

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-09-29,715

In re: 4941 North Capitol Street, N.E., Unit 21

Ward Five (5)

**GELMAN MANAGEMENT COMPANY**  
Housing Provider/Appellant

v.

**DEBRA CAMPBELL**  
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, 14 DCMR §§ 3800-4399 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 16, 2009, Tenant/Appellee Debra Campbell (Tenant), residing at 4941 North Capitol Street, N.E., Unit 21, Washington, D.C. 20011 (Housing Accommodation), filed Tenant Petition RH-TP-09-29,715 (Tenant Petition) against Housing Provider/Appellant Gelman Management Company (Housing Provider) claiming the following violations of the Act: (1) the rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations; and (2) services and/or facilities provided as part of rent and/or tenancy have been substantially reduced. *See* Tenant Petition at 1-2; Record for RH-TP-09-29,715 (R.) at 10-11.

On December 15, 2010, the ALJ issued a final order, Campbell v. Gelman Mgmt. Co., RH-TP-09-29,715 (OAH Dec. 15, 2010) (Final Order). On January 5, 2011, the Housing Provider filed a Notice of Appeal (“Notice of Appeal”) with the Commission, asserting the following: “Gelman Management Co. hereby notes its appeal from the Final Order below, because a settlement agreement filed in the landlord-tenant branch of the Superior Court, as well as the Rental Housing Act’s statute of repose bars all of the petitioner’s claims.” Notice of Appeal at 1. The Commission held a hearing on this matter on April 24, 2012.

In a Decision and Order entered on December 23, 2013, the Commission (1) affirmed the ALJ’s subject matter jurisdiction over the Tenant Petition; (2) determined that the Housing Provider had waived the defense of *res judicata*; (3) determined that the ALJ committed plain error in the calculation of damages awarded for rent increases while substantial housing code violations existed in the Tenant’s unit; (4) determined that the ALJ’s conclusion that the

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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 Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013) (Decision and Order). The Commission sets forth here only the facts relevant to the issues that arise from the Tenant’s Motion for Attorneys’ Fees.

reductions in services and/or facilities in the Tenant's unit began on December 12, 2008, constituted plain error; and (5) determined that the ALJ's conclusion that damages related to an improperly installed smoke alarm accrued through May 12, 2010, constituted plain error. *See* Decision and Order at 16-30.

On January 10, 2014, the Tenant filed "Appellant's Motion for Attorneys' Fees" (Tenant's Motion for Attorneys' Fees). On January 23, 2014, the Housing Provider filed "Housing Provider's Opposition to Tenant Petitioner's Motion for Attorneys Fees" (Opposition), one (1) day after the expiration of the time period allotted for filing an opposition to Tenant's Motion for Attorneys' Fees under 14 DCMR § 3814.3 ("[a]ny party may file a response in opposition to a motion within five (5) days after service of the motion").<sup>3</sup> The Tenant filed "Appellee's Response to Housing Provider's Opposition to Appellee's Motion for Attorney's Fees" (Response to Housing Provider's Opposition) on February 6, 2014.<sup>4</sup>

### **III. DISCUSSION**

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<sup>3</sup> Despite having been filed out of time, the Commission notes that the Housing Provider contended in its Opposition that the Tenant cannot be considered a prevailing party because the Commission remanded the case to the ALJ for further consideration, and because the Housing Provider prevailed in part, specifically in relation to the time period for which the Tenant is entitled to relief. *See* Opposition at 1. The Commission has held that in order to be a "prevailing party" for purposes of attorney's fees, a party need not prevail on *every* issue, but merely the majority of the issues. *See* Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005) (citing Slaby v. Bumper, TPs 21,518 & 22,521 (RHC Sept. 21, 1995); Black's Law Dictionary, 1145 (7<sup>th</sup> ed. 1999)). In this case, the Commission observes that the Tenant prevailed on both of the issues that were raised before the Commission in the Housing Provider's Notice of Appeal. *See* Decision and Order at 30-31. Insofar as this case may be ongoing, in light of the Commission's remand to OAH, the Commission is satisfied that the proceedings for which the Tenant seeks fees – namely, the Housing Provider's appeal to the Commission – have concluded. *See id.*

<sup>4</sup> The Commission notes that the Tenant's Response to Housing Provider's Opposition attempts to clarify the grounds supporting the reasonableness of its fee request. *Compare* Response to Housing Provider's Opposition, *with* Tenant's Motion for Attorneys' Fees. The Commission addresses the reasons for the fee award *infra*.

