



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
NELSON RUIZ,)	
)	
Complainant,)	
)	Charge No.: 2002CP2216
and)	EEOC No.: N/A
)	ALS No.: 12247
OSCO DRUG, INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On August 10, 2005, a Recommended Liability Determination (RLD) was entered in this case. The RLD recommended that Complainant, Nelson Ruiz, and his attorney, Ellen A. Yearwood, pay part of Respondent’s attorneys’ fees as a result of their failure to notify Respondent’s counsel of their intention to dismiss this case. Pursuant to the RLD, Respondent filed a written motion for fees. Complainant filed a written response to that motion. The matter is ready for decision.

FINDINGS OF FACT

1. Respondent is seeking compensation for the work of attorneys William J. Wortel, Mary Margaret Moore, and Christian M. Poland at the rate of \$220.00 per hour for 13.6 hours.
2. Respondent is seeking reimbursement for \$176.10 spent on copying and binding Respondent's post-hearing brief in this matter.
3. The requested hourly rate is reasonable and should be accepted.
4. The requested number of hours is reasonable and should be accepted.
5. The requested costs are reasonable and compensable.

CONCLUSIONS OF LAW

1. Complainant’s failure to give notice of his intention to dismiss this case unreasonably delayed this matter and caused Respondent to incur unnecessary expense.

2. Under controlling Commission case law, Complainant's actions require an appropriate sanction. Refusal to apply such a sanction would be an abuse of discretion on the part of the administrative law judge.

DISCUSSION

This Recommended Order and Decision takes the unusual position of recommending an award of fees in favor of Respondent. The reasons for that recommendation are explained in the Recommended Liability Determination entered on August 10, 2005 and will not be revisited here.

Respondent, Osco Drug, Inc., has requested an award of \$2,992.00 in attorneys' fees. It also has requested reimbursement for \$176.10 in costs. Although Complainant filed a response to Respondent's fee petition, no specific objection was raised to the reasonableness of either request.

The proper approach to a motion for attorneys' fees is set forth in ***Clark and Champaign National Bank***, 4 Ill. HRC Rep. 193 (1982). Under the ***Clark*** approach, the first thing to do is to determine the appropriate hourly rate for the attorneys' work. The next step is the determination of the number of hours reasonably expended. Finally, it is necessary to decide if any adjustments should be made to the award.

In this case, Respondent is requesting compensation for the work of three different lawyers. However, only a single hourly rate is being sought. That rate is \$220.00 per hour. Complainant has not alleged that the requested rate is unreasonable. All three lawyers are partners at their firm and members of the firm's Labor and Employment Service Group. All three have significant experience in employment discrimination litigation. In light of that experience, the requested hourly rate is quite reasonable and should be accepted.

The total number of requested hours is 13.6. That represents the work done on and after March 3, 2005. Respondent has submitted time records to support its request, and the work listed on the submitted records appears to be acceptable. If anything, the requested time

is lower than it could be, because Respondent did not request compensation for the time spent preparing the fee petition. The requested hours are reasonable and should be accepted. 13.6 hours of work at \$220.00 per hour amounts to a fee of \$2,992.00. There is no apparent need for any further adjustment. \$2,992.00 is the recommended fee award.

Finally, there is the issue of costs. Respondent is requesting reimbursement for \$176.10. in costs. Those costs were incurred for copying and binding Respondent's post-hearing brief. Such costs are reasonable and compensable.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered with the following provisions:

A. That Complainant, Nelson Ruiz, and his attorney at the time, Ellen A. Yearwood, be jointly and severally liable to pay to Respondent the sum of \$3,168.10 as compensation for attorney's fees and costs incurred as a result of their misconduct;

B. That the complaint in this matter be dismissed with prejudice as recommended in the Recommended Liability Determination entered in this matter on August 10, 2005.

HUMAN RIGHTS COMMISSION

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

ENTERED: FEBRUARY 24, 2006