



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
MICHAEL BAKER,)	
)	
Complainant,)	
)	Charge No.: 1999CA0319
and)	EEOC No.: 21B983098
)	ALS No.: 10940
VILLAGE OF NILES,)	
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

A Recommended Liability Determination (RLD) was entered in this matter on August 30, 2001. Pursuant to the RLD, Complainant, Michael Baker, filed a written motion for attorney's fees. Despite being given the opportunity so to do, Respondent, Village of Niles, failed to file any response to that motion. The time for filing such a response has passed. The matter is ready for decision.

FINDINGS OF FACT

1. Complainant has requested compensation for the work of attorney Michael L. Maduff at the rate of \$250.00 per hour for 63.9 hours.

2. Complainant has requested compensation for the work of attorney Aaron B. Maduff at the rate of \$225.00 per hour for 77.55 hours.

3. Complainant has requested compensation for the work of attorney Deanne S. Medina at the rate of \$150.00 per hour for 1.3 hours.

4. Complainant has requested compensation for the work of a paralegal at the rate of \$50.00 per hour for 19.45 hours.

5. Complainant has requested reimbursement for \$563.31 in costs incurred in the prosecution of this matter.

6. In light of the absence of objection, the requested hourly rates are reasonable and should be accepted.

7. The number of requested hours includes some time which should not be compensated. The number of hours for the work of Aaron Maduff should be reduced to 76.45. The number of hours for the paralegal's work should be reduced to 18.95.

8. Some of the requested costs are not compensable. The compensable costs total \$408.00.

CONCLUSIONS OF LAW

1. Because of its failure to file a response to Complainant's motion for attorney's fees, Respondent has waived the issue of such fees.

2. Use of a multiplier to increase the attorney's fee award is not justified in this case.

DISCUSSION

Complainant, Michael Baker, has requested an award of \$34,591.25 in attorney's fees, plus an unspecified multiplier. In addition, he has requested reimbursement for \$563.31 in costs.

Respondent has filed no objection to Complainant's requests.

The Recommended Liability Determination (RLD) entered in this matter gave Respondent 21 days after service of the motion to respond to Complainant's motion for fees. The RLD specifically stated that "failure so to do will be taken as evidence that Respondent does not contest the amount of such fees." Despite that language, Respondent has not filed any response to Complainant's motion for fees. As a result, Respondent has waived the issue of attorney's fees. **Mazzamuro and Titan Security**, ___ Ill. HRC Rep. ___, (1989CN3464, October 21, 1991).

Despite that waiver, Complainant's fee request cannot be granted in its entirety. There are a few cuts, which should be made. Such cuts are appropriate, even in a waiver situation, when a fee petition requests payment for time which clearly is not compensable. See **White and County of Winnebago/Animal Services Dep't**, ___ Ill. HRC Rep. ___, (1989CA0450, April 28, 1992).

There are two types of deductions, which must be made from the time of attorney Aaron Maduff. The first is a charge of .40 hours on January 22, 2000 for filing a motion. Attorneys cannot be compensated for performing basic clerical tasks. **Altes and Illinois Dep't of Employment Security**, 50 Ill. HRC Rep. 3 (1989).

The second type of deduction is for several telephone calls to the Human Rights Commission. From June 12, 2000 to September

14, 2000, there are seven such calls, each for .10 hour, in which the attorney was inquiring about the status of the case. Two of those calls (8/9 and 9/4) appear to have been double billed, but none of the calls should be compensable, as they did nothing to advance the case.

Deducting those two types of entries leaves 76.45 hours of time for Aaron Maduff. Those hours appear to be reasonable and should be accepted. The time for the other two attorneys also appears to be reasonable.

There should be a small deduction, though, in the time claimed for the work of the paralegal. There is an entry for half an hour for filing a motion on August 14, 2000. A paralegal or law clerk's time is compensable only when the work performed is of the type typically performed by an attorney. ***Matejewski and State of Illinois, Dep't of Corrections, Pontiac Correctional Center***, 22 Ill. HRC Rep. 184 (1986). Since an attorney could not be compensated for the clerical task of filing a motion, a paralegal's time also should be deducted. That leaves 18.95 hours of compensable paralegal time.

The claimed hourly rates for Aaron and Michael Maduff are fairly high by Commission standards. However, the claimed rates did not elicit any objection and they are well supported by the accompanying affidavits. As a result, it is recommended that the claimed rates be accepted.

Complainant has requested a fee multiplier, but that request

should be denied. Complainant's attorneys did a professional job of representation, but the case simply does not justify use of a multiplier. To justify a multiplier, the record must reflect "exceptional circumstances," such as unique and difficult issues. **Podgurski and Rackow**, 11 Ill. HRC Rep. 55 (1984), *aff'd sub nom Rackow v. Illinois Human Rights Commission*, 152 Ill. App. 1046, 504 N.E.2d 1344 (2d Dist. 1987). As the Commission stated in **Podgurski**, "[a] multiplier is not justified in every case where the attorney's presentation is exceptionally good." 11 Ill. HRC Rep., at 58. A multiplier would not be appropriate on this record.

Using the requested hourly rates and the deductions discussed above results in attorney's fees of \$34,318.75. That is the recommended fee award.

Finally, there need to be some adjustments made to the requested costs. Complainant's petition requests reimbursement for \$113.10 in copies and 99 cents in postage. Such matters are generally considered part of a law firm's overhead. **Kaiser and MEPC American Properties, Inc.**, 164 Ill. App. 3d 978, 518 N.E.2d 424 (1st Dist. 1987). There also are requests for \$32.62 to Federal Express and \$8.60 for a delivery service. There is nothing to indicate why those matters could not have been handled through the U. S. mail, so they should be deducted here. After those deductions, the remaining costs total \$408.00.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent be ordered to pay to Complainant the sum of \$34,318.75 for attorney's fees reasonably incurred in the prosecution of this matter;

B. That Respondent be ordered to pay to Complainant the sum of \$408.00 as reimbursement for costs reasonably incurred in the prosecution of this matter;

C. That Complainant receive all other relief recommended in the Recommended Liability Determination entered in this matter on August 30, 2001.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: March 13, 2002