

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-14-28,794

In re: 4501 Connecticut Avenue, N.W., Unit 809

Ward Three (3)

SMITH PROPERTY HOLDINGS FIVE (D.C.) L.P.
Housing Provider/Appellant

v.

KAREN MORRIS AND DAVID POWER
Tenants/Appellees

ORDER ON ATTORNEY'S FEES

August 19, 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 OAH assumed jurisdiction over the conduct of hearings on tenant petitions from the Rental Accommodations and Conversion Division (RACD) and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Supp. 2005). The functions and duties of the RACD were transferred to RAD by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (Sept. 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

I. PROCEDURAL HISTORY²

On September 20, 2006, Tenants/Appellees Karen Morris and David Power (Tenants), residing in Unit 809 of 4501 Connecticut Avenue, N.W. (Housing Accommodation), filed Tenant Petition RH-TP-06-28,794 (Tenant Petition) with DCRA, claiming that the Housing Provider/Appellant, Smith Property Holdings Five (D.C.) L.P. (Housing Provider), violation the Act as follows:

1. The rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency Act of 1985;
2. A property thirty (30) day notice of rent increase was not provided before the rent increase became effective;
3. The Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division;
4. The rent being charged exceeds the legally calculated rent ceiling for my/our unit(s).
5. The rent ceiling filed with the Rental Accommodations and Conversion Division for my/our unit(s) is improper;
6. My/our rent was increased while a written lease, prohibiting such increases, was in effect;
7. The building in which [m]y/our rental unit(s) is located is not properly registered with the Rental Accommodations and Conversion Division;
8. Services and/or facilities provided in connection with the rental of my/our unit(s) have been permanently eliminated;
9. Services and/or facilities provided in connection with the rental of my/our unit(s) have been substantially reduced;

² A detailed factual background prior to this Order on Attorney's Fees set forth in the Commission's Decision and Order in Smith Property Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013) (Decision and Order). The Commission sets forth in this decision only the facts relevant to the issues that arise from the Tenant's Motion for Attorney's Fees

10. Retaliatory action has been directed against me/us by my/our Housing Provider, manager or other agent for exercising our rights in violation of section 502 of the Rental Housing Emergency Act of 1985;
11. A Notice to Vacate has been served on me/us which violates the requirements of section 501 of the Act; [and]
12. The Housing Provider, manager or other agent of the Housing Provider of my/our rental unit(s) have violated the provisions of Section ___ [sic] of the Rental Housing Emergency Act of 1985.

Tenant Petition at 1-5; Record for RH-TP-06-28,794 (R.) at 105-109. On October 21, 2008, the ALJ issued a final order, Morris v. Smith Property Holdings Five (D.C.) L.P., RH-TP-06-28,794 (OAH Oct. 21, 2008) (Final Order), determining that the Tenants proved two (2) out of the twelve (12) claims raised in their Tenant Petition, and awarding the Tenants \$8,654.44 in damages. R. at 51-65.

On October 28, 2008, the Housing Provider filed an appeal (First Notice of Appeal) with the Commission. First Notice of Appeal at 1. On December 23, 2013, the Commission issued its Decision and Order affirming the ALJ's Final Order in part, and remanding for the ALJ to adjust his calculation of the Tenants' rent refund for the period of August 1, 2006 through August 4, 2006 to reflect the pre-August 5 provision the Act governing the calculation of damages for a reduction in services and/or facilities, D.C. OFFICIAL CODE § 42-3502.11, that was in effect during that period. *See* Decision and Order at 20-31.

On March 18, 2014, the ALJ issued a Final Order on Remand, Morris v. Smith Prop. Holdings Five (D.C.) L.P., RH-TP-14-28,794 (OAH Mar. 18, 2014) (Final Order on Remand), recalculating the Tenants' rent refund and interest and awarding the Tenants \$8,651.02 in damages, in accordance with the Commission's Decision and Order. *See* Final Order on Remand at 2-3; R at 404-5.

On March 28, 2014, the Housing Provider filed a notice of appeal (Second Notice of Appeal). Second Notice of Appeal at 2-4. On July 3, 2014, the Commission issued its Decision and Order Following Remand, Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC July 23, 2014) (Decision and Order Following Remand), affirming the entirety of the ALJ's Final Order on Remand. See Decision and Order Following Remand at 16.