Under D.C. OFFICIAL CODE § 42-3509.02 (2001),<sup>5</sup> the Commission may award reasonable attorney' fees to the prevailing party in an action before the Commission. D.C. OFFICIAL CODE § 42-3509.02. 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 discussed *supra* at 2-3, that the Tenant prevailed 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 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).<sup>6</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)).

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<sup>5</sup> D.C. OFFICIAL CODE § 42-3509.02 provides: "[t]he 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."

<sup>6</sup> The regulation states as follows: "[t]he 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).

### **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 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 Tenant’s Motion for Attorneys’ Fees requested attorneys’ fees for Student Attorney Byron White and Supervising Attorney Edward Allen.

#### **1. Hours Requested By Student Attorney Byron White.**

The Tenant’s Motion for Attorneys’ Fees indicates that Byron White was a 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 10, 2012 through May 5, 2012. See White Affidavit at 1. Mr. White’s Affidavit attached to the Tenant’s Motion for Attorneys’ Fees indicates that he began working on this case on February 3, 2012, and his

responsibilities included researching and writing the Tenant's brief on appeal, and preparing for oral argument before the Commission. *See id.* Mr. White's Affidavit contains approximately three (3) pages of contemporaneous time entries detailing the work that he performed in relation to the Tenant's case before the Commission. *See White Affidavit* at 2-4. Where more than one task was performed on a particular date, Mr. Clark has indicated how much time was spent on each individual task. *See id.* Mr. White's Affidavit states that he logged a total of 156.5 hours; however, Supervising Attorney Edward Allen substantially discounted the total number of hours for which Mr. White is seeking fees by approximately 90% to 15 hours. *See Tenant's Motion for Attorneys' Fees* at 9.

The Commission's review of Mr. White's Affidavit indicates that he provided contemporaneous records of the work done during the time logged. *See White Affidavit.* However, the Commission notes that Mr. White's Affidavit lacks the requisite detail necessary for the Commission to determine whether the time spent on the Tenant's case was reasonable. *See id.* For example, on February 8, 2012, Mr. White states that he "spent 3.3 hours reading *Russel v. Bradeon* to understand opposing counsel's opinion." *See id.* at 2. Similarly, on February 20, 2012, Mr. White states that he "spent 8.0 hours redoing legal analysis and researching for the case." *See id.* Nevertheless, the Commission's review of the Tenant's Motion for Attorneys' Fees reveals that the hours billed by Mr. White were substantially reduced by Mr. Allen from the original total by at least 90%, to cure the lack of detail and specificity in Mr. White's Affidavit, as well as to approximate the amount of time a practicing attorney, rather than a student attorney, would have spent performing similar tasks. *See Tenant's Motion for Attorneys' Fees* at 9. *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 Mr. White reasonably account for any excessiveness, redundancy or any lack of professional experience contributing to the time spent by Mr. White in his 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 15 billable hours requested by Mr. White 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.

## **2. Hours Requested By Supervising Attorney Edward Allen**

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 April 17, 2012, and that his responsibilities included providing guidance and oversight to student attorneys. *See id.* at 3. Mr. Allen's Affidavit contains contemporaneous time entries detailing the work that he performed in relation to the Tenant's case before the Commission, for a total of 15.1 hours.<sup>7</sup> *See id.*

The Commission observes that a number of the time entries in Mr. Allen's Affidavit are substantially similar to those of Mr. White, so that Mr. Allen's "distinct contribution" to the representation of the Tenant 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>8</sup> However, the record reflects that Mr. Allen reduced the number of hours that he has requested as supervising attorney in the representation of the Tenant by over 30% from 15.1 to 10.1. 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).<sup>9</sup> By regulation, therefore, when law students appear before the Commission, multiple counsel will

