.8.

Respondent’s failure to provide written notices of increases from 2005 through 2008 and Petitioner’s elderly status did not result in a more complicated or complex case

³ *Ungar v. D.C. Rental Hous. Comm’n*, 535 A.2d 887, 890 (D.C. 1987).

for Ms. Blass to prepare or litigate. Nor did those factors make Ms. Blass's work in this matter more difficult. Hence an increase in the lodestar amount is not warranted. However, based on "the amount involved and the results obtained," and "the results obtained, when the moving party did not prevail on all the issues," I reduce the amount. 14 DCMR 3825(b).

When a party has succeeded on some but not all claims for relief, two questions must be answered before an attorney fee is awarded. *Hensley*, 461 U.S. 424. First, were the successful and unsuccessful claims related? Second, did the prevailing party achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award? *Id.* at 434. In some cases, an attorney's "work on one claim will be unrelated to his work on another claim." *Id.* at 435. "In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories." *Id.* The attorney's time "will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim by claim basis." *Id.* In making a determination about the fee award and when adjusting the award, the court must "provide a concise but clear explanation of its reasons for the fee award" and make it clear that "it has considered the relationship between the amount of the fee awarded and the results obtained." *Id.* at 437.

Here, Petitioner's successful and unsuccessful claims are related only by a common remedy. Petitioner failed to prove that a rent increase was taken while her unit was not in substantial compliance with D.C. Housing Regulations. In order to prove this claim, Petitioner had to show that substantial housing code violations existed at the time the rent increase was taken by providing dates and the duration of those violations.

Nwankwo v. William J. Davis, Inc., TP 11,728 (RHC Aug. 6, 1986); *Russell v. Smithy Braedon Prop. Co.*, TP 22,361 (RHC July 20, 1995). Petitioner also had to prove that Respondent was on notice of the violations. *Gavin v. Fred A. Smith Co.*, TP 21,198 (RHC Nov. 18, 1992). Although Respondent was on notice of the violations, he resolved the violations within two weeks of notice. As a result, Petitioner did not prove that a rent increase was made while her unit was not in substantial compliance with D.C. Housing Regulations.

To prove the second challenge to a rent increase, improper registration, Petitioner researched the law of exemptions. She demonstrated that a registration form was not properly filed after sifting through an unusual set of facts. D.C. Official Code § 42-3502.08(a)(1)(B); 14 DCMR 4109.9. Although Respondent produced an exemption number and the year 1986, as well as information about several owners, Petitioner proved that no properly filed registration/exemption form corresponded to that exemption number. The rent increase, therefore, was invalid.

Petitioner alleged two claims with one remedy, the reversal of an improper rent increase. In the instant matter, Petitioner's proof of either claim, non-compliance with the D.C. Housing Regulations or improper registration, would have resulted in a finding that the rent increase was invalid and unlawful. D.C. Official Code § 42-3502.08(a)(1)(B); D.C. Official Code § 42-3502.08(a)(1).

The second step of the analysis is determining if the plaintiff achieved a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award. Much of attorney time in this case was devoted to litigation as a whole —

research, meeting with client, conferring with opposing counsel, and preparing witnesses — which makes it difficult to divide the hours expended on a claim by claim basis. Yet, it must be acknowledged that some time was expended solely on the unsuccessful claim. Dividing the time in half simply because Tenant prevailed on one of two claims would not adequately compensate counsel for her work, although some reduction is necessary in acknowledgment of failure to prove housing code violations. A fee award that is reasonable in relation to the results obtained, *see Hensley*, 461 U.S. at 440, in this case is two-thirds of that requested, a percentage that recognizes failure to prove one claim and success on the overall challenge to the rent increases.

Here, Petitioner prevailed by proving that her rent increases were invalid. She is awarded \$4,494 (2/3 of \$6,741) for legal work Attorney Blass performed.

B. Attorney Jennifer Berger

Petitioner also requests reasonable attorney's fees for hours devoted by Ms. Jennifer Berger as a "Supervising Attorney" to Ms. Blass, who is a "loaned associate" in terms of her work for AARP Legal Counsel for the Elderly. The filing of Petitioner's Motion to Set Reasonable Attorney's Fees is Ms. Berger's entry of appearance on Petitioner's behalf.

As noted above, Petitioner contends that Respondent's failure "to provide written notices of rent increases from 2005 through 2008," Respondents "fail[ure] to appear at scheduled Court hearing," and Petitioner's status as elderly contributed to "the complexity of case representation." For Ms. Berger's legal services, Petitioner requests "5 attorney hours between June 1, 2007 and May 31, 2008 at \$315.00 per hour (\$1,575)

and 3.75 attorney hours after June 1, 2008 at \$330.00 per hour (\$1,237), for a total of \$2,812.”

