



ISHMAEL SHERIFF
Complainant,

v.

**CARECO MENTAL HEALTH
SERVICES, INC.**
Respondent.

Docket Number 15-135 (CN)
EEOC No: 10C-2015-00110
Toya S. Carmichael, ALJ

FINAL DECISION AND ORDER GRANTING ATTORNEY'S FEES

OVERVIEW

This matter is before the D.C. Commission on Human Rights (“Commission”) upon the petition of Complainant’s counsel George A. Rose (“Attorney Rose”) for the award of attorney’s fees and costs. *See* Compl.’s Petition for Attorney Fees (June 15, 2018). The Commission issued a Final Decision and Order on May 7, 2018, finding Careco Mental Health Services, Inc. (“Careco” or “Respondent”) in violation of the District of Columbia Human Rights Act of 1977 (“DCHRA”). The Commission concluded that Respondent unlawfully discriminated against Mr. Sheriff by subjecting him to a hostile work environment based on his personal appearance and sex. Complainant prevailed in his underlying action before the Commission, and his counsel should be awarded attorney’s fees. However, because Complainant achieved only partial success, and his counsel failed to exercise billing judgement in some instances, the Commission finds the fees requested for billing hours logged by the attorneys not to be reasonable. Accordingly, the awarded attorney’s fees have been adjusted to \$49,748.27.

FINDINGS OF FACT

The undersigned makes the following findings of fact:

1. On December 17, 2014, Mr. Sheriff filed a Charge of Discrimination with the District of Columbia Office of Human Rights (“OHR” or “Office”) alleging that Careco (1) subjected him to a hostile work environment based on his personal appearance, religion, and national origin; (2) subjected him to a hostile work environment based on his sex; (3) failed to promote him based on his religion and personal appearance; and (4) retaliated against him for reporting discriminatory conduct. Compl.’s Charge (Dec. 17, 2014).
2. Complainant was represented in this matter by three attorneys at the Rose Law Firm LLC: Attorney Rose, Syed S. Bokhari (“Attorney Bokhari”), and John J. Leppler (“Attorney Leppler”).
3. On July 26, 2016, the Office issued a Letter of Determination (“LOD”) finding probable cause to believe that Respondent subjected Complainant to a hostile work environment on the basis of (1) national origin, personal appearance and religion; and (2) sex. LOD at 25.
4. On February 14, 2017, the Chief Administrative Law Judge David Simmons (“Judge Simmons”) sent Respondent a letter directing it to contact him by February 22, 2017 to arrange a Scheduling Conference. *See* Letter from Chief Administrative Law Judge David C. Simmons to David Miller, Owner of Careco (Feb. 14, 2017).
5. On February 28, 2017, Complainant filed a Motion for Default Judgment based on Respondent’s failure to appear and defend in this matter. *Id.*

6. On March 30, 2017, Judge Simmons held a hearing on Complainant's Motion for Default Judgment. Respondent failed to appear at this hearing. *See* Order for Post-Hearing Brief at 1 (April 6, 2017); Compl.'s Post-Hearing Brief at 7.
7. On April 6, 2017, Judge Simmons ordered Complainant to submit a post-hearing brief identifying the evidentiary basis to support his claims for liability and damages under the DCHRA. Order for Post-Hearing Brief (April 6, 2017).
8. Specifically, Complainant was instructed to identify, by citing to the time stamp of the audio recording of the hearing, the testimony that established that he was subjected to a hostile work environment based on (1) his national origin, personal appearance, and/or religion; and (2) his sex. *Id.* at 1. In presenting this evidence, Complainant was to set forth how this evidence established a *prima facie* case for each claim and to demonstrate that Respondent's articulation of a legitimate, non-discriminatory reason for the various occurrences was a pretext for intentional discrimination. *Id.*
9. On May 1, 2017, Complainant filed his post-hearing brief. Compl.'s Memorandum of Law in Support of Compl.'s Post-Hearing Brief Related to the March 30, 2017 Hearing (May 1, 2017).
10. On May 7, 2018, the Commission issued its Final Decision and Order finding that (1) Mr. Sheriff was entitled to a default judgment on the claim that Respondent subjected him to a hostile work environment based on his personal appearance; and (2) Mr. Sheriff was entitled to a default judgment on the claim that Respondent subjected him to a hostile work environment based on his sex. Final Decision at 22.
11. The Final Decision ordered that (1) Mr. Sheriff be awarded \$30,734.79 in compensatory damages for embarrassment, humiliation, indignity, and pain and suffering experienced

