

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,040

In re: 3636 16th Street, N.W., Unit A868

Ward One (1)

THE WOODNER APARTMENTS
Housing Provider/Appellant/Cross-Appellee

v.

GLORIA TAYLOR
Tenant/Appellee/Cross-Appellant

ORDER ON MOTION FOR ATTORNEY'S FEES

November 2, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a Final Order issued by the Office of Administrative Hearings (OAH),¹ based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 - 510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ OAH assumed jurisdiction over petitions arising under the Act from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

I. PROCEDURAL HISTORY²

On August 10, 2007, Tenant/Appellee/Cross-Appellant, Gloria Taylor (Tenant), residing in Unit A868 of 3636 16th Street, N.W. (Housing Accommodation), filed tenant petition RH-TP-07-29,040 (Tenant Petition) with the RACD, claiming that the Housing Provider/Appellant/Cross-Appellee, The Woodner Apartments (Housing Provider), violated the Act as follows: (1) the rent increase was larger than the amount of the increase which was allowed by any applicable provision of the Rental Housing Act of 1985; (2) the rent ceiling filed with the Rental Accommodations and Conversion Division is improper; (3) a rent increase was taken while the unit was not in substantial compliance with the D.C. Housing Regulations; (4) services and/or facilities provided in connection with the rental of the unit have been substantially reduced; and (5) retaliatory action has been directed against me by the Housing Provider, manager or other agent for exercising our rights in violation of Section 502 of the Rental Housing Act of 1985. Tenant Petition at 1-12; Record for RH-TP-07-29,040 (R.) at 19-30.

On September 16, 2008, Administrative Law Judge Erika L. Pierson (ALJ) issued a final order: Taylor v. Woodner Apartments, RH-TP-07-29,040 (OAH Sept. 16, 2008) (Final Order). R. at 137-92. The ALJ ruled in favor of the Tenant on all five issues raised in the Tenant Petition, and ordered a rent refund of \$6,763.66, and fined the Housing Provider \$500 for willfully retaliating against the Tenant. Final Order at 43-49; R. at 145-51.

² A detailed factual background prior to this Order on Motion for Attorney's Fees is set forth in the Commission's Decision and Order in Woodner Apartments v. Taylor, RH-TP-07-29,040 (RHC Sept. 1, 2015) (Decision and Order). The Commission sets forth in this decision only the facts relevant to the issues that arise from the Tenant's Motion for Attorney's Fees.

On October 2, 2008, the Housing Provider filed a timely notice of appeal (Notice of Appeal) with the Commission, and on October 20, 2008, the Tenant filed a notice of appeal with the Commission (Cross-Appeal).³ On September 1, 2015, the Commission issued its Decision and Order affirming the ALJ's Final Order in part, and remanding for the ALJ make further findings of fact and conclusions of law regarding whether the Housing Provider had provided clear and convincing evidence to rebut the presumption of retaliation. Decision and Order at 38-49.

On September 16, 2015, the Tenant filed a Motion for Attorney's Fees with the Commission, and a supporting "Memorandum of Points and Authorities in Support of Appellee/Tenant's Motion for Reasonable Attorney's Fees" (Memorandum), seeking compensation for a total of 38.3 hours of work performed before the Commission, between October 17, 2008, and December 17, 2009, by Tenant's counsel, Beth Mellen Harrison (Tenant's Counsel), employed by the Legal Aid Society of D.C. (Legal Aid). *See* Motion for Attorney's Fees, Exhibit B at 3. *See infra* at 7-8. The Motion for Attorney's Fees indicated that the Tenant is requesting a rate of \$270 per hour, based on the Laffey Matrix rate for a Legal Aid attorney with four to seven years of experience.⁴ *See id.* at 2-3; *see also*, Laffey Matrix Fee Schedule at

³ The Commission dismissed the Tenant's Cross-Appeal as untimely. Decision and Order at 32-33.

⁴ The Laffey Matrix begins with rates from 1981-1982 allowed and established by the U.S. District Court for the District of Columbia in the case of Laffey v. Northwest Airlines, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is a matrix form comprised of hourly rates for attorneys of varying experience levels and paralegals/law clerks, which has been compiled by the Civil Division of the United States Attorney's Office for the District of Columbia. It has been used since then by courts in the District to reflect billing rates for attorneys in the Washington, D.C. area with various degrees of experience. *See, e.g., Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40 (D.D.C. 2011). The Laffey Matrix is intended to be used in cases where a fee shifting statute permits a prevailing party to recover "reasonable" attorney's fees. In that regard, it is similar to Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(k), the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E) and the EAJA, 28 U.S.C. §2412(b). Rates for subsequent years after 1981-1982 are adjusted annually based on cost of living increases for the Washington, D.C. area. The Commission has awarded legal fees to *pro bono* attorneys on the basis of the Laffey Matrix. *See, e.g., Caesar Arms,*

Laffey Matrix 2003-2014, www.justice.gov/sites/default/files/usao-dc/legacy/2013/09/09/Laffey_Matrix%202014.pdf (last visited Oct. 27, 2015). *See infra* at 7-8.

On September 28, 2015, the Housing Provider filed “Appellant’s Opposition to Appellee’s Motion for and Award of Attorney’s Fees” (Opposition). The Opposition primarily contends that the Motion for Attorney’s Fees is premature, because the “prevailing party” cannot be determined until after the proceedings on remand have concluded. Opposition at 1-4. Additionally, the Housing Provider asserts that the amount requested by the Tenant is too high, given that this case involved a “challenge to a rent increase, which did not raise a novel or difficult question of law.” *Id.* at 4-6.

III. DISCUSSION

Under D.C. OFFICIAL CODE § 42-3509.02 (2001),⁵ the Commission may award reasonable attorney’s fees to the prevailing party in an action before the Commission. This provision creates a presumptive award of attorney’s fees for prevailing tenants in both tenant-initiated and landlord-initiated proceedings. *See, e.g., Loney v. D.C. Rental Hous. Comm’n*, 11 A.3d 753, 759 (D.C. 2010); *Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm’n*, 677 A.2d 46, 47 (D.C. 1996); *Hampton Courts Tenants’ Ass’n v. D.C. Rental Hous. Comm’n*, 573 A.2d 10 (D.C. 1990); *Cascade Park Apts. v. Walker*, TP 26,197 (RHC Mar. 18, 2005). A prevailing party “is ‘a party in whose favor a judgment is rendered, regardless of the amount of damages awarded.’”

LLC v. Lizama, RH-TP-07-29,063 (RHC Feb. 28, 2014) (awarding hourly rates lower than applicable Laffey Matrix rates to supervising attorneys and student attorneys from the University of the District of Columbia David A. Clark School of Law); *Loney v. Tenants of 710 Jefferson St., N.W.*, SR 20,089 (RHC Jan. 29, 2013) (awarding hourly rates lower than applicable Laffey Matrix rates for counsel from the Legal Aid Society of Washington, D.C.).

⁵ D.C. OFFICIAL CODE § 42-3509.02 provides the following: “The Rent Administrator, Rental Housing Commission, or a court of competent jurisdiction may award reasonable attorney’s fees to the prevailing party in any action under this chapter, except actions for eviction authorized under § 42-3505.01.”

Hardy v. Sigalas, RH-TP-09-29,503 (RHC July 21, 2014); Lizama, RH-TP-07-29,063; Cascade Park Apts., TP 26,197 (quoting BLACK'S LAW DICTIONARY 1145 (7th ed. 1999)). Moreover, the District of Columbia Court of Appeals (DCCA) has held that, in a court's discretion, prevailing tenants should generally be awarded attorney's fees. Tenants of 500 23rd Street, N.W. v. D.C. Rental Hous. Comm'n, 617 A.2d 486, 488 (D.C. 1992) (quoting Ungar v. D.C. Rental Hous. Comm'n, 535 A.2d 887, 892 (D.C. 1987)); Lizama, RH-TP-07-29,063; *see also* Cascade Park Apts., TP 26,197 (quoting Slaby v. Bumper, TPs 21,518 & 22,521 (RHC Sept. 21, 1995) (a prevailing party "merely has to 'succeed on any significant issue which achieves some of the benefit the parties sought in bringing the suit.'"); Chamberlain Apts. Tenants' Ass'n v. 1429-51 Ltd. P'ship, TP 23,984 (RHC July 7, 1999).

Contrary to the Housing Provider's assertion in its Opposition, the Commission's review of the record on appeal reveals that the Tenant prevailed on four out of the five issues raised by the Housing Provider in its Notice of Appeal. Decision and Order at 30-58. The Commission affirmed the ALJ's determinations that the Tenant is entitled to an elderly exemption, that the Tenant proved a reduction in services, and that two rent increases were improperly implemented while there were housing code violations in the Tenant's unit.⁶ *Id.* at 50-58. As a result of the Commission's determination of these issues, the Tenant remains entitled to the entire \$6,763.66 in rent refunds awarded by the ALJ. *Id.*; *see, e.g.*, Lizama, RH-TP-09-29,063; Cascade Park Apts., TP, 26197.

The Commission remanded solely on the issue of retaliation, for further findings of fact and conclusions of law. *Id.* at 38-49. The Commission's determination regarding the issue of

⁶ The Commission dismissed one of the Housing Provider's issues for failing to state a clear and concise statement of error. Decision and Order at 33-34.

retaliation did not affect any damages owed to the Tenant, but instead only vacated the \$500 fine payable by the Housing Provider to the District of Columbia. *Id.* at 49.

Based on the foregoing, the Commission is satisfied that the Tenant is a prevailing party in the proceedings on appeal to the Commission for purposes of D.C. OFFICIAL CODE § 42-3509.02, and is therefore entitled to an award of attorneys' fees. *See Loney*, 11 A.3d at 759; *Lenkin Co. Mgmt.*, 677 A.2d at 47; *Hampton Courts Tenants' Ass'n*, 573 A.2d at 10; *Cascade Park Apts.*, TP 26,197.

Under the Commission's regulations, any fee-setting inquiry starts with the "lodestar," which is a reasonable hourly rate multiplied by the number of hours reasonably expended on a task. *See* 14 DCMR § 3825.8(a) (2004);⁷ *see also Sindram v. Tenacity Grp.*, RH-TP-07-29,094 (RHC Sept. 14, 2011); *Cascade Park Apts.*, TP 26,197; *Reid v. Sinclair*, TP 11,334 (RHC Nov. 9, 1999). The determination of the amount of reasonable attorney's fees is committed to the discretion of the Commission. *See Cascade Park Apts.*, TP 26,197; *Dey v. L.J. Dev., Inc.*, TP 26,119 (RHC Nov. 17, 2003); *Town Ctr. Mgmt. Corp. v. Pettaway*, TP 23,538 (RHC Feb. 29, 1996) (citing *Alexander v. D.C. Rental Hous. Comm'n*, 542 A.2d 359, 361 (D.C. 1988)).

Under the DCAPA, the proponent of a rule or order has the burden to prove all facts essential to their claim by a preponderance of the evidence. D.C. OFFICIAL CODE § 2-509(b);⁸ *see, e.g., Barac Co. v. Tenants of 809 Kennedy St., N.W.*, VA 02-107 (RHC Sept. 27, 2013); *Wilson v. KMG Mgmt., LLC*, RH-TP-11-30,087 (RHC May 24, 2013); *Jassiem v. Jonathan Woodner Co.*, TP 27,720 (RHC Sept. 4, 2009). In this case, as the proponent of the Motion for

⁷ The regulation states as follows: "The starting point shall be the lodestar, which is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate." 14 DCMR § 3825.8(a).

⁸ D.C. OFFICIAL CODE § 2-509(b) provides, in relevant part, as follows: "In contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof [.]"

Attorney's Fees, the burden is on the Tenant to prove by a preponderance of evidence both a reasonable hourly rate for the services of, and the number of hours reasonably expended by, Tenant's Counsel for the entire time period of representation. Loney, SR 20,089 (RHC June 6, 2012) ("[c]ounsel seeking an award of legal fees has the burden of proof to document and support the amount and reasonableness of the . . . rates claimed" (citing Webb v. County Bd. of Educ., 471 U.S. 234, 242 (1985))); *see also* D.C. OFFICIAL CODE § 2-509(b); Barac Co., VA 02-107; Wilson, RH-TP-11-30,087; Jassiem TP 27,720.

A. Reasonable Hourly Rate

The first element of the lodestar calculation requires the Commission to determine a reasonable hourly rate "as measured by prevailing market rates in the relevant community for attorneys of similar experience and skill." 14 DCMR § 3825.8(a); *see* Hampton Courts Tenants Ass'n, 599 A.2d at 1115 n.7; Dey, TP 26,119; Reid, TP 11,334; Hampton Courts Tenants' Ass'n v. William C. Smith Co., CI 20,176 (RHC May 20, 1988). The DCCA has recently held that Laffey Matrix rates were presumptively reasonable for attorneys employed by Legal Aid who represent tenants in cases arising under the Act. Tenants of 710 Jefferson St. v. D.C. Rental Hous. Comm'n, No. 13-AA-199, 2015 LEXIS 376 (D.C. Aug. 20, 2015). The DCCA explained that it was not directing that the Laffey Matrix must be applied in every case where the requesting attorney does not have established billing rates, but that "it is a good place to start . . . [and] in most cases will be the best place to end lest litigation over attorney's fees overshadow the underlying case." *Id.* at 31.

Here, the Tenant requested an hourly rate of \$270 for the work of Tenant's Counsel before the Commission, based on the Laffey Matrix rate for an attorney with between four and seven years of experience. Motion for Attorney's Fees, Exhibit B at 2-3. Tenant's Counsel

asserted that she is an attorney for the Legal Aid, a “nonprofit organization representing low-income clients free of charge” and that she does not have a customary hourly rate. Memorandum at 6.

Tenant’s Counsel also stated that she graduated from Harvard Law School in 2003, and was admitted to the Maryland Bar in 2003, and the District of Columbia Bar in 2006. Motion for Attorney’s Fees, Exhibit B at 1. She asserted that she has worked for Legal Aid in various roles since 2005, focusing exclusively on housing cases. *Id.* Furthermore, Tenant’s Counsel stated that at the time that she worked on this appeal, she was in her sixth and seventh years of practice as an attorney. *Id.* at 2.

Although the Housing Provider asserts that the requested rate is not reasonable, the Commission notes that the Housing Provider has not provided any evidence to support this bare assertion such as, for example, cases where the Commission has awarded attorneys with similar experience less than \$270 per hour, or affidavits from attorneys with six to seven years of experience that practice in rental housing that charge less than \$270 per hour. Opposition at 5. Moreover, the Housing Provider has not addressed or distinguished the DCCA’s ruling in Tenants of 710 Jefferson St., No. 13-AA-199, 2015 LEXIS 376, that the Laffey Matrix is generally reasonable for attorneys who do not otherwise have a customary billing rate. *Id.*

Finally, the Commission’s review of the Laffey Matrix confirms that during the relevant time period of October 2008 through December 2009, the billing rate for an attorney with Tenant’s Counsel’s experience was \$270 per hour. *See Laffey Matrix Fee Schedule; see also supra* at 3-4.

For the reasons stated *supra*, the Commission in the exercise of its reasonable discretion determines for purposes of the lodestar calculation under 14 DCMR § 3825.8(a) that the reasonable rate for the time of Tenant's Counsel is \$270 per hour.

B. Reasonable Hours Expended

To satisfy the second element of the lodestar calculation, that the hours claimed were reasonably expended on a case, a fee applicant must submit "sufficiently detailed information about the hours logged and the work done." See Hampton Courts Tenants' Ass'n, 599 A.2d at 1116; see also Am. Petroleum Inst. v. EPA, 72 F.3d 907, 915 (D.C. Cir. 1996); Nat'l Ass'n of Concerned Veterans v. Sec'y of Def., 675 F.2d 1319, 1327 (D.C. Cir. 1982); Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980). Commission decisions have held that a "reasonable" number of hours is a function of a number of factors, such as: (1) whether the time records are contemporaneous, complete and standardized rather than broad summaries of work done and hours logged; (2) whether an attorney skilled in the specialized field of rental housing would have logged the same number of hours for similar work; and (3) whether the hours appear excessive, redundant or otherwise unnecessary. See Hampton Courts Tenants' Ass'n, 599 A.2d at 16-17; Town Ctr. Mgmt. Corp., TP 23,538; Hampton Courts Tenants' Ass'n, CI 20,176.

The Tenant's Motion for Attorney's Fees includes a Declaration of Beth Mellen Harrison Regarding Attorney's Fees (Declaration), detailing the time spent by Tenant's Counsel on this case. See Motion for Attorney's Fees, Exhibit B. The Declaration indicates that Tenant's Counsel began working on this case on October 17, 2008, and her responsibilities included researching and writing the Tenant's brief on appeal, and preparing for oral argument before the Commission. See *id.* at 3-4. The Declaration contains approximately two pages of contemporaneous time entries detailing the work that Tenant's Counsel performed in relation to

the Tenant's case before the Commission. *Id.* Where more than one task was performed on a particular date, Tenant's Counsel has indicated how much time was spent on each individual task. *See id.* The Declaration indicates that Tenant's Counsel spent a total of 38.3 hours on this case. *Id.*

The Commission notes that the Motion for Attorney's Fees indicates that the requested number of hours, 38.3, "includes substantial billing discretion." Memorandum at 8 n.4. Tenant's Counsel indicates that approximately thirty hours of time spent meeting and corresponding with the Tenant, the Housing Provider's attorney, and the Commission during the years that the appeal was pending were not included in the request. *Id.* Moreover, the time spent by the Tenant's prior counsel of record at Legal Aid was not included in the request. *Id.*

The Commission's review of the Declaration indicates that Tenant's Counsel provided contemporaneous records of the work done during the time logged. Motion for Attorney's Fees, Exhibit B at 3-4. Moreover, the Commission has no basis to conclude that an attorney skilled in the specialized field of rental housing would have spent less time than Tenant's Counsel for similar work, particularly where Tenant's Counsel has represented that her practice focuses exclusively on housing cases. *See, e.g., Hampton Courts Tenants' Ass'n*, 599 A.2d at 1115 n.7; *Gelman Mgmt. Co. v. Campbell*, RH-TP-09-29,715 (RHC April 22, 2015); *Smith Prop. Holdings Five (D.C.) L.P. v. Morris*, RH-TP-14-28,794 (RHC Aug. 19, 2014); *Dey*, TP 26,119; *Reid*, TP 11,334; *Hampton Courts Tenants' Ass'n*, CI 20,176.

The Commission notes that some entries appear to be redundant, for example Tenant's Counsel indicated that she "revised brief" on both September 30, 2009, and October 1, 2009. *Id.* However, this redundancy appears to be in the nature of Tenant's Counsel maintaining detailed, contemporaneous records of the work performed, rather than performing tasks that were

excessive or otherwise unnecessary. *Id.* Although Tenant's Counsel logged time for preparing for oral argument on six separate days for a total of 11.4 hours, the Commission's review of the record in this case indicates that the Commission's hearing was continued twice at the request of the Housing Provider, thus explaining the somewhat duplicative nature of the preparations for her oral argument. See Woodner Apts. v. Taylor, RH-TP-07-29,040 (RHC May 29, 2009) (Order on Consent Motion for Continuance); Nov. 10, 2009 Notice of Rescheduled Hearing; Housing Provider's Consent Motion to Continue; Oct. 16, 2009 Notice of Rescheduled Hearing.

Accordingly, based on its review of the record, the Commission is satisfied that substantial evidence supports that the 38.3 billable hours requested by Tenant's Counsel are reasonable. See Hampton Courts Tenants' Ass'n, 599 A.2d at 16-17; Town Ctr. Mgmt. Corp., TP 23,538; Hampton Courts Tenants' Ass'n, CI 20,176.

C. Lodestar Amount

As previously noted *supra* at 6, the Commission's fee-setting inquiry starts with the "lodestar," which is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate. See 14 DCMR § 3825.8(a); *see also* Sindram, RH-TP-07-29,094; Cascade Park Apts., TP 26,197; Reid, TP 11,334. The table below shows the Commission's calculation of the lodestar amounts for Tenant's Counsel using the hours and hourly rates determined *supra* at pp. 7-10:

HOURS EXPENDED	HOURLY RATE	LODESTAR
38.3	\$270/hour	\$10,341.00

Pursuant to 14 DCMR § 3825.8(a), the Commission approves the following "lodestar" amount of fees for Tenant's Counsel: \$10,341.00.

D. Lodestar Adjustment Factors

The Commission may make adjustments to the “lodestar” amount upon consideration of the following factors:

- (1) the time and labor required;
- (2) the novelty, complexity, and difficulty of the legal issues or 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 or prevailing rate in the community for attorneys with similar experience;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorney;
- (10) the undesirability of the case;
- (11) the nature and length of the professional relationship with the client;
- (12) the award in similar cases; and
- (13) the results obtained, when the moving party did not prevail on all the issues.

14 DCMR § 3825.8(b).

Having calculated the lodestar amounts of the fees for Tenant’s Counsel, the Commission will proceed to consider whether any adjustments to the lodestar amount are warranted under 14 DCMR § 3825.8(b). The Commission’s determination will be based upon its review of the record, fee awards in other cases under the Act, and its “past experience with attorney services in the rental housing area.” *See Kuratu v. Ahmed, Inc.*, RH-TP-07-28,985 (RHC May 10, 2013);

Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Jan. 29, 2013); Hampton Courts Tenants' Ass'n, CI 20,176 at 8-9; Reid, TP 11,334 at 17.

The Commission notes that the Housing Provider asserts that downward adjustments to the lodestar are warranted by factors one, two, three, four, six, and seven. Opposition at 5-6. The Housing Provider contends that this was a standard “landlord and tenant dispute based on a rent increase claim.” *Id.* at 5. The only complicated issue, according to the Housing Provider, was the retaliation claim, regarding which the Tenant did not prevail. *Id.*

(1) The time and labor required

This factor has been addressed by the Commission in its determination of an appropriate amount of hours expended by Tenant’s Counsel in the instant case. *See supra* at 8-11. The Commission is satisfied that this factor does not warrant any adjustment of the lodestar amount. *See, e.g., Gelman Mgmt. Co.*, RH-TP-09-29,715; Smith Prop. Holdings Five (D.C.) L.P., RH-TP-14-28,794.

(2) The novelty, complexity, and difficulty of the legal issues or questions

Based upon its review of the record, the Commission in its discretion does not regard the issues or questions addressed by Tenant’s Counsel in the instant case to be of unusual or extraordinary novelty, complexity or difficulty—both in the context of practitioners in the specialized field of rent control and rental housing under the Act and in the context of typical actions brought under the provisions of the Act applicable to this case—to warrant any adjustment of the lodestar in this case. *See, e.g., Gelman Mgmt. Co.*, RH-TP-09-29,715; Smith Prop. Holdings Five (D.C.) L.P., RH-TP-14-28,794. Moreover, the Commission does not regard the issues as so simple or straightforward as to warrant any other adjustment of the lodestar in this case. *See id.*