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<sup>7</sup> The Commission notes that Mr. Allen's Affidavit states on page 3 that he spent a total of 11.9 hours supervising students in relation to the instant case; however, the time entries in the Affidavit add up to a total of 15.1 hours, and the Tenant's Motion for Attorneys' Fees states in more than one place that Mr. Allen recorded 15.1 hours in this case. *See* Allen Affidavit; Tenant's Motion for Attorneys' Fees at 9, 12. The Commission is satisfied that Mr. Allen's total hours logged in this case were 15.1, not 11.9.

<sup>8</sup> For example, Mr. Allen's Affidavit indicates that he spent 1.6 hours meeting with Mr. White on April 18, 2012 to discuss revisions to the Tenant's Brief and mooted oral arguments before the Commission, while Mr. White's Affidavit indicates that he spent 1.6 hour on April 18, 2012 meeting with Mr. Allen to review the Tenant's Brief and mooted. *See* Allen Affidavit at 3; White Affidavit at 3.

<sup>9</sup> 14 DCMR § 3812.4(c) 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.



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 of the substantial evidence in the record, the Commission is satisfied that the reduction in billable hours by Mr. Allen sufficiently accounts and compensates for any duplication, excessiveness and redundancy in his provision of legal services to the Tenant as the supervising attorney for Mr. White. *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 Tenant by Byron White is 15 hours, and by Edward Allen is 10.1 hours.

#### **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). *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 Tenant requested a rate of \$95 per hour for work done by student attorney Byron White. *See* Tenant’s Motion for Attorneys’ Fees at 10. The Tenant asserted that \$95 per hour was a reasonable request in light of the fact it is “lower than the *Laffey Matrix* recommended per hour rate of \$175.00 for law clerks and paralegals in 2013” *See id.* (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>).<sup>10</sup> Moreover, the Tenant noted that an ALJ recently awarded student attorneys \$95 per hour in Lizama v. Caesar Arms, LLC, RH-TP-07-29,063 (OAH Apr. 13, 2010) and that the Commission recently awarded student attorneys \$95 per hour in Avila, RH-TP-28-799, under substantially similar circumstances related to client representation. *See* Tenant's Motion for Attorneys' Fees at 10 (*citing* Avila, RH-TP-28-799; Lizama, RH-TP-07-29,063). For the foregoing reasons, the Commission is satisfied in the exercise of its reasonable discretion, that the billing rate of \$95 per hour is a reasonable rate in this case for a student attorney 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 Tenant requested an hourly rate of \$345 for the work of Supervising Attorney Edward Allen. *See* Tenant's Motion for Attorneys' Fees at 11. 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

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<sup>10</sup> 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 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.

Commission, RACD, RAD, and OAH. *See* Allen Affidavit at 2. In further support, the Tenant's Motion for Attorney's Fees cited a case wherein the Commission had awarded Mr. Allen an identical fee within the last two years. *See* Tenant's Motion for Attorneys' Fees at 11 (*citing Ahmed, Inc.*, RH-TP-28,799). In addition to the information contained in the Tenant's Motion for Attorneys' Fees and Mr. Allen's Affidavit, and based on 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*, 842 F. Supp. 2d 40, 48 n.7 (D.D.C. 2012).<sup>11</sup> 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 Loney*, SR 20,089 (Order on Motion for Attorney's Fees); *Hampton Courts Tenant Ass'n*, 599 A.2d at 1116; *Hampton Courts Tenants' Ass'n*, CI 20,176 at 12; *Reid*, TP 11,334 at 18. 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 Mr. White is \$95 per hour, and the reasonable rate for Mr. Allen's time is \$345 per hour.

### **C. Lodestar Amounts**

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<sup>11</sup> *See supra* at p. 9 n.10.