The timesheets for both Ms. Blass and Ms. Berger include time for services performed over three months before Petitioner filed her tenant petition on July 1, 2008. Ms. Berger’s timesheet states that she first interacted with Petitioner for an “initial meeting” on April 1, 2008. From that date up to May 19, 2008, Ms. Berger states that time was spent on “case investigation,” “a case transfer discussion with B. Blass,” and “case discussion.” These hours were reasonably expended on Petitioner’s case because they were essential to reaching a determination to represent Petitioner. The total time for these activities is 3.75 hours. On May 19, 2008, Ms. Berger states that a mediation session took place. As stated above, the first scheduled hearing for this matter before this administrative court was September 8, 2008. As a result, I find that the hour claimed does not correspond with the schedule at OAH.

As stated above, I consider hours documented after May 22, 2008, as within a reasonable period of time prior to the notification of representation. Legal services for hours after that date can be counted as services performed in reaching a determination to represent Petitioner. Starting on May 23, 2008, and ending on June 24, 2008, Ms. Berger had case discussions. Because this period of time coincides with the time period in which Ms. Blass was meeting with Petitioner, conferring with attorney, and preparing the tenant petition, I find that these hours were reasonably expended on Petitioner’s behalf in reaching a determination to represent Petitioner in this matter. Later, in October 2008, she worked 0.75 hours reviewing proposed findings for fact and conclusions of law.

The final three entries on Ms. Berger's timesheet for dates May 1, 4, and 6, 2009, are for services related to this attorneys' fees motion. Ms. Berger's work included discussion of the hearing decision, information gathering related to the instant motion, coordinating the affidavit for Ms. Blass and finalizing the instant motion. The time expended, 1.5 hours, was reasonable and essential to the overall litigation of this case.

Petitioner also requests a reasonable hourly rate of attorney's fees for Ms. Berger based on the *Laffey* Matrix. As stated above, the D.C. Court of Appeals has approved the use of the *Laffey* Matrix for an award of attorney's fees where such fees are permitted by statute. *Lively*, 930 A.2d at 988-89. Ms. Berger has chosen rates for attorneys that have eight to ten years of experience. The rate for attorneys with eight to ten years of experience for the period of June 1, 2007, to May 31, 2008, is \$315 per hour. The rate for attorneys with the same level of experience for the period of June 1, 2008, to May 31, 2009, is \$330 per hour. Ms. Berger has completed legal work on behalf of Petitioner within both years. Ms. Berger completed 4 hours of work between June 1, 2007, and May 31, 2008, and 3.75 hours of work between June 1, 2008, and May 31, 2009. The use of these rates results in an award of \$2,497, which is calculated as follows: $4 \times \$315 = \$1,260$; $3.75 \times \$330 = \$1,237.5$ ($\$1,237 + \$1,260 = \$2,497$).

Ms. Berger acted as the Supervising Attorney in this case and is partially responsible for outcome of this case. As with Attorney Bronwen's fee request, I reduce her fee award because of the partial success in this matter. Attorney Berger is awarded \$1,664.66 (2/3 of \$2,497).

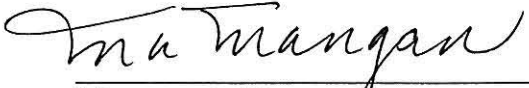
In his response to this motion, Respondent suggested that a request for attorneys' fees cannot exceed the \$2,852.50 awarded to Petitioner in the Final Order. The Rental Housing Commission, however, held otherwise when it affirmed an attorney fee award in *Town Ctr. Mgmt. Corp. v. Pettaway*, TP 23,538 (RHC Feb. 29, 1996). "The enforcement of the tenants' rights depends on the willingness of attorneys to represent them." Consequently, "[t]he amount of attorney fees should not be connected to the amount of the monetary recovery." *Id.* at 11. Similarly, in this case, an attorney fee of \$6,158.67, that exceeds the monetary recovery, is awarded.

Accordingly, it is this 20th day of August 2009,

ORDERED, that Petitioner's Motion for Attorneys' Fees is **PARTIALLY GRANTED** for legal services provided by Attorneys Bronwen Blass and Jennifer Berger; and it is further

ORDERED, that Respondent shall pay counsel for Petitioner attorneys' fees in the amount of **SIX THOUSAND ONE HUNDRED AND FIFTY-EIGHT DOLLARS AND SIXTY-SEVEN CENTS (\$6,158.67)** within thirty (30) days of the issuance of this order; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.



Margaret A. Mangan
Administrative Law Judge

MOTIONS FOR RECONSIDERATION

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of the final order in accordance with 1 DCMR 2937. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the final order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, D.C. 20002
(202) 442-8949

By Priority Mail with Delivery Confirmation (Postage Paid):

Bronwen Blass, Esq.
Jennifer Berger, Esq.
AARP-Legal Counsel for the Elderly
601 E Street, NW
Washington, DC 20049

Robert Clayton Cooper, Esq.
1625 Massachusetts Avenue, NW
Suite 425
Washington, DC 20036

By Inter-Agency Mail:

District of Columbia Rental Housing Commission
941 North Capitol Street, NE, Suite 9200
Washington, DC 20002

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King Jr. Ave., SE
Washington, DC 20020

I hereby certify that on 8-20, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Benedicta Rhames
Clerk / Deputy Clerk