This Recommended Order and Decision was followed by an Order and Decision in the 4th Quarter of 2006

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

FRANK ROY LEMERY	)	
	)	
Complainant,	)	
	)	**Charge No. 2002CF0170**
And	)	**EEOC No. 21BA13038**
	)	**ALS No. 11835**
BALMORAL RACING CLUB, INC.	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is before me on Complainant Frank Roy Lemery's Petition for Attorneys' Fees filed on September 29, 2005. Respondent, Balmoral Racing Club, Inc., filed its objections to Complainant's fee petition on January 6, 2006. Complainant filed a reply on January 27, 2006. On July 22, 2005, Chief Administrative Law Judge Mary Kennedy entered a Recommended Liability Determination ("RLD") finding that Complainant was the victim of unlawful retaliation. This matter is now ready for resolution of Complainant's fee petition.

FINDINGS OF FACT

1. Mr. Randal Schmidt is the Director of the Employment Discrimination Project at the Edwin F. Mandel Legal Aid Clinic ("Mandel Legal Aid Clinic"). He is also a Clinical Professor of Law at the University of Chicago Law School. He has taught and worked at the Mandel Legal Aid Clinic of the University of Chicago Law School since January 1980. Mr. Schmidt has represented hundreds of clients in employment discrimination cases before the Human Rights Commission, as well as before the Equal Employment Opportunity Commission and in Federal Court. In addition to representing individual clients in discrimination cases, Mr. Schmidt has been counsel in class actions

challenging the constitutionality of various procedures used to resolve claims of discrimination. Mr. Schmidt was admitted to practice law in Illinois in 1979.

2. The following students from the University of Chicago School of Law worked on this case for Complainant during the years set forth herein: Eric Ha (2001-2003), Heather Kelly Trachtenberg (2002), Timothy Brown (Summer 2002), Jennifer Jones (Summer 2002), Matthew Sorenson (Fall 2002), Susan Campbell (2003), Susanne Courteaux (2003-2004), Averil Edwards (Spring 2004), Tracy Dardick (Summer 2004), Jessica Hall (Summer 2004) and Amanda Weiss (Summer 2005).

3. Mr. Schmidt supervised all of the work done by these law students on the Complainant's case.

4. Mr. Schmidt is requesting a billing rate of $250.00 per hour. He is also requesting a rate of $75.00 per hour for each of the students whose hours are submitted as part of the fee petition (*i.e.,* Suzanne Courtheoux, Tracey Dardick, Eric Ha, Jessica Hall, Heather Kelly Trachtenberg and Amanda Weiss).

5. Mr. Schmidt excluded all of the time of Matthew Sorenson, Timothy Brown, Jennifer Jones, Susan Campbell and Averil Edwards because he opined such time was duplicative of time spent by other students whose time has been submitted. Attached to the fee petition was an Exhibit B evidencing the excluded time and work performed by each of these students.

6. Mr. Schmidt reduced the fee petition of some of the law students because he opined that the work performed was duplicative. Attached to the fee petition was an Exhibit A evidencing the time excluded for these students.

7. The Complainant is requesting $63,082.50 in fees, of which $31,087.50 (124.35 hours) is for Mr. Schmidt's work, and $31,995.00 (426.60 hours) is for the total of the students' work.

8. There is a discrepancy of 4.2 hours between the fee petition (page 2 of Complainant's Petition for Attorney's Fees) and what the total would be for excluded time on Exhibit A.

9. The Complainant has submitted affidavits of Randall Schmidt, Suzanne Courtheoux, Tracy Dardick, Eric Ha, Jessica Hall, Heather Kelly Trachtenberg and Amanda Weiss to support the fee petition.

CONCLUSIONS OF LAW

1. A prevailing complainant is entitled to reasonable attorney's fees and necessary costs incurred to litigate a case.

2. The hourly rates requested are reasonable.

3. The numbers of hours requested are reasonable.

DETERMINATION

Complainant is entitled to an award of $62,770.50 for attorney's fees.

