

3/5/15

Before the
STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR No. 03 ERT 044

EEOC No. 16JA200213

In the matter of

The Estate of Dr. John Satti
[Julia Satti Cosentino, Administratrix]
Complainant

v.

DECISION AND ORDER ON MOTION
FOR AWARD OF ADDITIONAL
ATTORNEYS' FEES AND COSTS

State of Rhode Island/Department of Mental
Health, Retardation & Hospitals
[State of Rhode Island/Department of
Behavioral Healthcare, Developmental
Disabilities and Hospitals]
Respondent

INTRODUCTION

On September 3, 2002, Dr. C. John Satti¹ filed a charge against State of Rhode Island/Department of Mental Health, Retardation & Hospitals² (hereafter referred to as the respondent) with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission). Dr. Satti alleged that the respondent discriminated against him with respect to terms and conditions of employment, including unfair transfer, and termination because of his age and in retaliation for filing previous charges of discrimination, in violation of Section 28-5-7 of the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (FEPA). This charge was investigated and probable cause to believe the allegations of the charge was found. A notice of hearing and complaint issued. The complaint alleged that the respondent discriminated against Dr. Satti with respect to terms and conditions of employment and termination because of his age and retaliated against him for filing previous charges of discrimination.

¹ As Dr. Satti died in August 2003, the complainant in this case is now the Estate of Dr. John Satti [Julia Satti Cosentino, Administratrix].

² The respondent's name has been changed to the State of Rhode Island/Department of Behavioral Healthcare, Developmental Disabilities and Hospitals.

Hearings on the complaint were held before Commissioner Alberto Aponte Cardona. On November 30, 2007, the Commission issued a Decision and Order finding that the respondent retaliated against Dr. Satti for filing charges of discrimination and participating in Commission hearings and discriminated against him because of his age, with respect to terms and conditions of employment, termination of employment and reporting him to the Board of Medicine.

The complainant submitted a motion for attorneys' fees and costs. The respondent did not object. On May 2, 2008, The Commission issued a Decision and Order [On Attorneys' Fees] (hereafter referred to as the First Decision on Attorneys' Fees).

The respondent appealed the Commission Decision and Order. In a Decision issued October 17, 2014, Superior Court Associate Justice Luis Matos upheld the Commission Decision and Order except for that portion of the Commission's Order which required the respondent to develop and distribute an apology for its treatment of Dr. Satti. The Judgment of Justice Matos, dated October 29, 2014, provided that "[b]y agreement of the parties, the application for award of attorneys' fees and costs by the Estate of Dr. John Satti in connection with proceedings in the Superior Court is remanded and shall be presented to the Commission for its consideration...". The complainant filed with the Commission a Motion for Award of Additional Attorneys' Fees and Costs and associated materials by email, received on November 21, 2014, and by mail, received on November 24, 2014. The respondent has not objected to the Motion.

DISCUSSION

The complainant seeks attorneys' fees and costs totaling \$33,252.72. This sum reflects 91.6 hours of work by attorneys Lynette Labinger and John Roney and 39.6 hours of work by paralegal Jean Medeiros. The hourly rate for attorneys submitted is \$290 per hour. The hourly rate submitted for the hours worked by Ms. Medeiros is \$150. The complainant also seeks reimbursement of costs of \$748.72 (included in the above total). The respondent does not object to the hourly rate, the number of hours or the costs.

Both federal practice and Commission practice are that attorneys' 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) and Morro v. State of Rhode Island/Department of Corrections, Decision on Request for Attorney's Fees, Commission File No. 81 EAG 104-22/02 (August 3, 1982). In this case, the circumstances are appropriate for an award of attorneys' fees.

To calculate the lodestar amount for attorneys' fees, the number of hours reasonably expended by counsel is multiplied by a reasonable hourly rate. 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 (1st Cir. 2001).

