



**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.

Arnold's Restaurant  
**Respondent.**

**Case No.:** 08-P-24

**Date of Ruling:** February 16, 2011

**Date Mailed:** February 18, 2011

**TO COMPLAINANT:**

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

**TO RESPONDENT:**

Arnold DeMar, Owner  
Arnold's Restaurant  
4001 N. Broadway  
Chicago, IL 60613

**FINAL ORDER ON ATTORNEY FEES AND COSTS**

YOU ARE HEREBY NOTIFIED that on February 16, 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 in the total amount of \$1,435. The findings and specific terms of the ruling are enclosed.

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 August 18, 2010, shall occur no later than 28 days from the date of mailing of this order.<sup>1</sup> Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS  
Dana V. Starks, Chair and Commissioner

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<sup>1</sup> **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 of record.



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**FINAL RULING ON ATTORNEY FEES**

**I. PROCEDURAL HISTORY**

On August 18, 2010, the Commission on Human Relations issued its Final Order on Liability and Relief in this matter. The Commission found in favor of Complainant Anthony Cotten on his claim that Respondent Arnold's Restaurant discriminated against him by failing to provide full access to its restroom facilities or a reasonable accommodation to the extent possible without undue hardship. The Commission ordered payment of \$500 plus interest in emotional distress damages, plus a \$250 fine for violation of the Chicago Human Rights Ordinance. Additionally, the Commission ordered injunctive relief to bring Respondent into compliance with the Human Rights Ordinance. Finally, the Commission awarded Complainant his reasonable attorney fees and costs subject to the petition process set forth in CCHR Reg. 240.630.

On September 21, 2010, Complainant filed a timely Petition for Attorney's Fees, which included his affidavit and statement of time spent on the case. Respondent did not file a response. In the petition, Complainant sought \$1,575 in attorney fees for a total of 11.25 hours of time expended at the rate of \$140 per hour. No reimbursement of costs was requested. On December 29, 2010, the hearing officer issued a Recommended Ruling on Attorney Fees and Costs, to which neither Complainant nor Respondent filed objections.

**II. APPLICABLE STANDARDS**

Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to include in its orders for relief "reasonable" attorney fees and associated costs incurred in pursuing a discrimination complaint before the Commission or at any stage of review. Under CCHR Reg. 240.630(a), an attorney fee petition must establish the number of hours for which compensation is sought in increments of no more than one-quarter hour. The compensation sought must be itemized according to the date performed, work performed, and individual who performed the work. It must also establish the rate customarily charged by each individual for whom compensation is sought.

The Commission uses a lodestar method of calculating attorney fees. *Leadership Council for Metropolitan Open Communities v. Souchet*, CCHR No. 98-H-107 (May 17, 2001). Under this method, the Commission determines whether the hours spent on a matter were reasonable, then multiplies the number of hours by the hourly rate customarily charged by attorneys with the level of experience of Complainant's attorney. *Nash and Demby v. Sallas Realty et al.*, CCHR No. 92-H-128 (Dec. 7, 2000). The Commission is not required to award attorney fees in an amount

proportional to the amount of damages awarded. *Id.*; see also *Wright v. Mims*, CCHR No. 93-H-12 (Sept. 17, 1997), and *Lockwood v. Professional Neurological Services Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010). The party seeking attorney fees has the burden of presenting evidence from which the Commission can determine whether the fees requested are reasonable. *Brooks v. Hyde Park Realty Co.*, CCHR No. 01-E-116 (June 16, 2004).

### III. HOURLY RATE

In determining an attorney's appropriate hourly rate for fee award purposes, the Commission has been guided by decisions of the U.S. Court of Appeals for the Seventh Circuit regarding a fee applicant's burden and the evidentiary requirements to prove the appropriate hourly rate. For example, in *Sellers v. Outland*, CCHR No. 02-H-37 (Mar. 17, 2004 and Apr. 15, 2009), the Commission followed the reasoning of the Seventh Circuit as set forth in *Small v. Richard Wolf Medical Instruments Corp.*, 264 F.3d 702, 707 (7 Cir. 2001):

The fee applicant bears the burden of proving the market rate. The attorney's actual billing rate for comparable work is considered to be the presumptive market rate. If, however, the court cannot determine the attorney's true billing rate—such as when the attorney maintains a contingent fee or public interest practice—the applicant can meet his or her burden by submitting affidavits from similarly experienced attorneys attesting to the rates they charge paying clients for similar work, or by submitting evidence of fee awards that the applicant has received in similar cases. Once the fee applicant has met his or her burden, the burden shifts to the defendants to demonstrate why a lower rate should be awarded.

In this case, Complainant's attorney, Matthew Weems, is seeking fees at the rate of \$140 per hour. He stated in his affidavit that this is his usual hourly rate for this type of matter. Respondent has not opposed the rate claimed. In recent rulings, the Commission has approved the rate of \$140 per hour for Atty. Weems in similar cases, noting that the requested rate is "not atypical or unreasonable given market rates in the City of Chicago" for relatively new lawyers. *Hutchison v. Iftekaruddin*, CCHR No. 08-H-21 (June 16, 2010); see also *Cotten v. La Luce Restaurant, Inc.*, CCHR No. 08-P-34 (Oct. 20, 2010).