DISCUSSION

Standards for Attorney's Fee Awards

After a finding of liability against Respondent, Complainant is entitled to reasonable attorney's fees and costs incurred in litigating the matter. The purpose of a fee award is to provide an effective means of access to the judicial process to victims of civil rights violations who might not otherwise have the means to retain counsel. Although the provisions of the Illinois Human Rights Act awarding attorney's fees should be accorded liberal construction, the purpose of such awards is not to provide a windfall to prevailing attorneys. **Johnston and City of Chicago Police Department,** ___ *Ill. HRC Rep. ___, (1998CF2836, Aug. 31, 2004).* Every fee petition must be scrutinized to ensure that the amount recovered is fair and reasonable. The concept of reasonableness requires not only that excessive fees be cut, but also that the fees awarded be adequate to ensure competent counsel. **Bard and Cassidy Tire**

Company, *60 Ill. HRC Rep. 97 (1990).* When considering attorney's fee petitions, doubts are to be resolved in favor of the respondent. **Lieber and Southern Illinois University Board of Trustees***, 34 Ill. HRC. Rep. 206 (1987).*

The proper approach to evaluating a fee petition is set forth in the Human Rights Commission's landmark case of **Clark and Champaign Nat'l Bank***, 4 Ill. HRC Rep. 193 (1982).* Under the **Clark** approach, the first step is to determine the appropriate hourly rate for the attorney's work. The next step is to determine the number of hours reasonably expended on the case. Finally, it is necessary to decide if any additional adjustments should be made to the fee award.

Appropriate Hourly Rate

The hourly rate should generally depend on the experience of the attorney and the type of work involved***.*** **Clark** at 199. In this case, Complainant's lead attorney, Mr. Randall Schmidt, submitted an affidavit indicating that he has substantial experience and background in employment discrimination cases.

I am not persuaded by Respondent's argument that Complainant offered no evidentiary support for his claim that the requested hourly rate of $250.00 is reasonable. The Commission has previously held that an attorney's affidavit can be adequate evidence to support an award of $250.00 per hour. **Leseiko and Chase/Ehrenberg & Rosene, Inc**. ___ *Ill. HRC Rep.* ___ *(2000CF1882, Mar. 23, 2004*). I find that Mr. Schmidt's affidavit is adequate evidence to support his hourly fee request.

There is no doubt that Mr. Schmidt is well known and respected for his work in employment discrimination matters. His affidavit is replete with examples to support that he is eminently qualified. For example, Mr. Schmidt is the Director of the Employment Discrimination Project at the Mandel Legal Aid Clinic. He is a Clinical Professor of Law at the University of Chicago School of Law. He has taught and worked at the Mandel Legal Aid Clinic since 1980. In addition to representing individuals before the Illinois

Department of Human Rights and the Commission, as well as in Federal Court, he has represented victims of discrimination in class actions challenging the constitutionality of various procedures used to resolve claims of discrimination.

In addition, when complainants have not submitted affidavits from other attorneys with similar experience in support of requested hourly rates, prior Commission decisions have been considered in analyzing the issue. **Wood and University of Illinois at Urbana/Champaign,** ___ *Ill. HRC Rep.* ___ *(1989SF0560, Nov. 21, 1994).* The Commission recently approved hourly rates of $250.00 for attorneys in the community with experience and qualifications similar to those of Mr. Schmidt. **Johnston and the City of Chicago Police Department**, ___ *Ill. HRC Rep.* ___ *(1998CF2836, Aug. 31, 2004)*. *See also* **Taylor and Amerienvironmental, Inc***.,* ___ *Ill. HRC Rep.* ___ *(2001CE1961, Feb. 3, 2004) (noting the Commission had recently awarded an hourly rate of $250.00 to the most experienced attorneys appearing before it).*

Furthermore, in 2002, the Commission approved the hourly rate of $250.00 for Mr. Schmidt. **Payne and Roseland Christian Health Ministries, Inc., d/b/a Christian Community Health Center***,* ___ *Ill. HRC Rep.* ___ *(2000CF2741, Jan. 27, 2003).* Moreover, in **C.J. v. Department of Human Servcies**, *331 Ill. App.3d 871, 893, 771 N.E.2d 539, 558 (1st Dist. 2002*) the Illinois Appellate Court awarded an identical rate to another Clinical Professor at the University of Chicago. Accordingly, I find no reason to recommend that the Commission deviate from the $250.00 hourly rate requested in this case.