(3) The skill requisite to perform the legal service properly

Based upon its review of the record, the Commission in its discretion does not regard the legal skill required of Tenant's Counsel to perform her service properly on behalf of the Tenant in the instant case to be necessarily enhanced or increased when compared to the customary skill level of other attorneys with experience in the representation of clients under the Act. *See, e.g., Gelman Mgmt. Co.*, RH-TP-09-29,715; *Smith Prop. Holdings Five (D.C.) L.P.*, RH-TP-14-28,794. While the Commission is satisfied that Tenant's Counsel performed the requisite litigation, research, evidentiary and argument skills in a very professional manner in the instant case, the Commission does not regard the required legal skills for Tenant's Counsel to warrant any adjustment of the lodestar amount. *See id.*

(4) The preclusion of other employment by the attorney, due to acceptance of the case

The Commission observes that although the Housing Provider asserts that this factor warrants a downward adjustment of the lodestar amount, Tenant's Counsel has stated that her work on this case constituted "a measurable portion of [her] caseload, requesting resources that Legal Aid otherwise would have devoted to representing other low-income clients." Memorandum at 9. However, the Commission notes that any acceptance by Legal Aid of a particular case will necessarily preclude its attorneys from representing eligible and worthy clients in other cases. *See, e.g., Lizama*, RH-TP-07-29,063; *Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799. Therefore, Commission is satisfied that this factor does not warrant any adjustment of the lodestar amount. *See id.*

(5) The customary fee or prevailing rate in the community for attorneys with similar experience

This factor has been addressed by the Commission in its determination of the appropriate hourly rate for Tenant's Counsel in the instant case, *supra* at 7-8. *See, e.g., Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799; *Hampton Courts Tenants' Ass'n*, CI 20,176; *Reid*, TP 11,334. The Commission is satisfied that this factor does not warrant any adjustment of the lodestar amount.

(6) Whether the fee is fixed or contingent

This factor has been addressed by the Commission in its determination of the appropriate hourly rate for Tenant's Counsel in the instant case. *See supra* at 7-8. The Commission is satisfied that this factor does not warrant any adjustment of the lodestar amount. *See, e.g., Lizama*, RH-TP-07-29,063; *Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799.

(7) Time limitations imposed by the client or circumstances

The Commission observes that Tenant's Counsel has not asserted that there were any time limitations imposed on her by the Tenant or the circumstances of this case. Motion for Attorney's Fees; Memorandum. The Commission is satisfied that this factor does not warrant any adjustment of the lodestar amount. *See, e.g., Lizama*, RH-TP-07-29,063; *Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799.

(8) The amount involved and the results obtained (including results obtained, when the moving party did not prevail on all the issues)⁹

The calculation of attorney's fees may be adjusted based on "the results obtained, when the moving party did not prevail on all the issues." 14 DCMR § 3825.8(b)(13). The Commission observes that, although the Tenant did not prevail on all of the issues on appeal, the Tenant did prevail on the entire amount of damages claimed by the Tenant, resulting in the

⁹ The discussion regarding this factor also incorporates consideration of factor thirteen (13) under 14 DCMR § 3825.8(b).

retention of the entire \$6,763.66 in rent refunds awarded by the ALJ to the Tenant. On balance, the Commission determines in its discretion that no adjustment of the lodestar amount of fees is warranted based on this factor. *See, e.g., Gelman Mgmt. Co.*, RH-TP-09-29,715; *Kuratu*, RH-TP-07-28,985

(9) The experience, reputation, and ability of the attorney

Based upon its review of the record, and in the exercise of its reasonable discretion, the Commission observes that the appropriate quality of the representation of the Tenant by Tenant's Counsel did not require or otherwise necessitate enhanced or unusual legal experience, reputation and abilities in the context of all attorneys who are customarily engaged in the representation of clients in similar cases in the specialized field of rent control under the Act. *See, e.g., Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799; *Hampton Courts Tenants' Ass'n*, CI 20,176 at 8 - 9; *Reid*, TP 11,334 at 17. Thus, in the exercise of its reasonable discretion, the Commission determines that this factor does not warrant any adjustment of the lodestar amount. *See id.*