Atty. Weems' petition does not provide specific information regarding his level of experience. However, as noted above, no objection to the rate claimed in the petition has been raised by Respondent and the requested rate has been approved for Atty. Weems by this Commission in recent cases. The Commission accordingly approves the rate of \$140 per hour.

### IV. HOURS EXPENDED

In his supporting affidavit, Atty. Weems states that he expended a total of 11.25 hours in this matter. He attaches a time log recorded in 15-minute increments as allowed by CCHR Reg. 240.630(a)(1), in which he lists each 15-minute segment separately when he spent more than 15 minutes on a particular task or activity. This method of documentation required the hearing officer to add up the stated segments to determine the total time spent on a designated task or activity. In doing so, the hearing officer confirmed that the total time of 11.25 stated hours was accurately calculated. The hearing officer determined that Atty. Weems documented reasonable amounts of time expended on meeting with Complainant, reviewing pleadings, filing an appearance, attending the pre-hearing conference, drafting the pre-hearing memorandum, preparing for the hearing, appearing at the hearing, and reviewing the recommended and final decisions on liability and relief.

However, the hearing officer found several tasks and activities for which the time claimed

should be specifically addressed. First, Atty. Weems claimed two hours for time spent traveling to and from the Commission's office for two scheduled proceedings. He did not claim costs for parking or mileage. The appropriateness of billing travel time was addressed in *Cotten v. La Luce Restaurant, supra*. After noting that the Commission does not follow a firm rule regarding the billing of travel time, in that case the Commission found that the two hours of travel time claimed by Atty. Weems for attendance at four scheduled proceedings was "not excessive and was reasonably and necessarily incurred to successfully prosecute this case." Therefore, under the circumstances of that case, the travel time was allowed.

In the present case, Atty. Weems has again claimed two hours of travel time to and from the Commission. He does not specify the location from which he traveled or to which he returned. However, the hearing officer made the logical assumption that the travel time was measured from and to his office location, which at the time of the proceedings in this matter was listed as 1652 W. Ogden Avenue in Chicago. The dates of proceedings in this case (August 12 and October 27, 2009) occurred during the same period as the proceedings in *Cotten v. La Luce Restaurant, supra* (July and November 2009). Atty. Weems filed change of address notice for his current address with the Commission later, on March 15, 2010. Therefore, his office address at the time of the proceedings in both cases appears to have been the same. However, in this case only two proceedings—the pre-hearing conference and the administrative hearing—took place, rather than the four proceedings described in *Cotten v. La Luce Restaurant*, yet the same amount of travel time was billed.

The party seeking attorney fees has the burden of presenting evidence from which the Commission can determine whether the fees requested are reasonable. *Brooks, supra*. There is no reasonable explanation why the travel time would be the same for half the number of proceedings. As such, the hearing officer determined that the amount of travel time billed in this case appears excessive and recommended reducing the amount by one hour. No objection or clarification was received from Atty. Weems in light of this recommendation. Therefore, the Commission accepts the recommended one-hour reduction.

Second, the hearing officer considered Atty. Weems' claim of one-quarter hour of time spent in filing a change of address notice with the Commission. CCHR Reb. 210.127 requires that the parties provide notice of changes of address. As such, the hearing officer recommended that the time expended be found reasonable and necessarily incurred to prosecute the case. The Commission agrees.

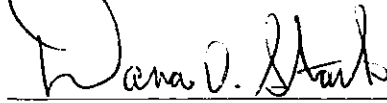
Third, Atty. Weems claimed 45 minutes of time expended in drafting the fee petition in this case. As noted by the hearing officer, the Commission has regularly excluded charges claimed for billing tasks such as keeping time logs, finding this to be work of a clerical nature which is part of the overhead of a law practice. *Cotten v. CCI Industries, Inc.*, CCHR No. 07-P-109 (May 19, 2010); *Lockwood, supra*. However, the Commission has awarded claimed fees for a reasonable amount of time expended in preparing the fee petition for submission to the Commission. See, e.g., *Cotten v. La Luce Restaurant, supra*, in which the Commission approved 30 minutes as a reasonable time for preparation and submission of the fee petition. Here, the claimed 45 minutes appears to be confined to the time necessary for the actual drafting of the petition with no includes of time to maintain billing records, and the time does not appear excessive for the tasks involved. The Commission thus approves the hearing officer's recommendation that the time be allowed as stated.

**V. CONCLUSION**

Accordingly, the Commission approves and adopts the hearing officer's recommended findings as to the appropriate hourly rate and the reasonableness of the time charged by Complainant's attorney. The Commission thus orders Respondent to pay \$1,435 to Complainant's attorney as attorney fees.

**CHICAGO COMMISSION ON HUMAN RELATIONS**

By:



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Dana V. Starks, Chair and Commissioner

Entered: February 16, 2011