As previously 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). 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 attorney Byron White, and Supervising Attorney Edward Allen, using the hours and hourly rates determined *supra* at pp. 5-11:

	HOURS EXPENDED	HOURLY RATE	LODESTAR
Byron White	15	\$95/hour	\$1,425.00
Edward Allen	10.1	\$345/hour	\$3,484.50

Pursuant to 14 DCMR § 3825.8(a), the Commission approves the following “lodestar” amount of fees: (1) for Student Attorney Byron White, \$1,425; and (2) for Supervising Attorney Edward Allen, \$3,484.50. The total amount of the lodestar for Mr. White and Mr. Allen, collectively, is \$4,909.50.

**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).

Having calculated the lodestar amounts of the fees for Mr. White, 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 Mr. White and Mr. Allen in this case. See *supra* at 4-8.

(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 Mr. White and Mr. Allen in this 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-09-29,715.

(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 Mr. White and Mr. Allen to perform their service properly on behalf of the Tenant in this 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 Mr. White and Mr. Allen 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 Mr. White 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 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 Mr. White and Mr. Allen in this case. *See supra* at 8-11. *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 either Mr. White 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 Tenant or the circumstances in the prosecution of this case on behalf of the Tenant. While Mr. White and Mr. Allen appear to the Commission to have timely carried out their representation of the Tenant, the Commission in its reasonable discretion 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)<sup>12</sup>

Based upon its review of the substantial evidence in the record, the Commission is not

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<sup>12</sup> The discussion regarding this factor also incorporates consideration of factor thirteen (13) under 14 DCMR § 3825.2(b).



persuaded that the positive results that Mr. White 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 a client under similar circumstances to this case. While the Commission notes that the result of the Tenant's representation by Mr. White and Mr. Allen was of important value to the Tenant, 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 Tenant by Mr. White and Mr. Allen 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. Thus, in the exercise of its reasonable discretion, the Commission determines that this factor does not warrant any adjustment of the lodestar amount. 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.

(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 of the professional, attorney-client relationship between the Tenant, and Mr. White and Mr. Allen, 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 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 the ALJ to the Tenant 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 § 3825.2(b). *See supra* at 15-16.

The Commission has given careful consideration to each of the factors in 14 DCMR

§ 3825.2(b) with respect to the representation of the Tenant in this case by both Mr. White and Mr. Allen. The Commission's review of the record indicates that Mr. White and Mr. Allen provided the Tenant 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 Tenant to warrant any adjustments to the lodestar amounts of their respective fees under 14 DCMR § 3825.2(b). Furthermore, the Tenant concedes that the factors under 14 DCMR § 3825.2(b) do not warrant adjustment in this case.<sup>13</sup> See Tenant's Motion for Attorneys' Fees at 12.

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 attorney, the Commission in the exercise of its reasonable discretion grants the Tenant's request for attorneys' fees. The Commission thereby awards \$4,909.50 in attorney's fees to Mr. White and Mr. Allen for legal services performed before the Commission in this appeal. The award is the sum total of the following: (1) for Student Attorney Byron White, \$1,425; and (2) for Supervising Attorney Edward Allen, \$3,484.50.

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<sup>13</sup> The Commission notes that the Tenant's 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. 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.

Tenant's Motion for Attorneys' Fees at 12 (citations omitted).

#### IV. CONCLUSION

In accordance with the foregoing, the Commission awards \$4,909.50 in attorney's fees to Mr. White and Mr. Allen for their representation of the Tenant in this case. *See, e.g., Kuratu, RH-TP-07-28,985; Avila, RH-TP-28,799.*<sup>14</sup>

**SO ORDERED**

  
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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."

#### 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

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<sup>14</sup> On the date of this Decision and Order, the Commission issued a Decision and Order on an award of legal fees in another case in which students from the UDC School of Law represented a tenant(s) on appeal. *See Caesar Armss, LLC. v. Lizama, RH-TP-07-29,063 (RHC Feb. 17, 2014).*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing **ORDER ON MOTION FOR ATTORNEYS' FEES** in RH-TP-09-29,715 was mailed, postage prepaid, by first class U.S. mail on this **18th day of February, 2014** to:

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