In the past five years, the Commission has awarded hourly fees to attorneys ranging from \$200 per

hour to \$290 per hour and hourly fees to paralegals at \$100 per hour. In 2003, the federal district court awarded fees at rates ranging from \$175 per hour to \$305 per hour to attorneys who submitted a supplemental motion for attorneys' fees in a Title IX discrimination case. Cohen v. Brown University, 2003 WL 21511123 (D. N.H. 2003). In that case, paralegals were awarded hourly fees ranging from \$60 to \$75 per hour. 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. The amount awarded by the court for paralegal work in that case was \$80 per hour. A rate of \$150 for paralegal work by Ms. Medeiros was awarded in Spruill v. Alexander, No. CA 09-292S, 2011 WL 2413837, at *6 (D.R.I. Mar. 31, 2011) report and recommendation adopted, No. CA 09-292 S, 2011 WL 2363520 (D.R.I. June 10, 2011). In that case, the hourly rate assigned to Attorney Labinger's work was decreased from the requested rate of \$290 to \$250 because her role on that successful challenge to a Rhode Island agency's procedures was primarily that of local counsel, assisting specialized out-of-state attorneys (who received an award at hourly rates between \$350 and \$375 per hour). An attorney's fee rate of \$300 per hour for an experienced attorney in ERISA issues was awarded in Enos v. Union Stone, Inc., No. CA 11-098ML, 2012 WL 5198106, at *2-*3 (D.R.I. Oct. 19, 2012) *aff'd*, 732 F.3d 45 (1st Cir. 2013).

The affidavits attached to the fee petition for complainant's initial motion for attorneys' fees in 2008 were created between 1999 and 2004. The range of customary attorney's fees for partners attested to in the affidavits is from \$165 to \$325 per hour. The range of customary paralegal fees attested to is \$65 to \$125 per hour.

The hourly rates charged by Mr. Roney and Ms. Labinger thus appear to be within the customary range in the community. In the First Decision on Attorneys' Fees, the Commission awarded attorneys' fees at \$290 per hour for their work. The hourly rate charged by Mr. Roney and Ms. Labinger has been unchanged since after or around November 30, 2007. The number of hours requested is reasonable. The respondent did not object to the rates or hours. Therefore, the Commission will utilize \$26,564 (91.6 hours x \$290) as the lodestar amount for the work performed by Mr. Roney and Ms. Labinger.

In the First Decision on Attorneys' Fees, the Commission awarded fees to Ms. Medeiros at a rate of \$100 per hour.³ Since Ms. Medeiros has many years of experience, the U.S. District Court for Rhode Island has awarded her a fee at a \$150 rate and there is no objection to her rate, the Commission will utilize that rate to calculate the lodestar. The number of hours of work performed by Ms. Medeiros is reasonable. Therefore, the Commission will consider the amount requested, \$5,940 (39.6 hours x \$150), to be the lodestar amount for the work performed by Ms. Medeiros.

In determining whether to increase, decrease, or award the lodestar amount, the Commission will look to 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

³ While the fee rate for Ms. Medeiros' work from December 2007 onwards has been \$150 per hour, the previous motion for attorneys' fees had not requested fees for Ms. Medeiros for her work after November 30, 2007.

limitations imposed, the monetary and other results obtained, the experience, reputation and ability of the lawyers, the undesirability of the case, the nature and length of the attorney's professional relationship to the client and awards in similar cases. Morro.

In this case, the legal questions involved on appeal were not difficult. The case did not preclude other employment by the attorneys, the time limitations imposed by the circumstances were not onerous, and the case was not undesirable. The level of skill needed to perform the services in this case was average. The complainant prevailed on all claims and obtained the monetary relief it requested. While Justice Matos overturned the portion of the Order requiring that the respondent publicize an apology, this was a remedy created by the Commission; it was not requested by the complainant and the complainant addressed it only briefly in its brief on appeal. In that one-page mention, the complainant cited no case law and simply argued the logic of the remedy. Lynette Labinger represented Dr. Satti in past cases. The Commission has no information on the nature of John Roney's relationship with the client.