as a result of Respondent's hostile work environment based on his personal appearance and sex; (2) Mr. Sheriff be reappointed to his position, if Careco is still in business at the time the Order issued; (3) Mr. Sheriff receive all regular promotional credit that he would have received had he not been discharged in January 2014, if Careco is still in business at the time the Order issued; and (4) Mr. Sheriff's 2014 termination be expunged from his record and all reference to it removed. Final Decision at 23.

12. The Final Decision and Order also found that Complainant was the prevailing party in this matter and instructed his counsel to "submit a petition to the Commission outlining counsel's entitlement to attorney's fees on those matters upon which Mr. Sheriff substantially prevailed...." Final Decision at 21.

13. On or about January 13, 2014, Mr. Sheriff retained Attorney Rose to represent him in this matter. Rose Aff. ¶ 2.

14. Attorney Rose is the managing attorney at Rose Law Firm. Rose Aff. ¶ 1.

15. On June 15, 2018, Attorney Rose filed Complainant's Petition for Attorney's Fees ("Petition").

16. Attorney Rose graduated from law school in May 1999. Rose Aff. ¶ 1.

17. At all relevant times during his representation of Complainant, Attorney Rose had between 15 and 19 years of substantial legal experience based on his May 1999 graduation. *Cf.* Rose Aff. ¶ 1.

18. Attorney Bokhari graduated from law school in 2011. Rose Aff. ¶ 4.¹

19. Attorney Bokhari began working on Complainant's case in August 2015. Rose Aff. ¶ 4.

¹ Attorney Bokhari's month of graduation is not specified in the affidavit. The Commission assumes a May graduation date for calculating Complainant's attorney's fees.

20. At all relevant times during his representation of Complainant, Attorney Bokhari was in his fifth year of legal practice based on a May 2011 graduation. *Cf.* Rose Aff. ¶ 4.
21. Attorney Leppler graduated from law school in May 2014. Rose Aff. ¶ 5.
22. Attorney Leppler began working on Complainant’s case in July 2016. Rose Aff. ¶ 5.
23. At all relevant times during his representation of Complainant, Attorney Leppler had between two and three years of substantial legal experience based on his May 2014 graduation. *Cf.* Rose Aff. ¶ 5.
24. Paralegals at the Rose Law Firm logged 39.5 hours on this case. Rose Aff. ¶ 3.
25. On October 3, 2018, Judge Simmons sent a Proposed Decision and Order on Attorney’s Fees to counsel for Complainant and Respondent. However, a Commission tribunal never took place.
26. On May 21, 2019, this matter was transferred from Judge Simmons to Administrative Law Judge Toya S. Carmichael (“Judge Carmichael” or “the undersigned”).

RELEVANT PRINCIPLES OF LAW

- A. Under the “American Rule,” each party in a lawsuit ordinarily bears its own attorney’s fees unless there is express statutory authorization to the contrary. *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1993).
- B. Under the DCHRA and related regulations, a prevailing complainant “shall be entitled to reasonable attorney’s fees for the number of hours reasonably expended by the complainant’s attorney on claims upon which the complainant prevailed.” D.C. MUN. REGS. tit. 4, § 213.1; *cf.* D.C. CODE § 2-1403.13(a)(1)(E) (authorizing the payment of a complainant’s attorney’s fees by a respondent who is determined to have engaged in unlawful discriminatory practices against that complainant).

