

STATE OF RHODE ISLAND  
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 07 EAO 185

EEOC No. 16J-2006-01365

In the matter of

Edwin Sanchez  
Complainant

v.

DECISION ON MOTION FOR  
ATTORNEY'S FEES

Wayne Carvalho  
Respondent

**INTRODUCTION**

On February 12, 2007, Edwin Sanchez (hereafter referred to as the complainant) filed a charge with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against Wayne Carvalho (hereafter referred to as the respondent). After investigation and a finding of probable cause, a complaint and notice of hearing issued. The complaint alleged that there was probable cause to believe that the respondent discriminated against the complainant because of his ancestral origin with respect to harassment and disparate treatment in violation of Section 28-5-7 of the General Laws of Rhode Island. A hearing on the complaint was held on January 30, 2009 before Commissioner John B. Susa. The complainant was present and represented by counsel. The respondent did not appear.

On September 3, 2009, the Commission issued a Decision and Order which found that the respondent discriminated against the complainant on the basis of his ancestral origin with respect to inciting unlawful employment practices, obstructing an employer from complying with the Fair Employment Practices Act and attempting directly and indirectly to commit an unlawful employment practice. The Decision and Order provided that:

The attorney for the complainant may file a Motion and Memorandum For Award Of Attorney's Fees no later than thirty (30) days from the date of this Order, with a copy mailed to the respondent. The respondent may file a Memorandum in Opposition no later than thirty (30) days after the complainant's attorney files his Motion and Memorandum with the Commission. The parties' attention is directed to Morro v. Rhode Island Department of Corrections, Commission File No. 81 EAG 104-22/02 (Decision on Attorney's Fees 1982) for factors to be generally considered in an award of attorney's fees under the FEPA. Either party may elect a hearing on the issues involved in the determination of an appropriate award of attorney's fees by

requesting it in the memorandum.

On October 5, 2009, the complainant's attorney filed Attorney Richard J. Savage's Motion For Attorney's Fees For His Representation Of Complainant Edwin Sanchez. Mr. Savage also filed an Affidavit in Support. The respondent did not file a memorandum in opposition. Neither party requested a hearing on the Motion.

## DISCUSSION

### I. Introduction

Section 28-5-24(a)(3) provides in relevant part that: "In appropriate circumstances attorney's fees, including expert fees and other litigation expenses, may be granted to the attorney for the plaintiff if he or she prevails."

In establishing its standards for evaluating evidence in discrimination cases, the Commission utilizes the decisions of the Rhode Island Supreme Court, the Commission's prior decisions and decisions of the federal courts interpreting federal civil rights laws. The Rhode Island Supreme Court has utilized federal cases interpreting federal civil rights law as a guideline for interpreting the state anti-discrimination laws. "In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964. See Newport Shipyard, Inc., 484 A.2d at 897-98." [Center for Behavioral Health, Rhode Island, Inc. v. Barros](#), 710 A.2d 680, 685 (R.I. 1998).

The complainant seeks attorneys' fees of \$2,441.20 for work up to January 30, 2009. This sum reflects 11.67 hours of work at a rate of \$200 per hour and 1.34 hours at a rate of \$80 per hour. As noted above, the respondent did not file an objection.

### II. There Are No Special Circumstances That Would Make an Award of Attorney's Fees Unjust

Both federal practice and Commission practice provide that attorney's fees should be granted to complainants who prevail in civil rights cases unless special circumstances would make such an award unjust. See Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968); Christianburg Garment Co. v. EEOC, 434 U.S. 412 (1978), Banyaniye v. Mi Sueno, Inc. and Jesus M. Titin, Commission File No. 07 PPD 310 (Decision on Motion for Attorney's Fees 2009) (Banyaniye) and Morro v. State of Rhode Island/Department of Corrections, Decision on Request For Attorney's Fees, Commission File No. 81 EAG 104 (1982) (Morro). In this case, the circumstances are appropriate for an award of attorneys' fees.

### III. The Appropriate Amount of Attorneys' Fees

To calculate the lodestar amount for attorney's fees, the number of hours reasonably expended by counsel is multiplied by a reasonable hourly rate. City of Burlington v. Dague, 505 U.S. 557, 559, 112 S. Ct. 2638, 2640 (1992) (Dague).

The Commission, in the past, has looked at a number of factors to determine whether to increase or decrease the lodestar. Morro. Those factors include the novelty and difficulty of the questions involved, the skill needed to perform the legal services, preclusion of other employment by the attorney, the customary fee in the community, time limitations imposed, the monetary and other results obtained, the experience, reputation and ability of the lawyer, the undesirability of the case, the nature and length of the attorney's professional relationship to the client and awards in similar cases. The federal courts over the years have been shifting the consideration of these factors to calculation of an appropriate lodestar amount instead of using them to decide whether to grant an increase in the lodestar amount. Courts have been holding that in most cases the lodestar amount is the proper amount to be awarded. Blum v. Stenson, 465 U.S. 886, 897, 898-899, 104 S. Ct. 1541, 1548, 1549 (1984) (the attorney's fees to be awarded in this federal Section 1988 suit should not be adjusted upward; the lodestar is presumed to be the reasonable fee to be awarded; the results obtained and the complexity and novelty of a case should be factors considered in calculating the lodestar not as a factor to justify increasing the fee; the special skill of the attorney justifies an increase in the lodestar only in rare cases); Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 564 – 565, 106 S. Ct. 3088, 3098 (1986) (a fee under the Clean Air Act could not be enhanced for superior quality of the work of plaintiff's attorney; the lodestar is presumed to be the correct amount; upward modification of the lodestar occurs in only unusual cases); Dague, 505 U.S. at 562, 567, 112 S. Ct. at 2641, 2643-2644 (1992) (it is impermissible to increase an attorney's fee under the Clean Water Act on the basis that it was brought on a contingent-fee basis; there is a strong presumption that the lodestar is the correct fee to be awarded; case law interpreting a reasonable attorney's fee under federal fee-shifting statutes should be uniformly applied to all the statutes). Indeed, the Commission has been following these precedents *de facto*; it has not awarded an increase in the lodestar amount in the past ten years, except for one case in which the lodestar was adjusted to reflect the delay in payment. The Commission will examine the above-cited factors in determining the lodestar.<sup>1</sup> Banyaniye.