Both of the complainant's attorneys are able attorneys who have extensive experience in litigation relating to civil rights and/or constitutional issues. Both have practiced for a substantial period of time. Ms. Medeiros has an Associate's Degree in Paralegal Studies, a Bachelor's Degree in Administrative Management and a Master's Degree in Managerial Technology. She has worked as a paralegal since 1989 and is experienced in assisting in litigation.

None of the above-cited factors justify increasing or decreasing the lodestar amount.

Considering all of the factors discussed above, the Commission awards attorneys' fees of \$32,504.00 for work performed from January 9, 2008 to November 21, 2014.

The Commission also awards the complainant the requested costs, which the respondent does not dispute.

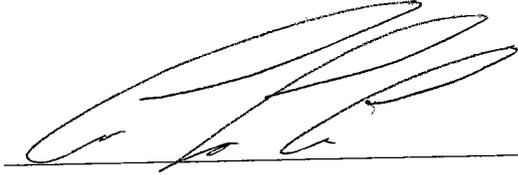
ORDER

Violations of R.I.G.L. Section 28-5-7 having been found the Commission hereby orders the respondent:

1. To pay the complainant \$32,504.00 for attorneys' fees (including paralegal fees) for work performed from January 9, 2008 to November 21, 2014;
2. To pay the complainant \$748.72 in costs;
3. To submit a cancelled check indicating remuneration of the complainant in accordance with Paragraphs 1 and 2 above within thirty (30) days of the date of this Order;

4. To pay the complainant 12% annual interest on the amounts in Paragraphs 1 and 2 above, commencing thirty (30) days from the date of this Order and ending when the award is paid in full.

Entered this 5th day of MARCH, 2015



Alberto Aponte Cardona
Hearing Officer

I have read the record and concur in the judgment.



Rochelle Bates Lee
Commissioner

Angelyne E. Cooper
Commissioner

CERTIFICATION

I certify that I mailed a copy of the within DECISION AND ORDER ON MOTION FOR ADDITIONAL ATTORNEYS' FEES AND COSTS and Judicial Review Notice in The Estate of Dr. John Satti [Julia Satti Cosentino, Administratrix] v. State of Rhode Island/Department of Mental Health, Retardation & Hospitals [State of Rhode Island/Department of Behavioral Health, Developmental Disabilities and Hospitals], Commission File No. 03 ERT 044, to the following persons by regular mail, postage prepaid, on March 5, 2015:

Ms. Julia Satti Cosentino,
Administratrix
The Estate of Dr. John Satti
365 Auburn Street
Cranston, RI 02920

Lynette Labinger, Esq.
John Roney, Esq.
Roney & Labinger
344 Wickenden Street
Providence, RI 02903

Peter Kilmartin, Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903

Maria Montanaro, Director
Department of Behavioral Health, Developmental
Disabilities and Hospitals
14 Harrington Road
Cranston, RI 02920

Sue Ellen Dunn, Esq.
Department of Administration
Division of Legal Services
One Capitol Hill
Providence, RI 02908


Betsy Ross
Chief Clerk

STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

JUDICIAL REVIEW NOTICE

Pursuant to §42-35-12 of the RI General Laws

Please take notice that you have the right to have judicial review of a final Order in a court of law pursuant to the Administrative Procedures Act, Section 42-35-15 of the Rhode Island General Laws. Proceedings for review are instituted by filing a complaint in the superior court of Providence County or in the superior court in the county in which the cause of action arose. The complaint must be filed with that court within thirty days after mailing notice of this final decision, or, if you have requested a rehearing, within thirty days after the decision on your request for a rehearing. Copies of the complaint must be served upon the Rhode Island Commission for Human Rights and all other parties of record in the manner prescribed by applicable procedural rules of court and within ten days after you file the complaint in court.

If you have any questions, please seek the advice of an attorney. If you do not have an attorney, you may contact the Lawyer Referral Service of the RI Bar Association. Staff of the RI Commission for Human Rights cannot give you any legal advice.