This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 02/21/06

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
STEPHANIE J. GINN,	)	
	)	
Complainant,	)	**CHARGE No. 2002CF0882**
	)	
	)	**ALS No. 11883**
AND	)	
	)	
GRAYLINE TOURS D/B/A AME,	)	
	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is before this tribunal on Complainant, Stephanie Ginn's *Petition for Attorney Fees and Costs* filed on July 28, 2005. Respondent, Grayline Tours D/B/A AME, filed its *Objections to Petition for Attorney's Fees and Costs* on August 17, 2005 and Complainant filed her *Response to Respondent's Objections to Petition for Attorney Fees and Costs* on August 31, 2005. Prior to the filing of above-named pleadings, on June 28, 2005, this tribunal entered a *Recommended Liability Determination* finding that Respondent, through the actions of one of its supervisors, had sexually harassed Complainant. In that same *Recommended Liability Determination,* Complainant's retaliation claim was dismissed with prejudice. The matter is now ready for resolution of Complainant's fee petition.

FINDINGS OF FACT

1. Complainant has requested compensation for the work of her attorney at the rate of $300.00 per hour for 147.9 hours of work.

2. Complainant has submitted affidavits of three (3) Chicago-area attorneys, which establish that Complainant's requested hourly rate is consistent with rates for similarly qualified attorneys and is reasonable.

3. Complainant did not fully prevail in this action. The public hearing covered two (2) distinct claims and Complainant only prevailed on one (1) claim. Complainant's Petition for Attorney's Fees makes no differentiation between time spent on the successful claim and time spent on the unsuccessful claim.

4. In light of Complainant's failure to prevail on all claims or to receive substantially all of the relief she requested, the number of hours requested for the work of her attorney is unreasonable. A 40% reduction in those hours is therefore reasonable.

5. Complainant's Petition for Attorney Fees and Costs was timely filed.

CONCLUSIONS OF LAW

1. All previous conclusions of law in the Recommended Liability Determination are incorporated by reference herein.

2. A prevailing complainant may recover reasonable attorney's fees to maintain her action.

3. This tribunal may reduce a fee request based upon the limited success obtained by the prevailing party and unreasonable requests for fees.

DISCUSSION

Once there has been a finding that a respondent has violated the Illinois Human Rights Act and a complainant's damages have been determined, the focus of the remaining inquiry concerns the amount of attorneys' fees and costs that should be awarded to a complainant under the Act. *See* 775 ILCS 5/8A-104(G). In the case of

Clark and The Champaign National Bank, 4 Ill. HRC. Rep. 193 (1982), the Commission set forth numerous factors as guidelines when considering attorney fee and costs awards. Under *Clark,* the burden of proof for the petition for an award of attorneys' fees is the same burden that is applied to anyone seeking a money judgment. *Clark*, 4 Ill. HRC at 198.

The first factor discussed in *Clark* is the *factual showing necessary to establish the attorney's hourly rate*. The hourly rate should generally depend on the experience of the attorney and the type of work involved. *Id.* at 199, *citing, Copeland v. Marshall,* 641 F.2d 880, 892 (D.C. Cir. 1980). An attorney requesting fees must provide specific evidence of the prevailing community rate for the type of work for which he seeks an award. *Id.* Affidavits reciting the precise fees that attorneys with similar qualifications have received from fee-paying clients in comparable cases can aid in determining prevailing community rate information. *Id.*

Here, Complainant has provided the affidavits of three Chicago-area attorneys, Ronald B. Schwartz, L. Steven Platt and Edward C. Jepson, each of whom have practiced before the Commission and practice generally in the area of labor and employment law. Mr. Schwartz, Mr. Platt and Mr. Jepson all have at least twenty-five years of experience in the practice of law and know Complainant's attorney, Jerome F. Marconi, on a professional level. Mr. Marconi has been in practice approximately nineteen years, has extensive litigation experience and has also practiced before the Commission in cases other than the one presently at hand. See *Marconi affidavit, Exhibit A.* Attorneys Schwartz, Platt and Jepson have provided very extensive affidavits which clearly support the finding that Complainant's request for attorney's fees at a rate of $300.00 per hour is reasonable considering both his experience and reputation in the legal community. *See Schwartz, Platt and Jepson affidavits, Exhibits (B), (C) and (D).* Thus, an award of $300.00 per hour is recommended.

Through her *Petition for Attorney Fees and Costs,* Complainant is also required to establish the number of hours reasonably expended on this case by her attorney. Complainant seeks attorney fees for 147.9 hours of work. However, Complainant's petition fails to address the fact that she only prevailed on one (1) of her two (2) claims. Specifically, Complainant prevailed on her sexual harassment claim, but was unsuccessful on her retaliation claim. *Clark* and its progeny make clear that attorney's fees cannot be recovered for claims on which a complainant did not prevail. Additionally, Complainant's petition makes no attempt to distinguish time spent on her successful claim from time spent on her unsuccessful claim. *Edward Banks and American Airlines, Inc.,* Charge No. 1985CF0174, ALS No. 2549,1993 WL 817790 (Ill. Hum. Rts. Comm., June 11, 1993); *See also, Leon I. Wong and Kraft, Inc.,* Charge No. 1987CF0180, ALS No. 2378, 1994 WL 880478 (Ill. Hum. Rts. Comm., Order and Decision, April 29, 1994).