On July 15, 2014, the Tenants filed a Motion for Attorney's Fees (Motion for Attorney's Fees) with the Commission, seeking compensation for a total of 60.4 hours of work performed by their counsel Joseph Creed Kelly (hereinafter "Counsel") before both OAH and the Commission, between February 27, 2007 and July 3, 2014. See Motion for Attorney's Fees, Exhibit 1 at 1. The Motion for Attorney's Fees indicated that the Tenants are requesting a rate of \$360 per hour, a rate equal to the Laffey Matrix rate for an attorney with eight (8) years of experience.³ See *id.* at 5. On July 17, 2014, the Commission issued an Order to Supplement, ordering that the Tenants supplement their Motion for Attorney's Fees with the following:

(1) evidence that Counsel accepted the Tenants' case on a *pro bono* basis; or (2) if not *pro bono* representation, evidence of the hourly rate that Counsel charged the Tenants, for the time period relevant to the Motion for Attorney's Fees (February 27, 2007 – July 3, 2014). If the Tenants paid attorney's fees at a rate less than the requested Laffey Matrix hourly rate of \$360, the Commission requests that the

³ The Laffey Matrix begins with rates from 1981–1982 allowed and established by the U.S. District Court for the District of Columbia in the case of Laffey v. Northwest Airlines, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is a matrix form comprised of hourly rates for attorneys of varying experience levels and paralegals/law clerks, which has been compiled by the Civil Division of the United States Attorney's Office for the District of Columbia. It has been used since then by courts in the District to reflect billing rates for attorneys in the Washington, D.C. area with various degrees of experience. See, e.g., Heller v. District of Columbia, 832 F. Supp. 2d 32, 40 (D.D.C. 2011). The Laffey Matrix is intended to be used in cases where a fee shifting statute permits a prevailing party to recover "reasonable" attorney's fees. In that regard, it is similar to Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(k), the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E) and the EAJA, 28 U.S.C. §2412(b). Rates for subsequent years after 1981-1982 are adjusted annually based on cost of living increases for the Washington, D.C. area. The Commission has awarded legal fees to *pro bono* attorneys on the basis of the Laffey Matrix. See, e.g., Caesar Arms, LLC v. Lizama, RH-TP-07-29,063 (RHC Feb. 28, 2014) (awarding hourly rates lower than applicable Laffey Matrix rates to supervising attorneys and student attorneys from the University of the District of Columbia David A. Clark School of Law); Loney v. Tenants of 710 Jefferson St., N.W., SR 20,089 (RHC Jan. 29, 2013) (awarding hourly rates lower than applicable Laffey Matrix rates for counsel from the Legal Aid Society of Washington, D.C.).

Tenants provide both legal authority and precedent for the Commission's capability to award legal fees at a Laffey Matrix hourly rate which exceeds the rate actually charged by the Tenants' counsel.

Smith Prop. Holdings Five (D.C.) L.P., RH-TP-06-28,794 (RHC July 17, 2014) (Order to Supplement) at 2-3 (citations omitted).

In response to the Order to Supplement, on July 30, 2014, the Tenants filed a Supplemental Affidavit to Support Tenants' Motion for Attorney's Fees (Supplemental Affidavit). In the Supplemental Affidavit, the Tenants withdrew their request for an award of attorney's fees at the requested Laffey Matrix rate of \$360 per hour. Supplemental Affidavit at 1. The Tenants averred that, for the period of February 27, 2007 through February 28, 2014, Counsel did not charge the Tenants an hourly rate. *Id.* at 2. Instead, according to the Supplemental Affidavit, the Tenants agreed to pay attorney's fees for an amount to be calculated as the greater of either (1) a contingency fee of one-third of any damages awarded or (2) an award of attorney's fees based on an undetermined hourly rate. *Id.* For the time period of March 11, 2014 through July 3, 2014, Counsel charged the Tenants an hourly rate of \$200 per hour. *Id.* at 2-3.

