

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),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 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 HISTORY²

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),³ 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;

² 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.

³ 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),⁴ 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

⁴ 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).⁵ 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

⁵ 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 (11th Cir. 1987).⁶ 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).⁷ 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

⁶ 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.

⁷ 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.

of the substantial evidence in the record, the Commission is satisfied that this reduction in billable hours by Mr. Allen sufficiently accounts for any duplication and redundancy in the provision of legal services to the Tenant. *See, e.g. Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799; *Cascade Park Apartments*, TP 26,197.

The Affidavit of Alysia Robben indicates that she graduated from the UDC School of Law in 2007, and was admitted to the District of Columbia Bar in the same year. *See Robben Affidavit* at 1. Ms. Robben states that she worked as a supervising attorney in the UDC School of Law Housing and Consumer Law Clinic between February 2008 and May 2011. *Id.* During this time period, Ms. Robben's Affidavit provides that she has represented tenants in eleven (11) rental housing cases before OAH, supervised students in at least nine (9) cases before the Landlord and Tenant Branch of the D.C. Superior Court, and supervised students in at least five (5) cases before the D.C. Superior Court Small Claims Branch. *See id.* Ms. Robben's Affidavit indicates that she logged time for this case on May 13, 2010, and that her responsibilities included drafting the Tenants' Answer to Appellant's Notice of Appeal. *See id.* at 2. Ms. Robben's Affidavit contains a contemporaneous time entry detailing the work that she performed in relation to the Tenants' case before the Commission, for a total of two (2) hours. *See id.* Based on its review of the record, the Commission is satisfied that substantial evidence supports that the two (2) billable hours requested by Ms. Robben were required of her as a supervising attorney as she avers, that these hours did not result in unreasonable duplication and redundancy in the provision of legal services to the Tenant, that these hours were necessary in assisting the two (2) students in appropriately responding to the Notice of Appeal, and that they are thus 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. *See, e.g.* Kuratu, RH-TP-07-28,985; Avila, RH-TP-28,799; Cascade Park Apartments, TP 26,197.

For the reasons stated herein, the Commission determines for purposes of the lodestar calculation under 14 DCMR § 3825(a), that the number of hours reasonably expended for the representation of the Tenants by Sarah Bardos is 10.5, by Achiya Yaffe is 3.8, by Edward Allen is 4.2, and by Alysia Robben is 2.0.

B. Reasonable Hourly Rate

The second 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) (2004). *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, CI 20,176.

The Tenants requested a rate of \$95 per hour for work done by student attorneys. *See* Motion for Attorneys' Fees at 13, 15. The Tenants asserted that \$95 per hour was a reasonable request in light of the fact it is “\$80 lower than the *Laffey Matrix* recommended per hour rate of \$175 for law clerks and paralegals in 2013.” *See id.* at 13 (emphasis in original). *See, e.g.* A.S. v. District of Columbia, 842 F. Supp. 2d 40, 48 n.7 (D.D.C. 2012) (the current Laffey Matrix can be found at <http://www.justice.gov/usao/dc/divisions/civil.html>).⁸

⁸ 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

The Commission notes that the ALJ in this case awarded student attorneys \$95 per hour in the Order Granting Motion for Attorney's Fees for work done before OAH, and that the Commission has recently awarded student attorneys \$95 per hour in Avila, RH-TP-28-799, under substantially similar circumstances related to client representation. For the foregoing reasons, the Commission is satisfied that in the exercise of its reasonable discretion, the billing rate of \$95 per hour is a reasonable rate in this case for student attorneys practicing in the field of rental housing when compared to billing rates of an attorney skilled in the specialized field of rental housing. 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. See, e.g. Kuratu, RH-TP-07-28,985; Avila, RH-TP-28,799; Cascade Park Apartments, TP 26,197.

