

**STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and
Opportunities, *ex rel.* : CHRO No. 0420438
Rosa DiMicco, Complainant : EEOC. No. 16aa400982
v.

Neil Roberts, Inc.,
Respondent : November 16, 2006

Decision on Reconsideration

On September 12, 2006, I issued a final decision on a hearing in damages in an employment discrimination case, wherein a default had previously been entered against the respondent for failure to file an answer to the complaint. The award included \$7220 for back pay, \$3699 for lost benefits, \$6000 for emotional distress and \$4740 for prejudgment interest.

The complainant had also sought an award of \$25,000 for attorney's fees. This request encompassed an "earned fee" of \$16,878.85 coupled with an unsubstantiated and legally unsupportable estimate for future costs of collection. The request was supported only by an affidavit from complainant's counsel, verifying the totals in the submitted bill. My decision noted that while an award of attorney's fees could be made in a matter such as this, it must be based on adequate documentation. *Hemsley v. Eckerhart*, 461 U.S. 424 (1983). I found the documentation to be inadequate and declined to make any award for attorney's fees.

On September 20, 2006, the complainant filed a timely motion pursuant to Section 46a-54-95a of the Regulations of the Connecticut State Agencies for a "narrow"

reconsideration of my decision, to again consider making an award of attorney's fees so as to make the complainant "whole".

On October 12, 2006 I granted the motion for the limited purpose of considering an award for reasonable attorney's fees and costs, as provided by General Statutes § 46a-86 (c). While the complainant's motion implied that I had provided in my September 12, 2006 decision that which was "needed" to support an attorney's fee award, in actuality I had simply made a brief recitation of the law regarding the making of such awards, and listed some of the "most basic necessities" customarily accompanying such requests, none of which had been provided to me at the time of the final decision. As a result of my granting the motion to reconsider, the complainant had the opportunity to supply me with such affidavits and support documents as she wished, consistent with what Connecticut law deemed relevant. The only documentation provided, however, was an unsworn itemized bill with requested hourly rates.

The accepted practice in Connecticut in arriving at a reasonable attorney's fee award is to arrive at the "lodestar" figure, which is defined as the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Hemsley*, supra. Connecticut courts have found that the lodestar calculation may then be adjusted by the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *Ernst v. Deere and Company*, 92 Conn. App. 572 (2005). The *Johnson* factors are (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary

fee for similar work in the community, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. The list is not exclusive and other factors may be applied to determine reasonableness. *Krack v. Action Motors Corp.*, 87 Conn. App. 687, 694-95, cert. denied, 283 Conn. 926 (2005).

Although there is now available for review a detailed itemized bill, counsel for the complainant again failed to provide supporting affidavits as to the accuracy of the time expended or the reasonableness of the hourly rates charged. Nonetheless, Connecticut law is clear that in awarding attorney's fees courts have a general knowledge of what constitutes reasonable compensation. *Piantedosi v. Florida*, 186 Conn. 275 (1982); *Appliances, Inc. v. Yost*, 186 Conn. 673 (1982). Based on the general range of hourly rates approved in matters before the commission for attorneys experienced in employment discrimination matters, and based further on the general range of time expended on a matter which culminated in a default and an unopposed hearing in damages, which hearing consumed but a half-day, I am compelled to discount the lodestar fee request of \$17,282.31 on the basis of "reasonableness." Such a substantial fee request should ordinarily be predicated on a far more spirited and thorough presentation than the somewhat underwhelming performance provided by the complainant, whose case was concluded on her brief testimony alone, without benefit of even a single witness on her behalf.

Furthermore, after reviewing the twelve relevant *Johnson* factors (as delineated above), in conjunction with recent commission decisions predicated on similar claims, items (2), (3), (8) and (12) are factors which dictate that a further discounting is warranted. The question presented was not particularly difficult and went largely undefended (factor 2). The requisite skill level to prosecute the matter was not extraordinary (factor 3). The awards made were not noteworthy by recent standards (factor 8), and the attorney's fee award requested was measurably higher than most requests in similar matters (factor 12). Adjustments for reasonableness and review pursuant to *Johnson* require that the fee request be discounted by forty percent, and an award for attorney's fees is herewith ordered in the amount of \$10,369.39, which sum the respondent is ordered to pay to counsel for the complainant. In all other respects the decision issued September 12, 2006 remains as originally issued and stated.

It is so ordered this day of November 2006.

J. Allen Kerr, Jr.
Presiding Human Rights Referee