- C. A complainant prevails if he succeeds on any significant issue in litigation which achieves some of the benefit sought in bringing the suit. *Hensley*, 461 U.S. at 433.
- D. In the District of Columbia, “[t]he reasonable hourly rate [for the attorney] multiplied by the reasonable number of hours expended upon successful claims is presumed to be the reasonable attorney’s fee.” D.C. MUN. REGS. tit. 4, § 213.2.
- E. In determining the reasonable hourly rate, the Commission may consider “rates charged for similar legal work by attorneys of comparable skill, experience, and reputation.” D.C. MUN. REGS. tit. 4, § 213.3.
- F. When determining a reasonable hourly rate for attorneys in cases where the prevailing party is statutorily entitled to attorney’s fees, the District of Columbia courts and administrative adjudicatory entities have relied upon a matrix formulated by the United States Attorney’s Office of the District of Columbia. *See Lively v. Flexible Packaging Ass’n*, 930 A.2d 984, 988-90 (D.C. 2007).
- G. This Matrix is referred to as the “*Laffey Matrix*” because it has its origins in the case of *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *rev’d in part on other grounds*, 746 F.2d 4 (1984). *See Lively*, 930 A.2d at 988-89. The current version of the *Laffey Matrix* for 2015-2018 can be found at <https://www.justice.gov/usao-dc/file/796471/download> (*Laffey Matrix* 2015-2018).
- H. The *Laffey Matrix* identifies the level of experience of the attorney and then sets out a corresponding reasonable hourly rate for an attorney of that level of experience. *See Laffey Matrix*. To determine the attorney’s level of experience, the courts normally calculate the attorney’s years of experience practicing law starting from the attorney’s graduation from law school. *See Laffey Matrix* at n.6. Further, the calculation of the

level of experience of the attorney is fixed as of the date the legal services were provided on behalf of the client. *See Lively*, 930 A.2d at 990-91.

- I. The hourly rate associated with the attorney's level of experience, however, is calculated at the current market rate for an attorney of that level of experience as referenced in the current *Laffey* Matrix. *See id.* This use of the current market rate is designed to take into account the effect of inflation or prolonged delay between when the legal services are rendered and when the attorney actually receives payment of the attorney's fees. *Id.* at 990.
- J. Under the *Laffey* Matrix, the reasonable attorney's fees are calculated by multiplying the number of hours expended by the attorney at that specific level of experience by the hourly rate for an attorney of that experience level. *Id.* at 989.
- K. In determining the reasonable number of hours expended upon a successful claim, the judicial factfinder is to make a nuanced judgment as to the amount of time that was reasonable for the completion of a specific litigation task. *Cf. Lively*, 930 A.2d at 992 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (noting that a simple mathematical deduction for limited success is not appropriate in determining an award of attorney's fees)).
- L. If a plaintiff in an action brought under the DCHRA has achieved only partial success, the product of hours reasonably expended by his attorneys on the litigation as a whole multiplied by a reasonable hourly rate may be an excessive amount to award in attorney's fees. *Lively*, 930 A.2d at 984.
- M. Many civil rights cases will present only a single claim. In other cases, the complainant's claims for relief will involve a common core of facts or will be based on related legal

theories. Much of counsel's time will be devoted to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Rather, the court should focus on the significance of the overall relief obtained by the complainant in relation to the hours reasonably expended on the litigation. *Hensley*, 461 U.S. at 435.

N. Whether to reduce a fees award in an action brought under the DCHRA based on a finding that a party prevailed on less than all claims is a case-by-case determination. *Lively*, 930 A.2d at 992.

O. In reducing an attorney's fees request of a party who prevailed only on some claims brought under the DCHRA, it is not for the trial court to justify each dollar or hour deducted from the total submitted by counsel. Rather, it is counsel's burden to prove and establish the reasonableness of each dollar and each hour. *Lively*, 930 A.2d at 993.

DISCUSSION

A. Complainant is entitled to attorneys' fees.

The Commission found Respondent unlawfully discriminated against Complainant by subjecting him to a hostile work environment based on his personal appearance and sex. Final Decision at 22. Although the Commission rejected Complainant's claims of discrimination based on religion and national origin, it is undisputed that Complainant is the prevailing party in this matter and thus is entitled to attorneys' fees.

