

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-07-29,063

*In re:* 3435 Holmead Place, N.W., Unit 609

Ward One (1)

**CAESAR ARMS, LLC**  
Housing Provider/Appellant

v.

**JUANA LIZAMA, et al.**  
Tenant/Appellee

**ORDER ON MOTION FOR ATTORNEYS' FEES**

February 18, 2014

**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),<sup>1</sup> 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.

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<sup>1</sup> The Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from the RACD and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE §2-1831.01, - 1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the RACD were transferred to the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008)).

## I. PROCEDURAL HISTORY<sup>2</sup>

On September 13, 2007, Tenants/Appellees Juana Lizama and Jose Hernandez (Tenants), residents of 3435 Holmead Place, N.W., Unit 609 (Housing Accommodation) filed Tenant Petition RH-TP-07-29,063 (Tenant Petition) with RACD, asserting that the Housing Provider had violated the Act as follows: (1) a rent increase was taken while the Housing Accommodation was not in substantial compliance with the D.C. Housing Regulations; and (2) services and/or facilities provided to the Housing Accommodation have been substantially reduced. Tenant Petition at 3-4; Record for RH-TP-07-29,063 (R.) at 27-28,

On May 27, 2010, the ALJ issued a final order, Lizama v. Caesar Arms, LLC, RH-TP-07-29,063 (OAH May 27, 2010) (Final Order),<sup>3</sup> and an Order Granting Motion for Attorney's Fees. On June 9, 2010, the Housing Provider filed two Notices of Appeal with the Commission, which the Commission, in its discretion, interpreted as raising the following issues:

- (1) Whether the ALJ erred in determining that the Housing Provider had illegally raised the Tenants' rent while substantial housing code violations existed and that the Housing Provider substantially reduced the Tenants' services;
- (2) Whether the ALJ erred in determining that the Housing Provider acted in bad faith and is liable for treble damages;
- (3) Whether the ALJ erred in determining that the Housing Provider willfully violated the Act under D.C. OFFICIAL CODE § 42-3509.01(b) (2001);
- (4) Whether the Commission, in the event that it declines to reverse the fines imposed pursuant to D.C. OFFICIAL CODE § 42-3509.01(b) (2001), may substantially reduce the amount of the fines;

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<sup>2</sup> The factual background prior to the Motion for Attorneys' Fees is set forth in the Commission's Decision and Order in Caesar Arms, LLC v. Lizama, RH-TP-07-29,063 (RHC Sept. 27, 2013) (Decision and Order). The Commission sets forth here only the facts relevant to the issues that arise from the Motion for Attorneys' Fees.

<sup>3</sup> The Final Order issued by the ALJ on May 27, 2010, was the ALJ's Second Amended Final Order. For the complete procedural history of this case, please refer to the Commission's September 27, 2013 Decision and Order.

- (5) Whether the ALJ committed error because neither Respondent nor Respondent's counsel received a copy of the Motion for Attorneys' Fees;
- (6) Whether the ALJ erred when she deemed the Tenants to have prevailed on issues that are still pending on appeal; and
- (7) Whether the amount of hours for which the Tenants' counsel were awarded fees was excessive because the ALJ failed to base the award on a reduced number of hours to account for the additional amount of time that was expended due to the make-up and nature of Tenants' legal team.

See Decision and Order at 17-18. The Commission held a hearing on this matter on October 19, 2011.

In its Decision and Order entered on September 27, 2013, the Commission affirmed both the ALJ's Final Order, and the ALJ's Order Granting Motion for Attorney's Fees. See Decision and Order at 40. On October 9, 2013, the Tenant filed "Appellees' Motion for Attorney's Fees" (Motion for Attorneys' Fees).

### **III. DISCUSSION**

Under D.C. OFFICIAL CODE § 42-3509.02 (2001),<sup>4</sup> the Commission may award reasonable attorney's fees to the prevailing party in an action before the Commission. D.C. OFFICIAL CODE § 42-3509.02 (2001). 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 Apartments v. Walker, TP 26,197 (RHC Mar. 18, 2005). The Commission is satisfied, based on the procedural history

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<sup>4</sup> D.C. OFFICIAL CODE § 42-3509.02 (2001) provides: "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."

discussed *supra* at 2-3, that the Tenants prevailed on their appeal to the Commission for purposes of D.C. OFFICIAL CODE § 42-3509.02 (2001), and are 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 Apartments, TP 26,197.