In support of her contention that attorney fees are recoverable for unsuccessful claims, Complainant cites to *Brewington v. Department of* Corrections, 161 Ill.App.3d 54, 513 N.E. 2d 1056,112 Ill.Dec.447 (1st Dist. 1987). In that case, the appellate court examined an Illinois Human Rights Commission case wherein the complainant prevailed on her claim that she was the victim of sex discrimination, but did not prevail on her claim that she was constructively discharged. Complainant correctly points out that in *Brewington* the appellate court discussed the U.S. Supreme Court case of *Hensley v. Eckerhart,* 461 U.S. 424 (1983) in order to determine the applicable standards used to evaluate the propriety of attorney fee awards. In examining *Hensley,* the *Brewington* court recognized that "the most useful starting point for determining a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate" and that a court should "exclude from this initial fee calculation hours . . . not

‘reasonably expended’ “ such as “hours that are excessive, redundant, or otherwise unnecessary.” *Brewington,* 161 Ill.App.3d at 64, *citing*, *Hensley,* 461 U.S. at 433-34. *Brewington* also recognized that *Hensley* ultimately held, in pertinent part, that:

> *… the extent of a plaintiff’s success is a crucial factor in determining the proper amount of an award of attorney’s fees under 42 U.S.C. § 1988. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney’s fee reduced simply because the court did not adopt each contention raised. But where the plaintiff achieved only limited success, the court should award only that amount of fees that is reasonable in relation to the results obtained*. *Id.* at 64, *citing Hensley,* 461 U.S. at 440.

The *Brewington court* also found that the “Commission’s rationale revealed a proper exercise of the discretion vested in it under *Hensley* and that Plaintiff Brewington’s case was the type which, as described in *Hensley*, involved claims for relief based on ‘*a common core of facts or related legal theories, as opposed to the type involving distinctly different claims for relief based on different facts and legal theories.*’ “ *Brewington,* citing *Hensley,* found that in such a case, ‘much of counsel’s time is devoted to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis.” However, Complainant Ginn has failed to recognize that the *Brewington* court also went on to state:

> This is readily apparent here, where plaintiff’s claim of discrimination with respect to a shift change at the CRC was *the predicate* for the claim that she had been constructively discharged. *If plaintiff had not proven the former, she could not have attempted to prove the latter.* (emphasis added). *Brewington* 161 Ill. App.3d at 66.

Although some degree of overlap is inevitable in most cases with multiple charges and attorneys’ hours cannot always be neatly pigeon-holed, a claim of

retaliation clearly requires a *prima facie* showing that is quite different from that of a *sexual harassment* allegation. Certainly, if Complainant had not proven sexual harassment, she could have proven retaliation. One is not dependent on the other, as each are distinctly different claims for relief under the Human Rights Act. A complainant is required to deduct hours from her fee petition where those hours were spent on a separable and unsuccessful part of the case. *Wong,* Charge No. 1987CF0180, ALS No. 2378,1994 WL 880478 (Ill. Hum. Rts. Comm. April 29, 1994). In fact, *Hensley* itself directs attorneys to maintain billing time records in a manner that will enable a reviewing court to identify distinct claims. *Hensley,* 461 U.S. 424, 437 (1983). In the matter at hand, the sexual harassment and retaliation claims are not *so interrelated* that one cannot separate the time spent on each one. *Banks and American Airlines*, Charge no. 1985CF0174, ALS No. 2549, 1993 WL 817790 (Ill. Hum. Rts. Comm., June 11, 1993).

When deciding the matter of attorney's fees, all doubts are to be resolved in favor of the respondent. *Leiber and Southern Illinois University Board of Trustees,* 34 Ill. HRC Rep. 206 (1987). Keeping the *Lieber* holding in mind, allowing for some overlap in this case, and carefully considering the results obtained on Complainant's behalf, it is recommended that the requested attorney's hours of 147.9 be reduced by 40%, to 88.7.

Lastly, in its objections to Complainant's *Petition for Fees and Costs*, Respondent raises the argument that Complainant's petition was untimely filed in that it was not filed with the Commission within 21 days of service of the *Recommended Liability Determination*. Respondent incorrectly states that the *Recommended Liability Determination* was *served* on June 28, 2005. Although the *Recommended Liability Determination* was *entered* on June 28, 2005, it was not mailed until July 6, 2005. Pursuant to the procedural rules that apply to proceedings before the Illinois Human Rights Commission, the effective date of service by U.S. mail is four (4) days after the mailing of a document, which is properly addressed and posted for delivery to the person

to be served. 56 Ill. Admin. Code 5300.30 (c). Thus, as Complainant correctly points out, the effective date of service of the *Recommended Liability Determination* would have been July 10, 2005. Because July 10th fell on a Sunday, the effective date of service was actually Monday, July 11, 2005. Thus, Complainant's filing of her petition on July 28, 2005 was timely.

RECOMMENDATION

Based upon the foregoing, it is hereby recommended:

1. That Respondent be ordered to pay Complainant $26,610.00 as and for attorney's fees in this matter;
2. That Complainant receive all other relief as recommended in the *Recommended Liability Determination* entered in this matter on June 28, 2005.

ENTERED: November 17TH, 2005 **HUMAN RIGHTS COMMISSION**

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MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION