

DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS

COMPLAINANT	§	
Complainant,	§	
	§	
v.	§	DOCKET NO. 15-988-P (CN)
	§	EEOC NO. 10C-2015-00908
	§	David C. Simmons, CALJ
DOWN UNDER, INC. d/b/a	§	
BRAVO BRAVO	§	
Respondent.	§	

**PROPOSED DECISION AND ORDER AWARDING COMPLAINANT’S COUNSEL
ATTORNEY’S FEES AND COSTS**

OVERVIEW

This matter is before the D.C. Commission on Human Rights (“Commission”) upon the petition of Complainant’s Counsel, Mr. Bruce Godfrey (“Attorney Godfrey”), for the award of attorney’s fees and costs. *See* Petition for Award of Legal Fees and Costs (July 13, 2018) [hereinafter “Petition”]. Complainant substantially prevailed in her underlying action before the Commission. For the reasons set forth below, Attorney Godfrey should be awarded attorney’s fees in the amount of \$13,156.00 and costs in the amount of \$644.32, for a total of \$13,800.32.

FINDINGS OF FACT

The undersigned makes the following findings of fact:

1. On September 2, 2015, Complainant filed a Charge of Discrimination with the District of Columbia Office of Human Rights (“OHR” or “Office”) alleging that Down Under, Inc., d/b/a Bravo Bravo (“Respondent” or “Bravo Bravo”): (1) subjected her to disparate treatment on the basis of sex by terminating her employment when she was seven months pregnant;

and (2) subjected her to disparate treatment on the basis of sex by refusing to rehire her when she tried to return to work in July 2015. Compl.'s Charge (Sept. 2, 2015).

2. The Office found probable cause to believe that 1) Respondent unlawfully discriminated against Complainant on the basis of sex when it terminated her employment when she was seven months pregnant and 2) Respondent discriminated against her when it failed to rehire her. Letter of Determination (June 8, 2016) [hereinafter "LOD"].
3. Complainant retained Jezic & Moyse, LLC on October 10, 2016 to assist her with her claims for wrongful termination and discrimination. Petition at 1.
4. On March 14, 2017, the Office certified this matter to the Commission; it was assigned to Chief Administrative Law Judge David Simmons ("Judge Simmons") shortly thereafter.
5. On December 6, 2017, Judge Simmons held a one-day hearing on the merits of Complainant's charge.
6. On July 20, 2018, the Commission issued its Final Decision and Order. The Commission found that: (1) Bravo Bravo subjected Complainant to disparate treatment on the basis of sex by terminating her employment when she was seven months pregnant; and (2) Bravo Bravo subjected Complainant to disparate treatment on the basis of sex by refusing to rehire her when she tried to return to work in July 2015. Final Decision at 20.
7. As a result, the Commission ordered that Respondent pay Complainant \$16,195 as a back-pay award and prejudgment interest thereon, calculated at a rate of 4% per annum, for Bravo Bravo's violation of her rights under the D.C. Human Rights Act ("DCHRA"). Final Decision at 20. The Commission also ordered that Complainant was entitled to recover from Respondent a compensatory damage award that was equal to one-half of her back-pay award, *i.e.*, \$8,097.50. Final Decision at 20.

8. The Final Decision and Order also found that Complainant was the prevailing party in this matter and thus is entitled to statutory attorney's fees. Final Decision at 20.
9. Attorney Godfrey was the only Jezic & Moyses attorney who participated in the representation of Complainant. Petition at 2.
10. Attorney Godfrey graduated from the University of Maryland School of Law in June 1994. Petition at 1.
11. Attorney Godfrey has been a member of the Maryland Bar since December 13, 1994 and the District of Columbia Bar since October 2005. Petition at 1.
12. From the period of June 1, 2016 through May 31, 2017, Attorney Godfrey had twenty-three (23) years of substantial legal work experience as calculated from his June 1994 graduation from law school. *Cf.* Petition at 1.
13. From the period of June 1, 2017 through May 31, 2018, Attorney Godfrey had twenty-four (24) years of substantial legal work experience as calculated from his June 1994 graduation from law school. *Cf.* Petition at 1.
14. From the period of June 1, 2018 to the present, Attorney Godfrey had twenty-five (25) years of substantial legal work experience as calculated from his June 1994 graduation from law school. *Cf.* Petition at 1.
15. Under the United States Attorney's Office's *Laffey* Matrix for June 2018-May 2019, the reasonable hourly rate for an attorney with 21 to 30 years of experience at the time the work was conducted, like Attorney Godfrey, is \$572. USAO Attorney's Fees Matrix 2015-2018, USAO-District of Columbia, <https://www.justice.gov/usao-dc/file/796471/download> (*Laffey* Matrix 2015-2018) [attached hereto as Exhibit A].

16. In total, Attorney Godfrey reasonably expended twenty-three (23) hours of work in his representation of Complainant. Petition at Ex. A (originally referenced as Billable Time) [attached hereto as Exhibit B].
17. The costs Attorney Godfrey incurred during his representation of Complainant were minimal due to lack of deposition practice and mitigation of transcript charges. Petition at 4.
18. Specifically, Attorney Godfrey expended \$575.00 in process service and witness skip tracking; \$42.32 on courier delivery of the Joint Exhibit Binder; and \$27.00 in parking during the day of the hearing, for a total of \$644.32. Petition at 4; Petition Ex. B (originally referenced as Expense Receipts).

RELEVANT PRINCIPLES OF LAW

- A. 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 Complainant’s attorney’s fees by Respondent who is determined to have engaged in unlawful discriminatory practices against that Complainant).
- B. 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.
- C. 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.

- D. When determining a reasonable hourly rate for attorneys in those cases when the prevailing party is statutorily entitled to attorney's fees, the District of Columbia courts and administrative adjudicatory bodies 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).
- E. This Matrix is referred to as the "*Laffey Matrix*" because it has 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 2015-2019 can be found at <https://www.justice.gov/usao-dc/file/796471/download> (Laffey Matrix 2015-2019).
- F. The *Laffey Matrix* sets out the level of experience of the attorney and then identifies a corresponding reasonable hourly rate for an attorney of that level of experience. *See Laffey Matrix*. To determine the attorney's level of experience, 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 attorney's level of experience is fixed as of the date the legal services were provided on behalf of the client. *See Lively*, 930 A.2d at 990-91.
- G. 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 in the *Laffey Matrix* 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.

- H. 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.
- I. 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 mathematical deduction for limited success is not appropriate in determining an award of attorney’s fees)).
- J. Attorneys are also entitled to recover reasonable costs incurred during litigation. *See Sexcius v. District of Columbia*, 839 F. Supp. 919, 926 (D.D.C. 1993) (providing that costs are recoverable as “incidental and necessary expenses incurred in furnishing effective and competent representation”).

DISCUSSION

A. It Is Undisputed That Complainant Substantially Prevailed.

The undersigned finds that attorney’s fees should be awarded in this case. It cannot be disputed that Complainant substantially prevailed in this case. Final Decision at 20; *see also* Findings of Fact at ¶ 8 [hereinafter “Facts”]. The Commission tribunal that heard the merits of the underlying case made such a ruling in the Final Decision and Order. Facts at ¶ 8. Furthermore, this ruling is strongly supported by the evidence. Specifically, the Office found probable cause to believe that Respondent discriminated against Complainant when it discharged her because she was pregnant and when it failed to rehire her. Facts at ¶ 2. The Final Decision and Order found that these two claims were established by a preponderance of the evidence presented at the hearing on the merits. Facts at ¶ 6.

B. The Hours Spent Litigating This Matter Were Reasonable.

The undersigned finds that Attorney Godfrey submitted detailed billing records in which he set forth the specific tasks on which he worked and the amount of time that he spent on those tasks. Petition Ex. A. With respect to the number of hours expended, the undersigned finds that Attorney Godfrey reasonably expended twenty-three (23) hours during his representation of Complainant in this matter. Facts at ¶ 16.

C. The *Laffey* Matrix Sets Forth the Reasonable Hourly Rate.

As discussed above, in the District of Columbia, courts and administrative adjudicatory bodies rely on the *Laffey* Matrix to establish the reasonable hourly rate for an attorney with a certain amount of experience. See Relevant Principles of Law at ¶¶ D-F [hereinafter “Principles”]. The undersigned finds that Attorney Godfrey had between 21 and 30 years of substantial legal experience at all relevant times during his representation of Complainant. See Facts at ¶¶ 12-14. Under the current *Laffey* Matrix, the reasonable hourly rate for an attorney with between 21 and 30 years of substantial legal experience at the time the legal work was conducted is \$572. Facts at ¶ 15.

D. Calculation of Reasonable Attorney’s Fees.

As discussed above, reasonable attorney’s fees are calculated by multiplying the number of hours reasonably expended by the attorney by the reasonable hourly rate for an attorney of that experience as identified in the current *Laffey* Matrix. Principles at ¶ H. Accordingly, the undersigned finds that Attorney Godfrey’s reasonable attorney’s fees are equal to the product of 23 hours times \$572 per hour, or \$13,156.00.

E. The Costs Expended by Complainant's Counsel in This Matter Were Reasonable.

The costs Complainant seeks are routine, documented, and reasonable. *Cf.* Principles at ¶ J. Attorney Godfrey incurred \$644.32 in costs throughout his representation of Complainant. Facts at ¶ 18. These costs were minimal due to lack of deposition practice and mitigation of transcript charges. Facts at ¶ 17. Specifically, Attorney Godfrey expended \$575.00 in process service and witness skip tracking; \$42.32 on courier delivery of the Joint Exhibit Binder; and \$27.00 in parking during the day of the hearing, for a total of \$664.32. Petition at 4; Petition at Ex. B (originally referenced as Expense Receipts); Facts at ¶ 18.

CONCLUSION

For the reasons provided above, the undersigned finds that Attorney Godfrey is entitled to recover a total of \$13,156.00 in attorney's fees and \$644.32 in costs, for a total of \$13,800.32, for his representation of the Complainant in this matter. A proposed final order to this effect is attached.

Toya S. Carmichael

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

Date: May 31, 2019

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PROPOSED ORDER AWARDING ATTORNEY’S FEES AND COSTS

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 May 29, 2019; 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, Down Under Inc., d/b/a/ Bravo Bravo, pay to Mr. Bruce Godfrey, Esq., Complainant’s Counsel in the underlying matter, the amount of \$13,156.00 for attorney’s fees and \$644.32 for costs, for a total of \$13,800.32.

SO ORDERED this 10th day of July 2019.

/s/ Gunther Sanabria

/s/ Anika Simpson

/s/ Timothy Thomas

Commissioner
Gunther Sanabria

Commissioner
Anika Simpson

Commissioner
Timothy Thomas