On August 5, 2014, the Housing Provider filed an "Opposition to Tenants' Motion for Attorney's Fees" (Opposition to Motion for Attorney's Fees). The Opposition to Motion for Attorney's Fees primarily contended that the Commission is not authorized to award attorney's fees when a fee arrangement is based upon a contingency agreement.⁴

⁴ The Commission observes that the Housing Provider's Opposition to Motion for Attorney's Fees, submitted through its counsel, contains two pages of legal contentions with only two (2) case citations in a footnote, and no citations to the Act, its regulations, or relevant Commission precedent regarding the calculation of attorney's fees. Opposition to Motion for Attorney's Fees at 1-2. Additionally, the Commission notes that the Opposition to Motion for Attorney's Fees addresses only the Tenants' Supplemental Affidavit, and does not address or otherwise respond to any of the information contained in the Tenants' Motion for Attorney's Fees. *Id.*

III. DISCUSSION

Under D.C. OFFICIAL CODE § 42-3509.02 (2001),⁵ the Commission may award reasonable attorney's fees to the prevailing party in an action before the Commission. This provision creates a presumptive award of attorney's fees for prevailing tenants in both tenant-initiated and landlord-initiated proceedings. *See, e.g., Loney v. D.C. Rental Hous. Comm'n*, 11 A.3d 753, 759 (D.C. 2010); *Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n*, 677 A.2d 46, 47 (D.C. 1996); *Hampton Courts Tenants' Ass'n v. D.C. Rental Hous. Comm'n*, 573 A.2d 10 (D.C. 1990); *Cascade Park Apartments v. Walker*, TP 26,197 (RHC Mar. 18, 2005). A prevailing party "is 'a party in whose favor a judgment is rendered, regardless of the amount of damages awarded.'" *Hardy v. Sigalas*, RH-TP-09-29,503 (RHC July 21, 2014); *Lizama*, RH-TP-07-29,063 at 42; *Cascade Park Apartments*, TP 26,197 at 2 (quoting BLACK'S LAW DICTIONARY 1145 (7th ed. 1999)). Moreover, the District of Columbia Court of Appeals (DCCA) has held that, in a court's discretion, prevailing tenants should generally be awarded attorney's fees. *Tenants of 500 23rd Street, N.W. v. D.C. Rental Hous. Comm'n*, 617 A.2d 486, 488 (D.C. 1992) (quoting *Ungar v. D.C. Rental Hous. Comm'n*, 535 A.2d 887, 892 (D.C. 1987)); *Lizama*, RH-TP-07-29,063 at 43. *See also Cascade Park Apartments*, TP 26,197 (RHC Jan. 14, 2005) at 70 (quoting *Slaby v. Bumper*, TPs 21,518 & 22,521 (RHC Sept. 21, 1995) at 11-12) (a prevailing party "merely has to 'succeed on any significant issue which achieves some of the benefit the parties sought in bringing the suit.'"); *Chamberlain Apartments Tenants' Ass'n v. 1429-51 Ltd. P'ship*, TP 23,984 (RHC July 7, 1999) at 15-16.

⁵ D.C. OFFICIAL CODE § 42-3509.02 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."

The Commission's review of the record reveals that the Tenants prevailed on two (2) out of the twelve (12) issues brought in their Tenant Petition, as follows: (1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Act; and (2) services and/or facilities provided in connection with the rental unit have been substantially reduced. *See* Final Order at 11-32; R. at 369-90. Additionally, the Commission notes that the ALJ awarded the Tenants \$8,651.02 in damages.⁶ Final Order on Remand at 4; R. at 403. Finally, the Commission notes that, on appeal, it affirmed the ALJ's determination that the Tenants prevailed on the above-recited claims. *See* Decision and Order Following Remand; Decision and Order.

Based on the foregoing, the Commission is satisfied that the Tenants are "prevailing parties" on their Tenant Petition both before OAH and in their appeal to the Commission for purposes of D.C. OFFICIAL CODE § 42-3509.02, 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 (RHC Mar. 18, 2005).

Under the Commission's regulations, any fee-setting inquiry starts with the "lodestar," which is a reasonable hourly rate multiplied by the number of hours reasonably expended on a task. *See* 14 DCMR § 3825.8(a) (2004).⁷ *See also* Sindram v. Tenacity Grp., RH-TP-07-29,094 (RHC Sept. 14, 2011); Cascade Park 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

⁶ The ALJ initially awarded the Tenants \$8,654.44 in the Final Order, and subsequently adjusted the award downward to reflect the pre-August 5, 2006 provision of D.C. OFFICIAL CODE § 42-3502.11 for the period of August 1, 2006 through August 4, 2006. *Compare* Final Order at 32; R. at 369, *with* Final Order on Remand at 4; R. at 403. *See also supra* at 3.