(10) The undesirability of the case

Because Legal Aid is specifically organized to take on "undesirable cases" insofar as its attorneys represent individuals whose lower income status and inability to afford legal fees of private law firms may render their cases as "undesirable" to such private law firms, the Tenant's case appears to fit appropriately within the type of "undesirable" case that Legal Aid's attorneys would ordinarily undertake. *See, e.g., Lizama*, RH-TP-07-29,063; *Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799. The Commission determines in its discretion that this appeal is not of such "undesirability," when compared with other rental housing cases brought under the Act, as to warrant adjustment of the lodestar amount of fees. *See id.*

(11) The nature and length of the professional relationship with the client

Based upon its review of the record, the nature and length of the professional, attorney-client relationship between the Tenant and Tenant's Counsel does not appear to the Commission to be unusual in length, difficulty or in substance in the context of attorneys ordinarily and customarily practicing before the Commission in the specialized field of rent control. *See Hampton Courts Tenants' Ass'n*, 599 A.2d at 16-17; *Town Ctr. Mgmt. Corp.*, TP 23,538; *Hampton Courts Tenants' Ass'n*, CI 20,176. Therefore, the Commission in its discretion does not consider this factor to warrant any adjustment of the lodestar amount of fees.

(12) The award in similar cases

Based upon its review of the record in this case and extensive Commission case law, the Commission is satisfied that the award by OAH to the Tenant in this case was not so extraordinary or unusual to warrant any adjustment of the lodestar amount. *See, e.g., Lizama*, RH-TP-07-29,063; *Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799.

(13) The results obtained (when the moving party did not prevail on all the issues)

The discussion of this factor was incorporated in the Commission's consideration of factor eight (8) under 14 DCMR § 3825.8(b). *See supra* at pp. 15 n.9.

The Commission has given careful consideration to each of the factors in 14 DCMR § 3825.8(b) with respect to the representation of the Tenant by Tenant's Counsel. The Commission's review of the record indicates that (1) Tenant's Counsel provided the Tenant with a proper, reasonable, and satisfactory quality of legal services, and (2) neither Tenant's Counsel's performance nor the nature and complexity of the case warranted upward or downward adjustments to the lodestar amount of the fee request. *See supra* at 11-17.

Thus, based upon its review of the record, the Commission, in the exercise of its reasonable discretion, determines that Tenant's Counsel's representation of the Tenant does not warrant any adjustment to the lodestar amount of the fee request under 14 DCMR § 3825.8(b). *See supra* at 9-17.

IV. CONCLUSION

Based upon its consideration of the fee request by Tenant's Counsel in light of the requisite factors regarding the lodestar amount of fees in 14 DCMR §§ 3825.8(a)-(b), *see supra* at 11-17, and the Commission's customary considerations regarding the reasonableness of the fee request, *see supra* at 4-11, the Commission in the exercise of its reasonable discretion grants the Tenant's request for attorney's fees in the amount of \$10,341.00.

SO ORDERED


PETER B. SZEGEDY-MASZAK, CHAIRMAN

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1, provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission...may seek judicial review of the decision...by filing a petition for review in the District of Columbia Court of Appeals. Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk

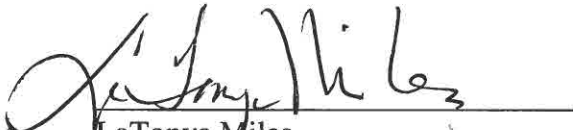
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION FOR ATTORNEY'S FEES** in RH-TP-07-29,040 was mailed, postage prepaid, by first class U.S. mail on this 2nd day of **November, 2015** to:

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