B. The *Laffey* Matrix sets forth the reasonable hourly rates.

As discussed above, in the District of Columbia, adjudicatory bodies rely upon the *Laffey* Matrix, compiled yearly by the U.S. Attorney's office, to establish the reasonable hourly rate for

an attorney based on his experience at the time he rendered legal services. *See* Relevant Principles of Law at ¶¶ F-J (“Principles”). The Commission finds that, at all relevant times during their representation of Complainant, Attorney Rose had between 16 and 20 years of substantial legal experience; Attorney Bokhari was in his fifth year of legal practice; and Attorney Leppler had between two and three years of substantial legal experience.

Under the June 2018 – May 2019 *Laffey* Matrix, applicable to counsel’s June 15, 2018 petition, the reasonable hourly rates are as follows: for an attorney with between 11 and 15 years of experience, \$491 (Attorney Rose during his first year representing Complainant); for an attorney with between 16 and 20 years of experience, \$544 (Attorney Rose during the rest of his representation of Complainant); for an attorney between four and five years of experience, \$351 (Attorney Bokhari); and for an attorney with between two and three years of experience, \$340 (Attorney Leppler). *See* 2018 *Laffey* Matrix. Complainant’s counsel also included hours logged by paralegal in this case. The reasonable hourly rate for paralegals as set by the 2018 *Laffey* Matrix is \$166. *Id.*

C. Complainant’s attorneys’ fees are awarded based on his successful claims.

Under the DCHRA, a tribunal may reduce an award of attorneys’ fees if a party did not prevail on every claim. *Lively*, 930 A.2d at 984. This decision is made on a case-by-case basis. *Id.* Here, the Commission did not find that Careco subjected Mr. Sheriff to a hostile work environment based on his national origin or his religion. Therefore, granting attorney’s fees for the total amount of hours spent on Complainant’s case would not be reasonable. *Lively*, 930 A.2d at 992, *see also Hensley*, 461 U.S. at 426. Because the Complainant prevailed on only two

of the four issues addressed by the Commission, Counsel's request for attorney fees should be reduced.

D. A reduction of counsels' fees is required for excessive and duplicative billing entries.

The purpose of the DCHRA attorney's fees provision is to attract competent counsel, not to produce windfalls to attorneys. *Blum v. Stenson*, 465 U.S. 886, 897 (1984). Therefore, while the DCHRA allows for reasonable attorneys' fees to be paid to the prevailing party, the fee applicant bears the burden of establishing entitlement to the award by documenting appropriate hours and justifying the reasonableness of the rates. *Heller v. District of Columbia*, 832 F. Supp. 2d 32 (D.D.C. 2011). To satisfy this burden, counsel for the prevailing party must make a good-faith effort to exclude from its request hours that are excessive, duplicative, or otherwise unnecessary. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Complainant's counsel has failed to meet its burden.

On several occasions, counsel failed to exercise billing judgement with respect to the hours logged. For example, they logged duplicative hours on some tasks. On July 28, 2015, Attorney Rose spent two hours drafting rebuttal. Ex. A at 3. On August 20, 2015, Attorney Bokhari spent nearly four hours working on that same rebuttal. Ex. A at 3. Finally, on September 1, 2015, Attorney Bokhari finished the rebuttal after another 2.5 hours of work. Ex. A at 3. Another example is the email concerning Complainant's records: on December 14, 2016, Attorney Rose spent twenty minutes drafting the email. Ex. A at 5. His paralegal also spent twenty minutes on that same email that same day. Ex. A at 5.

Other logged hours are simply excessive. For example, on July 29, 2016, Attorney Rose “reviewe[d]” OHR’s LOD for two hours. Ex. A at 4. Two weeks later, on August 13, 2016, Attorney Rose “outline[d]” the LOD for three hours. Ex. A at 4. In addition, between April 07, 2017 and May 1, 2017, Attorney Leppler logged 14.65 hours drafting and reviewing Complainant’s post-hearing brief. Ex. A at 7. Finally, Attorney Rose spent three hours reviewing the Chief Judge’s Proposed Decision & Order and two hours reviewing the Final Decision & Order. Ex. A at 9. It should not have taken that much time to review either document. In sum, counsel’s petition fails to provide sufficient reasoning for the number of hours logged given the relatively simple nature of the case and the fact that the proceedings were largely uncontested.

E. Calculation of the Reasonable Attorneys’ Fees

While the most essential factor when assessing an attorney’s request for fees is the overall results obtained, a judge may give some consideration to the overall amount in damages awarded to the complainant. *Riverside v. Rivera*, 477 U.S. 561, 585 (1986). Here, Complainant was awarded \$30,734.79 in compensatory damages. Final Decision at 23. By contrast, counsel request \$66,349.90 in attorneys’ fees. Petition at 4. It is the undersigned’s assessment that Complainant received less than what was possible in damages because, despite being entitled to default judgement, Complainant and counsel failed to provide the evidentiary basis for the overall amount in damages requested. *See* Final Decision and Order at 18-20 (finding that Complainant did not provide adequate evidence to be entitled to backpay). The Commission must give proper weight to the difference between Complainant’s damages and the requested attorney’s fees to make an accurate assessment of what amount is reasonable in this case. *See Blanchard v. Bergeron*, 489 U.S. 87, 96 (1989).

A one-third (33%) reduction of the requested attorneys' fees is appropriate based on the following factors: the limited success achieved, the overall amount of damages awarded to Complainant, and concerns about counsel's billing judgment. A line-by-line reduction of hours logged would be rigid and unnecessary. *See Hensley*, 461 U.S. at 437; *Hubbard v. United States*, 480 F.3d 1327, 1333-34 (Fed. Cir. 2007). Rather, a one-third reduction reflects a reasonable amount for attorney fees under the circumstances.

CONCLUSION

For the reasons provided above, the undersigned finds that the total reasonable attorneys' and paralegal fees in this matter is \$49,748.27.

Toya S. Carmichael

Toya S. Carmichael
Administrative Law Judge
D.C. Commission on Human Rights

Date: June 7, 2019

RIGHT TO FILE EXCEPTIONS

According to the District of Columbia Commission on Human Rights Rules of Procedure for Contested Cases, any party adversely affected by this Proposed Decision and Order may file exceptions and corrections within fifteen (15) calendar days of receipt of this decision. *See* D.C. MUN. REGS. tit. 4, § 430.1(d). Any party that wishes to submit exceptions to the Commission may file them electronically as an email attachment, with service copy to the opposing party.

SERVICE COPIES:

On July 9, 2019, a copy of the foregoing Proposed Decision and Order Awarding Complainant's Counsel Attorney's Fees and Costs was sent via electronic mail to the following parties at their respective addresses:

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ISHMAEL SHERIFF
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CARECO MENTAL HEALTH
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Respondent.

Docket Number 15-135 (CN)
EEOC No: 10C-2015-00110
David C. Simmons, CALJ

ORDER AWARDING ATTORNEY’S FEES AND COSTS

On, June 26, 2019, the undersigned members of a Hearing Tribunal of the District of Columbia Commission on Human Rights conducted a telephonic conference to review and discuss the above-captioned case. The members of the Commission Tribunal considered:

The Proposed Decision and Order Awarding Complainant’s Counsel Attorney’s Fees and Costs issued on September 21, 2018; and

The pleadings filed with the Commission in this matter.

No Exceptions or Corrections, as authorized by D.C. MUN. REGS. TIT. 4 § 430.1(d), were filed in this matter and therefore were not considered.

Based upon this review and deliberations, it is hereby **ORDERED** that Respondent, Careco Mental Health Services, pay \$49,748.27 in fees.

SO ORDERED this 9th day of July 2019.

/s/ Earl Fowlkes, Jr.

Chairman

Earl Fowlkes, Jr.

/s/ Wynter Allen

Commissioner

Wynter Allen

/s/ Eleanor Collinson

Commissioner

Eleanor Collinson