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

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 Hourly Rate

The first element of the lodestar calculation requires the Commission to determine a reasonable hourly rate “as measured by prevailing market rates in the relevant community for attorneys of similar experience and skill.” 14 DCMR § 3825.8(a). See Hampton Courts Tenants’ Ass’n, 599 A.2d at 1115 n.7; Dey, TP 26,119; Reid, TP 11,334; Hampton Courts Tenants’ Ass’n, CI 20,176. The Commission has elaborated the standard as follows:

In Reid v. Sinclair [TP 11,334] . . . [w]e noted that the community that we look to determine reasonable hourly rates in the specialized field of rent control is the community of practitioners in that field.... [I]t is not sufficient for counsel to show that there are other attorneys in the District of Columbia who receive the fee requested or even that counsel has received that fee on occasion in the past. Rather, the attorney must show by appropriate means, usually by affidavit, that he or she has obtained such a fee representing clients in rental housing litigation.

Hampton Courts Tenants’ Ass’n v. William C. Smith Co., CI 20,176 (RHC July 20, 1990) at 6 - 7.

The Tenants initially requested a rate of \$360 per hour for all of the work performed by Counsel, from February 27, 2007 through July 3, 2014, reflecting the current Laffey Matrix rate for an attorney with eight (8) years of experience. See Motion for Attorneys’ Fees, Exhibit 1 at 5-6. 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/Laffey_Matrix_2003-2013.pdf). See also *supra* at p. 4 n.3. On July 17, 2014, the Commission issued an Order to

Supplement, requesting legal authority to support the requested Laffey Matrix hourly rate, as well as evidence of the rate that the Tenants were actually charged. Order to Supplement at 1-3.

As noted *supra* at 5, in response to the Order to Supplement, the Tenants filed a Supplemental Affidavit which (1) withdrew their request for an award of attorney's fees at the requested Laffey Matrix rate of \$360 per hour; (2) averred that, for the period of February 27, 2007 through February 28, 2014 and in the absence of any agreed upon hourly rate, the Tenants agreed to pay attorney's fees for an amount to be calculated as the greater of either a contingency fee of one-third of any damages awarded or an award of attorney's fees based on an undetermined hourly rate; and (3) provided that for the time period of March 11, 2014 through July 3, 2014, the Tenants were charged an hourly rate of \$200 per hour. *See* Supplemental Affidavit at 1-3.

Under the DCAPA, the proponent of a rule or order has the burden to prove all facts essential to their claim by a preponderance of the evidence. D.C. OFFICIAL CODE § 2-509(b).⁸ *See, e.g., Barac Co. v. Tenants of 809 Kennedy St., N.W.*, VA 02-107 (RHC Sept. 27, 2013); *Wilson v. KMG Mgmt., LLC*, RH-TP-11-30,087 (RHC May 24, 2013); *Jassiem v. Jonathan Woodner Co.*, TP 27,720 (RHC Sept. 4, 2009). In this case, as the proponent of the Motion for Attorney's Fees, the burden is on the Tenants to prove by a preponderance of evidence both a reasonable hourly rate for the services of, and the number of hours reasonably expended by, Counsel for the entire time period of his representation. *Loney*, SR 20,089 (RHC June 6, 2012) (“[c]ounsel seeking an award of legal fees has the burden of proof to document and support the amount and reasonableness of the . . . rates claimed” (citing *Webb v. County Bd. of Educ.*, 471

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

U.S. 234, 242 (1985))). *See also* D.C. OFFICIAL CODE § 2-509(b); Barac Co., VA 02-107; Wilson, RH-TP-11-30,087; Jassiem TP 27,720. In the absence of any specified hourly rate, the Tenants were required to establish a “reasonable” hourly rate by introducing evidence of “prevailing market rates” for attorneys of similar experience and skill in the “specialized field” of rental housing law under the Act, with such rates either pre-established by the parties or imputed on the basis of the Laffey Matrix. 14 DCMR § 3825.8(a). *See* Hampton Courts Tenants’ Ass’n, 599 A.2d at 1115 n.7; Lizama, RH-TP-07-29,063; Loney, SR 20,089; Dey, TP 26,119; Reid, TP 11,334; Hampton Courts Tenants’ Ass’n, CI 20,176.