#### A. The number of hours reasonably expended by complainant's counsel

The Commission first examines the number of hours claimed by the complainant. The complainant's attorney asks that he receive a fee for 13.01 hours of work. The complainant's attorney represents that he worked additional hours on the case, but the time was not recorded contemporaneously and therefore he did not request attorney's fees for those hours. He also did not charge any additional time for preparing the attorney fee motion and affidavit.

The Commission finds that the hours submitted were eminently reasonable and will award fees for

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<sup>1</sup> There may be cases in which the lodestar should be increased, but the circumstances of this case do not warrant that.

those hours.

B. The reasonableness of the requested hourly fee

The complainant seeks a rate of \$80 per hour for travel and \$200 per hour for other legal work. As discussed above, the Commission will look at the factors of the undesirability of the case, the nature and length of the attorney's professional relationship to the client, preclusion of other employment by the attorney, time limitations imposed, the monetary and other results obtained, the novelty and difficulty of the questions involved, the skill needed to perform the legal services, the experience, reputation and ability of the lawyer, the customary fee in the community, and awards in similar cases in evaluating that rate.<sup>2</sup>

In this case, a number of factors are not significant. The case was not undesirable, the professional relationship of the attorney and the complainant was not unusual and the case would have only a minimal impact on the attorney's ability to take other cases. The time limitations imposed were not unusual.

The Commission ordered the respondents to pay the complainant \$25,000 in compensatory damages for pain and suffering plus 12% statutory interest. The Commission also ordered that the respondent undergo training on the provisions of state and federal law prohibiting discrimination in employment. Thus the complainant received a significant remedy and the hourly rate should not be decreased because of this factor.

Harassment is not a novel issue in employment discrimination law. A reasonable level of skill was needed to present the case. The complainant's attorney was admitted to practice in Rhode Island in 1995. He has concentrated on labor and employment issues, and in particular employment discrimination cases, since his admission. He presented the case in an effective way.

The Commission has awarded hourly fees to attorneys ranging from \$35 per hour to \$290 per hour. In O'Rourke v. City of Providence, 77 F.Supp.2d 258 (D. R.I. 1999), *aff'd in part and rev'd in part on other grounds*, 235 F.3d 713 (1<sup>st</sup> Cir. 2001), the District Court granted one of the attorneys in the case attorney's fees at a rate of \$200 per hour. The court, in that 1999 decision, further cited with approval the magistrate's conclusion that the appropriate attorney's fee range for civil rights litigation in Rhode Island is \$125 - \$200 per hour. In 2003, attorneys who submitted a supplemental motion for attorney's fees in a Title IX discrimination case were awarded fees at rates ranging from \$175 per hour to \$305 per hour. Cohen v. Brown University, 2003 WL 21511123 (D. N.H. 2003). In Shoucair v. Brown University, 2004 WL 2075159 (R.I. Super. 2004), an employment discrimination case, the Court found \$275 per hour to be a reasonable hourly rate to award an attorney with extensive experience in labor and employment litigation.

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<sup>2</sup> The Commission has recently held that the contingency of the fee arrangement will rarely, if ever, be a factor for consideration in determining an appropriate attorney's fee (Ezersky v. Rite-Way Forms, Inc., Decision and Order on Attorney's Fees and Damages, p. 6, Commission File No. 02 EPD 301 (2009)), and the Commission will not consider this factor in its determination.

Taking all of the above factors into account, the Commission finds that \$80 per hour is a reasonable rate for the complainant's attorney's travel time and \$200 per hour is a reasonable rate for the other time expended by the complainant's attorney. Therefore, the Commission will award the lodestar amount of \$2,441.20.

## ORDER

- I. Violations of R.I.G.L. Section 28-5-7 having been found, in addition to the relief ordered in the Decision and Order dated September 3, 2009, the Commission hereby orders the respondent:
1. Within thirty days of the date of this Order, to pay complainant's attorney's fees of \$2,441.20 plus 12% interest per annum for work performed up to January 30, 2009. The interest should be calculated starting from the date the cause of action accrued, June 30, 2005, and ending when the amount is paid;
  2. To submit to the Commission a copy of a cancelled check indicating compliance with Paragraph I(1) above within forty-five days of the date of this Order.

Entered this [1<sup>st</sup>] day of [February], 2010

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John B. Susa  
Hearing Officer

I have read the record and concur in the judgment.

\_\_\_\_\_/S/\_\_\_\_\_

Rochelle B. Lee  
Commissioner

\_\_\_\_\_/S/\_\_\_\_\_

Alton W. Wiley, Jr.  
Commissioner