Additionally, I find that it is appropriate to award fees for students supervised at the Mandel Legal Aid Clinic who worked on this case. I also find that the students' rate of $75.00 is reasonable. In the past, the Commission has approved fees for law students at the rate of $50.00 per hour (in 1991 and in 1994) and $75.00 per hour (in 2002). **Keen and Illinois Plant Protection, Inc.***,* ___ *Ill. HRC Rep.* ___ *(1989CF1213,*

April 29, 1994) (University of Chicago's Mandel Legal Aid Clinic students' fees of $50.00 approved). See also **Pridgett and Stuart Clothing Store-Chicago,** ___ *Ill. HRC Rep.* ___ *(1984CF1475, July 26, 1991) (hourly rate of $50.00 is reasonable for law students from the University of Chicago Law School working in the Mandel Clinic under the supervision of Attorney Randall Schmidt)* and **Payne,** ___ *Ill. HRC Rep.* ___ *(2000CF2741, Sept. 10, 2002) (hourly rate of $75.00 approved for University of Chicago law student).*

In sum, I recommend an hourly rate of $250.00 for Mr. Schmidt and an hourly rate of $75.00 for the University of Chicago Mandel Legal Aid Clinic law students.

Number of Hours Reasonably Worked

Once the hourly rate is decided, the next step is to determine whether the hours claimed are reasonable. Complainant filed detailed fee affidavits itemizing the hours billed for services performed by Mr. Schmidt and each of the law students whose fees are now sought. The total hours requested are 124.35 for Mr. Schmidt and 426.60 for the law students. The fee petition is in accordance with 56 Ill. Admin. Code §5300.765 (a)(1) and is sufficient to allow appropriate scrutiny.

I have carefully examined the fee affidavits and I find that the hours are reasonable. The Mandel Legal Aid Clinic began to represent the Complainant in January 2002 before the Illinois Department of Human Rights. Since that time, Complainant's attorneys have represented him in various proceedings before both the Department and the Commission. While the matter was pending at the Department, the Complainant's attorneys represented him at the Fact Finding Conference. Before the Commission, the attorneys briefed and presented oral argument on Respondent's Motion to Dismiss, which was denied. Thereafter, Complainant's attorneys prepared a Motion to Compel and appeared at several hearings on the Motion to Compel, which was granted. Discovery included review of over 100 personnel files. The public hearing

proceeded over the course of three (3) days. Post-hearing, Complainant's attorneys reviewed the transcripts and prepared detailed proposed findings of fact and conclusions of law, as well as a substantial post-hearing memorandum.

According to Mr. Schmidt's attestations, and Exhibit A of the fee petition, the fees have been screened and adjusted for duplicative or unwarranted fees. Exhibit A indicates that a total of 129.95 hours of time worked by some students was excluded from this fee request. Thus, the fee has already been reduced by $9,746.25 ($129.95 multiplied by $75.00). Because there is a discrepancy between the fee petition chart (page 2 of the Complainants Petition for Attorney's Fees) and totals in Exhibit A, I will exclude $315.00 (4.2 multiplied by $75.00) from the total fees requested.

When he prepared the fee petition, Mr. Schmidt attested that he completely eliminated all of the time spent on this case by the following students: Matthew Sorensen, Timothy Brown, Jennifer Jones, Susan Campbell and Averil Edwards. Mr. Schmidt attested that this time was excluded because it was duplicative of time spent by other students on the case. Thus, Exhibit B indicates that a total of 55.60 hours, totaling $4,170.00 in fees (55.60 multiplied by $75.00), was eliminated from the fee petition.

Mr. Schmidt also attested that he and the students exercised billing discretion in preparing the hours listed in their affidavits. Moreover, Mr. Schmidt attested that in making this fee request, many of the hours that he spent supervising the various law students working on this case were not listed in his fee affidavit.

Given all of the foregoing, the hours requested (less the 4.2 hour discrepancy) are reasonable.

Adjustments to Fee Award

Neither party requested that other factors be considered to adjust the fee upward or downward. I find no reason to make an adjustment.

RECOMMENDATION

Based on the foregoing, I recommend that:

1. Respondent pay Complainant $62,770.50 for reasonable attorney's fees in this case.
2. Complainant shall receive all other relief recommended in the RLD entered in this case on July 22, 2005.

HUMAN RIGHTS COMMISSION

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REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: February 1, 2006