1. The Period of Time from February 27, 2007 through February 28, 2014

Based upon its review of the record, the Commission observes that the Tenants and Counsel did not have a pre-existing fee agreement which clearly and unambiguously stated a single, fixed hourly billing rate for this time period. *See* Supplemental Affidavit at 1. Rather, the Tenants agreed to pay attorney’s fees for an amount to be calculated as the greater of either (1) a contingency fee of one-third of any damages awarded or (2) an award of attorney’s fees based on an undetermined hourly rate. *Id.* at 1-2.

As noted *supra* 7-8, under its regulations, the Commission is only authorized to award fees upon the basis of a lodestar calculation of a “reasonable hourly rate” for such fees. 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. Neither the Commission’s regulations nor its case precedent authorize the Commission to calculate a “reasonable hourly rate” on the basis of a speculative contingency agreement. *Id.* Moreover, aside from the Supplemental Affidavit, the Tenants have provided no additional evidence regarding the written contingency fee agreement that they entered into, especially any provisions

of such agreement according to which a reasonable hourly billing right may even arguably be determined. *See id.*

Furthermore, with respect to establishing a “reasonable hourly rate” on any other grounds, the Tenants have not submitted any evidence, or even a proffer, of any reasonable hourly rate for counsel during this specific period, having withdrawn their request under the Laffey Matrix. *See* Supplemental Affidavit; Motion for Attorney’s Fees. The record also indicates that the Tenants have not submitted any requisite evidence for this time period regarding the “prevailing market rates” for attorneys in the specialized field of rental housing control with similar experience and skill to Counsel’s. *See* Supplemental Affidavit; Motion for Attorney’s Fees. 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. Finally, the only evidence that the Commission has regarding any hourly rate for counsel’s services is the \$200 hourly rate that is claimed by Counsel solely for the period of March 11, 2014 through July 3, 2014, and not for this time period. Supplemental Affidavit at 3. *See infra*. The Commission is unable to determine any evidence in the record that this \$200 hourly rate actually applied, or even was simply intended by the Tenants to apply, to this time period. *See* Supplemental Affidavit; Motion for Attorney’s Fees.

Based on its review of the record, the Commission determines that the Tenants have failed to carry their burden of proof with respect to a reasonable hourly rate for the time period of February 27, 2007 through February 28, 2014. Supplemental Affidavit; Motion for Attorney’s Fees. *See* D.C. OFFICIAL CODE § 2-509(b); Barac Co., VA 02-107; Wilson, RH-TP-11-30,087; Loney, SR 20,089; Jassiem TP 27,720.

2. The Period of Time from March 11, 2014 through July 3, 2014

Based on its review of the record, the Commission is satisfied that the Tenants have shown by a preponderance of evidence, namely the Supplemental Affidavit, that Counsel's hourly rate for the period of March 11, 2014 through July 3, 2014 was \$200. Supplemental Affidavit at 3. For example, the Supplemental Affidavit contains the uncontested assertion that Counsel charged the Tenants \$200 per hour for this time period; the Commission's review of the record reveals no evidence that the \$200 hourly rate was not the rate agreed upon by Counsel and the Tenants; and the Commission is satisfied that the Motion for Attorney's Fees demonstrates that Counsel provided services to the Tenants during the period of March 11, 2014 through July 3, 2014. Supplemental Affidavit; Motion for Attorney's Fees. As required for the lodestar calculation, the Commission will proceed to determine whether the \$200 hourly rate is reasonable for the period of March 11, 2014 through July 3, 2014. 14 DCMR § 3825.8(a). *See supra* at 8-9.

The Commission's review of the record evidence demonstrates that Counsel graduated from law school and began practicing law in 2006, and thus had between seven and eight years of experience in 2014. Motion for Attorney's Fees, Exhibit 1 at 1. Although the Tenants did not submit any evidence regarding the prevailing market rates for an attorney's of Counsel's experience in the specialized field of rental housing, the Commission's review of relevant case law precedent reveals that \$200 per hour is lower than rates typically awarded for an attorney with between 7 and 8 years of experience, and closer to the rates typically awarded to attorneys with between 1 and 3 years of experience. Cummings v. Taylor, RH-TP-08-29,345 (OAH Aug. 20, 2009) (awarding \$270 per hour to attorney with 7 years of experience). *Cf. Lizama*, RH-TP-07-29,063 (awarding \$200 per hour to attorney with 3-4 years' experience); Benitez v. Ogden

Gardens Inc., RH-TP-08-29,189 (OAH Aug. 11, 2009) (awarding \$205 per hour to attorney with 1-3 years' experience).

