



City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Anthony Cotten
Complainant,
v.
Top Notch Beefburger Shop
Respondents.

Case No.: 09-P-31

Date of Ruling: June 15, 2011

Date Mailed: June 23, 2011

TO:

Matthew P. Weems
Law Office of Matthew P. Weems
180 N. Stetson St., Suite 3500
Chicago, IL 60610

Diran Soulian, President
Top Notch Beefburger, Inc.
2116 W. 95th St.
Chicago, IL 60643

FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on June 15, 2011, the Chicago Commission on Human Relations issued a Final Ruling on Attorney Fees and Costs in favor of Complainant in the above-captioned matter. The Commission orders Respondent to pay attorney fees of \$2,400 and costs of \$22.03, for a total award of \$2422.03. The findings and specific terms of the ruling are enclosed. Respondent is ordered to pay the total amount to Complainant's attorney at the address stated above.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law at this time. Compliance with this Final Order and the Final Order on Liability and Relief entered on February 16, 2011, shall occur no later than 28 days from the date of mailing of this order.¹ Reg. 250.210.

Notice Regarding Respondent's Correspondence: The Commission acknowledges and appreciates receipt of payment by Respondent of the fine imposed in the Final Order on Liability and Relief. The correspondence from Respondent's owner, Diran Soulian, included documentation of payments for restroom alterations to provide wheelchair accessibility. The Commission thanks Respondent for this documentation but, as a reminder, notes that a copy must also be served on Complainant's attorney of record pursuant to the Final Order on Liability and Relief, and Respondent's correspondence does not clarify whether that was done. See CCHR Reg. 270.210. In his correspondence, Soulian also asked where to direct payment of the damages owed to Complainant. These damages are payable to Complainant, not the Commission. Thus any check or money order for the damages should be made payable to Complainant, Anthony Cotten, but because Cotten is represented by an attorney, the payment should be sent to the attorney, Matthew Weems. Payment of the attorney fees and costs now ordered should be made payable and sent to Attorney Weems.

CHICAGO COMMISSION ON HUMAN RELATIONS

Entered: June 15, 2011

¹ **COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. CCHR Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

Payments of attorney fees and costs are to be made to Complainant's attorney/s of record.

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IN THE MATTER OF:

Anthony Cotten
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Case No.: 09-P-31

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FINAL RULING ON ATTORNEY FEES AND COSTS

I. PROCEDURAL HISTORY

On February 16, 2011, the Commission on Human Relations issued its Final Order on Liability and Relief in this matter, in favor of Complainant Anthony Cotten on his claim that Respondent Top Notch Beefburger Shop discriminated against him on the basis of disability by failure to ensure that he as a wheelchair user received equivalent service to the extent possible without the imposition of undue hardship. The Final Order was mailed to the parties on March 3, 2011. The Commission ordered payment of \$500 plus interest in emotional distress damages, plus a \$500 fine for violation of the Chicago Human Rights Ordinance. The Commission ordered injunctive relief to bring Respondent into compliance with the Human Rights Ordinance. The Commission also awarded Complainant his reasonable attorney fees and costs subject to the petition process set forth in CCHR Reg. 240.630.

On April 1, 2011, Complainant's attorney filed a timely petition for attorney fees including his affidavit and statement of time spent on the case. Respondent did not file a response. The hearing officer mailed her recommend ruling to the parties on May 18, 2011, follows by an amended recommended ruling mailed on May 23, 2011, which included notice of the procedures for filing and serving objections to the recommended ruling. No objections were received from either party.

Complainant's counsel, Matthew Weems, seeks attorney fees of \$3,000 for time expended plus \$22.03 in travel costs. He submitted an affidavit for 20 hours of time expended and seeks compensation at the rate of \$150 per hour.

II. APPLICABLE LEGAL STANDARDS

Section 10-120-510(l) of the Chicago Municipal Code allows the Commission to award reasonable attorney fees to a prevailing party represented by counsel. CCHR Reg. 240.630(a) requires that a petition for fees be supported by a statement of time in segments no larger than one-quarter hour that also identifies the manner of work performed. The petition must also establish that the per-hour rate sought is the normal per-hour rate for the attorney. The Commission uses the lodestar method for determining attorney fees, meaning that the Commission determines whether the hours spent on the matter were reasonable and then multiplies those hours deemed reasonable by the normal hourly rate charged by the attorney. See, e.g., *Leadership Council for Metropolitan Open Communities v. Souchet*, CCHR No. 98-H-107 (May 17, 2001). The party seeking fees has the burden of proving the request is reasonable.

See, e.g., *Brooks v. Hyde Park Realty Co.*, CCHR No. 02-E-116 (June 16, 2004). The Commission is not required to award attorney fees in an amount proportional to the amount of damages awarded. *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010).

In *Lockwood*, the Commission further explained the standards it utilizes, incorporating what are known as the “*Hensley* factors”:

As under federal law, the Commission follows the “lodestar” method of multiplying reasonable hourly rates by hours reasonably expended as a starting point and treats an attorney’s actual billing rate as presumptively appropriate for use as the market rate. If unable to determine an attorney’s actual billing rate, then the Commission turns to the next best evidence, the rate charged by lawyers in the community of reasonably comparable skill, experience, and reputation. Once the amount of fees is determined using the lodestar method, then the fee award may be adjusted by the “*Hensley* factors” ...although, as the court noted in [*People Who Care v. Rockford Board of Education*, 90 F.3d 1307, 1310-11 (7 Cir. 1996)], “most of those factors are usually subsumed within the initial lodestar calculation.”

The *Hensley* factors are (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the “undesirability” of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. S. Rep. No. 1011, 94th Cong. 2d Sess. 6 (1976), as cited in *People Who Care* at n. 1; *Hensley v. Eckerhart*, 461 U.S. 424 at 434 n. 9, 103 S.Ct. 1933 at 1940 n. 9.

III. REASONABLE HOURLY RATE

The applicant bears the burden of proving that the requested hourly rate is reasonable. *Sellers v. Outland*, CCHR No. 02-H-73 (May 17, 2004 and April 15, 2009) following the reasoning set forth in *Small v. Richard Wolf Medical Instruments Corp.*, 264 F.3d 702 (7th Cir. 2001). The attorney’s normal billing rate is deemed presumptively the market rate. *Id.*

Here Atty. Weems seeks \$150 per hour for his services. His affidavit states that this amount is his normal per hourly rate charged for such services. Respondent did not submit any objections to the Complainant’s petition. The Commission awarded Atty. Weems \$140 per hour in matters during 2010; this was an increase from \$125 per hour awarded for services performed in 2009. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (October 20, 2010). The hearing officer recommend that the hourly rate of \$150 be found reasonable, as it is a modest increase from earlier awards to Atty. Weems and is supported by an affidavit stating it is the attorney’s normal rate for services of this nature. The Commission agrees with the unopposed request and recommendation and so awards fees at the rate of \$150 per hour.

IV. REASONABLE EXPENDITURES OF TIME

Atty. Weems is requesting fees for 20 hours of time spent on this matter. His time log, submitted in 15 minute increments as required, supports this time request. The hearing officer found, however, that some of the combined totals are not supported by the quality or quantity of work she observed in presiding over the hearing and pre-hearing process. The hearing officer was concerned that Atty. Weems is seeking only .5 hour for meeting with his client over the entire duration of this case, and that was at the beginning of the case. She found that amount not unreasonable but rather insufficient as revealed by the conduct of the hearing. She recommend that the time listed be found reasonable with the following exceptions:

1. Atty. Weems seeks 1.5 hours' compensation to draft a request to produce. Most, if not all, of the request to produce is clearly repeated from the numerous other accessibility cases, including restroom accessibility cases, in which Weems represented this Complainant. In light of the limited originality of the work, the hearing officer recommended that the compensated time be reduced by .5 hour to one hour.

2. Atty. Weems seeks 2.5 hours' compensation to prepare for hearing. Normally this would be a reasonable amount of time to prepare for this type of hearing. However, there is no evidence that Atty. Weems met with his client prior to the hearing (indeed the only mention of his client in the attorney time record is 11 months prior to the hearing) and the hearing officer found ample observable evidence that Atty. Weems was not prepared at the hearing. Atty. Weems claims to have spent two hours drafting questions for the hearing, yet asked perhaps only 20 very basic questions. His one exhibit was not prepared for hearing. It was clear to the hearing officer that Atty. Weems was unprepared to ask the appropriate questions, had not prepared his witness adequately for the hearing, and had not prepared his exhibit for the hearing. Based on that performance, she recommended that the requested hours spent in preparation for hearing should be reduced from 2.5 to 1.5.

3. Atty. Weems seeks 2.5 hours' compensation for reviewing the recommended ruling on liability and relief and an additional 1.25 hours for reviewing the final order. The hearing officer found this excessive and recommended that the total for both activities be reduced from 3.75 hours to 2.5 hours.

4. Atty. Weems seeks 1.75 hours' compensation for preparing his fee petition. Preparation of fee petitions is compensable. *Huezo v. St. James Properties*, CCHR No. 90-E-44 (Oct. 9, 1991). However, Atty. Weems has sought compensation in amounts greater than 1.5 hours for this activity without success in two previous cases, yet tries once again. *Cotten v. CCI Industries, Inc.*, CCHR No. 07-P-109 (May 19, 2010) and *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Oct. 20, 2010). The fee petition submitted by Atty. Weems is a "fill in the blanks" variety; indeed the blanks are clearly visible in the document. The hearing officer recommended that the Commission recognize once again that completing such a petition is a simple matter and reduce the compensated amount from 1.75 hours to .5 hour.

In *Warren et al v. Lofton & Lofton Management d/b/a McDonald's et al.*, CCHR No. 07-P-062 (May 19, 2010), the Commission explained that a prevailing complainant's counsel shall be compensated for all time reasonably expended on the case, and that in determining what time expenditure is reasonable, the Commission will consider the specific facts of the case. In addition, "the hearing officer may use his or her own experience, knowledge, and expertise to determine the amount of time reasonably required for such work." *Id.*; see also *Hutchison v. Iftekaruddin*, CCHR No. 08-H-21 (June 16, 2010).

The Commission has regularly awarded lower attorney fees where requested hours are found excessive for the work performed. See, e.g., *Edwards v. Larkin*, CCHR No. 01-H-35 (Nov. 16, 2005); *Richardson v. Chicago Area Council of Boy Scouts*, CCHR No. 92-E-80 (Nov. 20, 1996) *reversed on other grounds*, 322 Ill. App. 3d 17 (1st Dist. 2001), dismissed on remand, CCHR No. 92-E-80 (Feb. 20, 2002), reducing the requested fee by 25%; *Soria v. Kern*, CCHR No. 95-H-13 (Nov. 20, 1996); and *White v. Ison*, CCHR No. 91-FHO-126-5711 (July 22, 1993). See also the Commission's recent discussion of excessive charges in *Rankin v. 6954 N. Sheridan, Inc., DLG Management, et al.*, CCHR No. 08-H-49 (May 18, 2011).

Here, Complainant has not objected to the hearing officer's recommended reductions of compensated time for certain activities, nor has Respondent objected to the hearing officer's recommended award. The Commission finds the hearing officer's recommendations well-supported and approves her proposed line-item reductions. Like the hearing officer, the Commission is troubled at the minimal preparation and presentation by Atty. Weems on behalf of his client in this case while seeking compensation for time and effort not well-reflected in his work product. Especially now that he has had handled a number of similar cases before this Commission, Atty. Weems should be well-aware of what is needed to demonstrate his client's entitlement to relief. The Commission has decided not to impose an additional percentage reduction of his fee award in this case given the lack of objection and the approval of a significant reduction of 20% from the total hours claimed based on the hearing officer's analysis. See *Rankin, supra*. However, pursuant to the *Hensley* factors cited above, the Commission will continue to scrutinize whether a prevailing attorney's charges for particular and overall work are reasonable in light of all circumstances in the case, including the level of difficulty of the work performed and the observable work product.

The approved line-item reductions result in a total deduction of four hours from the requested 20 hours, for a total of 16 hours approved as reasonable. At the approved hourly rate of \$150, this results in an award of attorney fees of \$2,400.

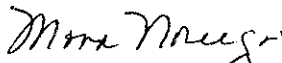
V. COSTS

Complainant's counsel seeks \$22.03 in costs, for mileage for two trips to the Commission. Atty. Weems stated the distance from his home to the Commission as 10.8 miles and sought \$.51 per mile for two round trips, a total of \$22.03. The hearing officer found this request reasonable. The Commission agrees and approves \$23.03 in costs.

VII. CONCLUSION

The Commission finds that Complainant is entitled to reasonable attorney fees of \$2,400 and associated costs of \$22.03, for a total of \$2,422.03 payable to Attorney Matthew Weems. Respondent is ordered to pay this amount to Atty. Weems as provided by Section 2-120-510(l), Chicago Muni. Code, and CCHR Regs. 240.630 and 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: _____
Mona Noriega, Chair and Commissioner
Entered: June 15, 2011