Under the Commission's regulations, any 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) (2004).<sup>5</sup> See also Sindram v. Tenacity Grp., RH-TP-07-29,094 (RHC Sept. 14, 2011); Cascade Park Apartments, 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 Apartments, 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)).

#### **A. Reasonable Hours Expended**

To satisfy the first 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 v. D.C. Rental Hous. Comm'n, 599 A.2d 1113, 1116 (D.C. 1991). 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

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<sup>5</sup> 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) (2004).

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 v. William C. Smith, Co.*, CI 20,176 (RHC July 20, 1990).

The Motion for Attorneys' Fees requested attorneys' fees for Student Attorneys Sarah Bardos and Achiya Yaffe, and Supervising Attorneys Edward Allen and Alysia Robben.

**1. Hours Requested By Student Attorneys Sarah Bardos and Achiya Yaffe.**

The Motion for Attorneys' Fees indicates that Sarah Bardos was a third-year law student at the University of the District of Columbia David A. Clark School of Law (UDC School of Law), and was enrolled in the Housing and Consumer Law Clinic from January 2011 through May 2012. *See* Motion for Attorneys' Fees at 9. Ms. Bardos' Affidavit, attached to the Motion for Attorneys' Fees, indicates that she began working on this case on October 5, 2011, and her responsibilities were to "research, prepare for, and present oral arguments on the appeal of this case before the Rental Housing Commission." *See* Bardos Affidavit at 1-2. Ms. Bardos' Affidavit contains approximately one (1) page of contemporaneous time entries detailing the work that she performed in relation to the Tenants' case before the Commission. *See id.* at 2-3. Where more than one task was performed on a particular date, Ms. Bardos has indicated how much time was spent on each individual task. *See id.* The time entries in Ms. Bardos' Affidavit total 15.7 hours. *See id.* at 1-3. Supervising Attorney Edward Allen discounted the total number of hours for which Ms. Bardos is seeking fees by approximately 33% to 10.5 hours. *See* Bardos Affidavit at 3; Motion for Attorneys' Fees at 11, 15.

The Affidavit of Achiya Yaffe indicates that he is a full-time student at the UDC School of Law, and has been enrolled in the Housing and Consumer Law Clinic since August 26, 2013. *See* Yaffe Affidavit at 1. Mr. Yaffe's Affidavit indicates that he began working on this case on October 4, 2013, and his primary responsibility was to "research and prepare the motion for attorney's fees." *See id.* Mr. Yaffe's Affidavit contains one half (0.5) page of contemporaneous time entries detailing the work that he performed in this case before the Commission. *See id.* at 1-2. Where more than one task was performed on a particular date, Mr. Yaffe has indicated how much time was spent on each individual task. *See id.* Mr. Yaffe's Affidavit states that he logged a total of 15.3 hours; however, Supervising Attorney Edward Allen substantially discounted the total number of hours for which Mr. Yaffe is seeking fees by approximately 75% to 3.8 hours. *See id.* at 2; Motion for Attorneys' Fees at 15.

The Commission's review of each of the respective Affidavits submitted by the two (2) student attorneys indicates that each contained contemporaneous, detailed records of the work done during the time logged. *See* Bardos Affidavit; Yaffe Affidavit. Although the Commission notes that the student attorneys are inexperienced in the area of rental housing, the Commission's review of the Motion for Attorneys' Fees reveals that the hours billed by each of the student attorneys were substantially reduced by Mr. Allen from their original totals, respectively, from 33% to 75% to approximate the amount of time a practicing attorney would have spent performing similar tasks. *See* Motion for Attorneys' Fees at 11; Bardos Affidavit; Yaffe Affidavit. *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 Commission determines that the reductions in the hours billed by the two (2) student attorney reasonably account for any excessiveness, redundancy or any lack of professional experience in their work on this appeal

when compared to time that would be reasonably logged for similar appellate work on behalf of clients by attorneys skilled in the specialized field of rental housing. *See, e.g. Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799; *Cascade Park Apartments*, TP 26,197. *See also Hampton Courts Tenants' Ass'n*, 599 A.2d at 16-17; *Town Ctr. Mgmt. Corp.*, TP 23,538; *Hampton Courts Tenants' Ass'n v. William C. Smith, Co.*, CI 20,176 (RHC July 20, 1990).

Accordingly, based on its review of the record, the Commission is satisfied that substantial evidence supports that the number of billable hours requested by the student attorneys are reasonable – 10.5 for Ms. Bardos, and 3.8 for Mr. Yaffe. *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.

## **2. Hours Requested By Supervising Attorneys Edward Allen and Alysia Robben**

The Affidavit of Edward Allen indicates that he graduated from Georgetown Law Center in 1975 and was admitted to the District of Columbia Bar in the same year. *See Allen Affidavit* at 1. Mr. Allen states that he has worked as a full time faculty member at the UDC School of Law supervising student attorneys in the Housing and Consumer Law Clinic since 1977. *Id.* Mr. Allen's Affidavit provides that he has supervised law students or represented tenants "in scores of cases at the various rent control agencies" including RACD, RAD, OAH, the Commission and the DCCA. *See id.* at 2. Mr. Allen also states that he directed the Housing and Consumer Law Clinic for approximately ten years, published an article related to administrative litigation, presented at D.C. Bar seminars on the topic of rent control law, and taught seminars for the D.C. Bar Committee on Rental Housing. *See id.* at 1-2. Mr. Allen's Affidavit indicates that he began logging time for this case on October 5, 2011, and that his responsibilities included providing guidance and oversight to student attorneys. *See id.* at 2-3. Mr. Allen's Affidavit contains

contemporaneous time entries detailing the work that he performed in relation to the Tenants' case before the Commission, for a total of 6.4 hours. *See id.* at 3.

The Commission observes that a number of the time entries in Mr. Allen's Affidavit are substantially similar to those of each of the supervised student attorneys, so that Mr. Allen's "distinct contribution" to the representation of the Tenants is not always clearly reflected in the record. *See Fred A. Smith Mgmt. Co. v. Cerpe*, 957 A.2d 907, 920 (D.C. 2008). *See also Afro-American Patrolmen's League v. Atlanta*, 817 F.2d 719, 726 (11<sup>th</sup> Cir. 1987).<sup>6</sup> However, the record reflects that Mr. Allen reduced the number of hours which he has requested as supervising attorney in the representation of the Tenant by over 30% from 6.4 to 4.2. *See* Allen Affidavit at 3-4. Additionally, the Commission observes that supervision of an attorney licensed to practice in the District is required by the regulation that allows law students to appear before the Commission. 14 DCMR § 3812.4(c) (2004).<sup>7</sup> By regulation, therefore, when law students appear before the Commission, multiple counsel will be involved in the representation of clients under the Act: student attorney(s) and supervisor(s). *See id.* *See also 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); *Cascade Park Apartments v. Walker*, TP 26,197 (Mar. 18, 2005). Based upon its review

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<sup>6</sup> For example, Mr. Allen's Affidavit indicates that he spent 0.6 hours meeting with Ms. Bardos on October 5, 2011, to discuss Commission oral arguments, while Ms. Bardos' Affidavit indicates that she spent 0.6 hours on October 5, 2011 meeting with Mr. Allen to discuss arguments before the Commission. Mr. Allen's Affidavit states that he spent 1.3 hours coaching Ms. Bardos on a "moot hearing" on October 17, 2011, while Ms. Bardos' Affidavit states that she spent 1.3 hours on October 17, 2011 "mooting" for the Commission hearing. *See* Allen Affidavit at 3; Bardos Affidavit at 2.

<sup>7</sup> 14 DCMR § 3812.4(c) (2004) provides as follows:

Any law student practicing under the supervision of an attorney admitted to practice in the District of Columbia as part of a program approved by an accredited law school for credit; provided, that the law student's representation before the Commission is undertaken pursuant to the student's participation in the clinical program; provided further, that the law student's supervising attorney is present at any hearing before the Commission.