The Tenants requested an hourly rate of \$200 for the work of Supervising Attorney Alysia Robben. See Motion for Attorneys' Fees at 13. In support of this request, Ms. Robben submitted an Affidavit in which she stated that she has more than three (3) years' experience supervising law students in small claims and landlord and tenant cases, as well as litigating rental housing cases before OAH. See *id.* The Tenants cited the ALJ's Order Granting Motion for Attorney's Fees in this case, where the ALJ awarded Ms. Robben \$200 per hour for her work before OAH. See *id.* In addition to the information contained in the Motion for Attorneys' Fees and Ms. Robben's Affidavit, the Commission notes that the requested rate of \$200 is approximately 20% below the Laffey Matrix rate of \$245 per hour for an attorney with one (1) to three (3) years of experience. See, e.g. A.S. v. District of Columbia, 842 F. Supp. 2d 40, 48 n.7

years after 1981-1982 are adjusted annually based on cost of living increases for the Washington, D.C. area. The Commission has used the Laffey Matrix as a supplement to the "prevailing market rates in the relevant community" to gauge whether the requested fees are reasonable. See, e.g. Kuratu, RH-TP-07-28,985; Avila, RH-TP-28,799; Loney v. Tenants of 710 Jefferson Street, N.W., SR 20,089 (RHC June 6, 2012) (Order on Motion for Attorney's Fees); Cascade Park Apartments, TP 26,197.

(D.D.C. 2012).⁹ The Commission observes that its reference to the Laffey Matrix as an appropriate rate standard is consistent with Commission precedent that “[a] reasonable hourly rate is ‘that prevailing in the community for similar work’, where the community are practitioners in the specialized field of rental housing or rent control under the Act.” *See, e.g., Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799; *Loney*, SR 20,089 (Order on Motion for Attorney’s Fees); *Hampton Courts Tenants’ Ass’n*, 599 A.2d at 1116; *Hampton Courts Tenants’ Ass’n*, CI 20,176 at 12; *Reid*, TP 11,334 at 18. Based on the foregoing, the Commission is satisfied in the exercise of its reasonable discretion, that \$200 is a reasonable rate in this case for an attorney with Ms. Robben’s experience in the specialized field of rental housing.

The Tenants requested an hourly rate of \$345 for the work of Supervising Attorney Edward Allen. *See* Motion for Attorneys’ Fees at 14. In support of this request, Mr. Allen submitted an Affidavit in which he stated that he has more than three (3) decades of experience supervising law students in landlord and tenant matters before the courts, the Commission, RACD, RAD, and OAH. *See* Allen Affidavit. In further support, the Motion for Attorneys’ Fees cited a case wherein the Commission had awarded Mr. Allen an identical fee within the last two years. *See* Motion for Attorneys’ Fees at 114 (*citing Ahmed, Inc. v. Avila*, RH-TP-28,799 (RHC Jan. 28, 2013)). In addition to the information contained in the Motion for Attorneys’ Fees and Mr. Allen’s Affidavit, and based upon its review of the record, the Commission notes that the requested rate of \$345 is more than 30% below the Laffey Matrix rate of \$505 per hour for an attorney with twenty or more years of experience. *See, e.g. A.S. v. District of Columbia*,

⁹ *See supra* at p. 10 n.8.

842 F. Supp. 2d 40, 48 n.7 (D.D.C. 2012).¹⁰ For the foregoing reasons, the Commission is satisfied in its discretion that \$345 is a reasonable rate in this case, especially for an attorney with Mr. Allen's experience in the specialized field of rental housing.

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 the student attorneys is \$95 per hour, the reasonable rate for Ms. Robben's time is \$200 per hour, and the reasonable rate for Mr. Allen's time is \$345 per hour.

C. Lodestar Amounts

As noted *supra* at p. 4, 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) (2004). See also Sindram, RH-TP-07-29,094; Cascade Park Apartments, TP 26,197; Reid, TP 11,334. The table below shows the Commission's calculation of the lodestar amounts for student attorneys Sarah Bardos and Achiya Yaffe, Supervising Attorney Alysia Robben, and Supervising Attorney Edward Allen, using the hours and hourly rates determined *supra* at 5-13:

	HOURS EXPENDED	HOURLY RATE	LODESTAR
Sarah Bardos	10.5	\$95/hour	\$997.50
Achiya Yaffe	3.8	\$95/hour	\$361.00
Alysia Robben	2.0	\$200/hour	\$400.00
Edward Allen	4.2	\$345/hour	\$1,449.00

Pursuant to 14 DCMR § 3825.8(a), the Commission approves the following "lodestar" amount of fees: (1) for Student Attorney Sarah Bardos, \$997.50; (2) for Student Attorney Achiya

¹⁰ See *supra* at 10 n.8.

Yaffe, \$361; (3) for Supervising Attorney Alysia Robben, \$400; and (4) for Supervising Attorney Edward Allen, \$1,449. The total amount of the lodestar for the two (2) student attorneys, Ms. Robben, and Mr. Allen, collectively, is \$3,207.50.

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) (2004).

Having calculated the lodestar amounts of the fees for Ms. Bardos, Mr. Yaffe, Ms. Robben, and Mr. Allen, respectively, the Commission will proceed to consider whether any

adjustments to the lodestar amounts 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 Acts, and its "past experience with attorney services in the rental housing area." See 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.

(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 the student attorneys, Ms. Robben, and Mr. Allen in the instant case. See *supra* at 4-9.

(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 the two (2) student attorneys, Ms. Robben, and Mr. Allen 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 RH-TP-07-29,063.

(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 requisite of the two (2) student attorneys, Ms. Robben, and Mr. Allen to perform their service properly on behalf of the Tenants 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. While the Commission is satisfied that student attorneys 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 to warrant any adjustment of the lodestar amount.

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

The Commission recognizes the important public function and role that student attorneys from the UDC School of Law play in representing clients of low and moderate income in legal matters, where legal representation of such individuals would otherwise be wanting for a client's lack of financial resources. While the engagement of the two (2) student attorneys, Ms. Robben, and Mr. Allen in the instant case likely precluded them from accepting other cases, the Commission notes that any acceptance by the UDC School of Law of a particular case will necessarily preclude its student attorneys, Ms. Robben, and Mr. Allen from representing eligible and worthy clients in other cases. Based upon its review of the record, and in its reasonable discretion, the Commission notes that this factor does not warrant any adjustment of the lodestar amount.

(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 rates for the student attorneys, Ms. Robben, and Mr. Allen in the instant case. *See supra* at 9-12. *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.

(6) Whether the fee is fixed or contingent

The Commission is not aware that the student attorneys, Ms. Robben, or Mr. Allen use a fee structure that involves fixed or contingent fees for legal services. As a result, the

Commission does not consider this factor to be relevant, or to warrant any adjustment of the lodestar amount.

(7) Time limitations imposed by the client or circumstances

Based upon its review of the record, the Commission does not observe that unusual time limitations were imposed by either the Tenants or the circumstances in the prosecution of this case on behalf of the Tenants. While student attorneys, Ms. Robben, and Mr. Allen appear to the Commission to have timely carried out their representation of the Tenants, the Commission does not consider this factor to warrant any adjustment of the lodestar amount.

(8) The amount involved and the results obtained (including results obtained, when the moving party did not prevail on all the issues)¹¹

Based upon its review of the substantial evidence in the record, the Commission is not persuaded that the positive results that the two (2) student attorneys, Ms. Robben, and Mr. Allen achieved in this case were extraordinary under the Act; the Commission is satisfied that they were the ordinary and customary results and remedies under the Act arising from any successful representation of clients under similar circumstances to this case. While the Commission notes that the result of the Tenants' representation by the two (2) student attorneys, Ms. Robben, and Mr. Allen was of important value to the Tenants, the Commission in its reasonable discretion does not consider the results obtained to be of such an unusual or uncommon level of achievement to warrant any adjustment of the lodestar amount.

(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 Tenants by the two

¹¹ The discussion regarding this factor also incorporates consideration of factor thirteen (13) under 14 DCMR § 3825.8(b).

(2) student attorneys, Ms. Robben, and Mr. Allen did not require of 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. Thus, in the exercise of its reasonable discretion, the Commission determines that this factor does not warrant any adjustment of the lodestar amount. *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.

(10) The undesirability of the case

The Commission's review of the record indicates that one of the primary purposes of the applicable clinical program of the UDC School of Law is to provide students with the opportunity to represent lower income clients otherwise "undesirable" to private law firms because of an inability to pay private firm legal fees. The Commission observes that this appeal appears to meet the above purpose of the clinical program at UDC. Upon review of the record, and in the exercise of its reasonable discretion and its recognition of the above uncontested purpose of the applicable clinical program at UDC School of Law, the Commission determines that this appeal is not of such "undesirability" as to warrant adjustment of the lodestar amount of fees. *See, e.g., Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799.

(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 Tenants and the two (2) student attorneys, Ms. Robben, and Mr. Allen do 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 v. William C. Smith, Co., CI 20,176 (RHC July 20, 1990). Therefore, the Commission in its discretion does not consider this factor to warrant any adjustment of the lodestar amount.

(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 Tenants in this case was not so extraordinary or unusual to warrant any adjustment of the lodestar amount. *See, e.g.*, 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) (2004). *See supra* at p. 16 & n.11.

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 in the instant case by each of the student attorneys, Ms. Robben, and Mr. Allen. The Commission's review of the record indicates that each of the student attorneys, Ms. Robben, and Mr. Allen provided the Tenants with a proper and appropriate quality of legal services. However, based upon its review of the record, the Commission, in the exercise of its reasonable discretion, does not deem their representation of the Tenants to warrant any adjustments to the lodestar amounts of their respective fees under 14 DCMR § 3825.8(b). Furthermore, the Tenants concede that the factors under 14 DCMR § 3825.8(b) do not warrant adjustment in this case.¹² *See Motion for Attorneys' Fees* at 15.

¹² The Commission notes that the Motion for Attorneys' Fees provided the following regarding the applicability of the factors under 14 DCMR § 3825.8(b):

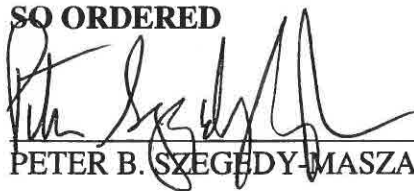
The [Commission] may assess whether the lodestar amount should be reduced on factors listed in 14 DCMR § 3825.8(b), however, applying there [sic] factors is unnecessary in the instant case.

In light of the time and labor expended, the prevailing fee rates for attorneys with similar experience in the specialized field of rent control, and the Commission-determined reasonable reduction in hours claimed by the student attorneys, the Commission in the exercise of its reasonable discretion grants the Tenants' request for attorneys' fees. The Commission thereby awards \$3,207.50 in attorneys' fees to the two (2) student attorneys, Ms. Robben, and Mr. Allen for legal services performed before the Commission in this appeal. The award is the sum total of the following fees: (1) for Student Attorney Sarah Bardos, \$997.50; (2) for Student Attorney Achiya Yaffe, \$361; (3) for Supervising Attorney Alysia Robben, \$400; and (4) for Supervising Attorney Edward Allen, \$1,449.

IV. CONCLUSION

In accordance with the foregoing, the Commission awards \$3,207.50 in attorneys' fees to the student attorneys, Ms. Robben, and Mr. Allen for their representation of the Tenants in this case. *See, e.g., Kuratu*, RH-TP-07-28,985; *Avila*, RH-TP-28,799.

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 (2004), 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."

The [Commission] need not consider those factors unless the case is "exceptional." This case is not exceptional; therefore the [Commission] need not apply those factors.

Motion for Attorneys' Fees at 15 (citations omitted).

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 ATTORNEYS' FEES** in RH-TP-07-29,063 was mailed, postage prepaid, by first class U.S. mail on this **18th day of February, 2014** to:

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