Nevertheless, where the Commission's review of the record reveals that the Tenants have not requested an hourly rate greater than \$200 per hour for this time period or otherwise asserted that \$200 per hour is not a reasonable hourly rate, the Commission is satisfied that \$200 is a reasonable hourly rate for purposes of the lodestar calculation.⁹ 14 DCMR § 3825.8(a).

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 hourly rate for counsel's time for the work performed in relation to this Tenant Petition between March 11, 2014 and July 3, 2014 is \$200 per hour. 14 DCMR § 3825.8(a). *See* Lizama, RH-TP-07-29,063; 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; Cummings, RH-TP-08-29,345; Benitez, RH-TP-08-29,189; Notsch, RH-TP-06-28,690; Laffey Matrix 2003-2013, http://www.justice.gov/usao/dc/divisions/Laffey_Matrix_2003-2013.pdf. As discussed *supra* at 10-11, although the Commission observes that counsel's representation of the Tenants began prior to March 11, 2014, the Commission's review of the record reveals no evidence of a reasonable hourly rate for any time prior to March 11, 2014. *See* Supplemental Affidavit; Motion for Attorney's Fees. Thus the Commission denies the Tenants' request for attorney's fees prior to March 11, 2014, for lack of evidence of a reasonable hourly billing rate. *See* D.C. OFFICIAL CODE § 2-509(b); Barac Co., VA 02-107; Wilson, RH-TP-11-30,087; Loney, SR 20,089; Jassiem TP 27,720.

⁹ The Commission notes additionally that the Housing Provider has not asserted that the \$200 hourly rate charged by Counsel between March 11, 2014 and July 3, 2014 is not a reasonable rate for an attorney in the specialized field of rent control with similar skill and experience for this time period. *See* Opposition to Motion for Attorney's Fees.

B. Reasonable Hours Expended

To satisfy the second element of the lodestar calculation, that the hours claimed were reasonably expended on a case, a fee applicant must submit “sufficiently detailed information about the hours logged and the work done.” See Hampton Courts Tenants’ Ass’n 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).

In light of the Commission’s determination *supra* at 9-13, that the Tenants only carried their burden of proof with respect to the reasonable hourly rate for the time period of March 11, 2014 through July 3, 2014, the Commission will likewise only consider whether the hours claimed during that specific time period were “reasonable” for purposes of the lodestar calculation. See *supra* at 8-13. The Affidavit of Counsel indicates that he graduated from law school and began practicing law in 2006. See Motion for Attorney’s Fees, Exhibit 1 at 1. Counsel states that at the time he took the Tenants’ case he was working for the People’s Law Resource Center, a firm specializing in landlord-tenant matters, and that he currently continues

to handle landlord-tenant disputes for low-income clients. *Id.* At 7. Counsel's affidavit indicates that his responsibilities during the time period of March 11, 2014 through July 3, 2014 included representing the Tenants before OAH on remand, and before the Commission during the Housing Provider's second appeal in this matter. *See id.* at 1-4. Counsel's Affidavit contains contemporaneous time entries detailing the work that he performed in relation to the Tenants' case, for a total of 15.7 hours between March 11, 2014 and July 3, 2014. *See id.*

The Commission observes that Counsel had between seven and eight years of experience in 2014, and is satisfied that his time entries during this period do not indicate that he logged an undue amount of time consulting with other counsel, or researching the relevant provisions of the Act in order to adequately represent the Tenants. *See id.* The Commission is thus satisfied that the hours logged by Counsel approximate the hours that might be logged by an attorney skilled in the specialized field of rent control law for similar work. *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.

Finally, the Commission is satisfied based on its review of Counsel's affidavit, that the time logged is not excessive, redundant, or otherwise unnecessary for the representation of the Tenants in this matter. Motion for Attorney's Fees, Exhibit 1 at 1-4. *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.

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

Counsel's reasonable representation of the Tenants between March 1, 2014 and July 3, 2014 is 15.7 hours.¹⁰

C. Lodestar Amount

As noted *supra* at p. 7, 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 amount for Counsel, using the hours and hourly rates determined *supra* at 7-15:

HOURS EXPENDED	HOURLY RATE	LODESTAR
15.7	\$200/hour	\$3,140

Pursuant to 14 DCMR § 3825.8(a), the Commission approves the following "lodestar" amount of fees for Counsel: \$3,140.

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;

¹⁰ The Commission observes that the Housing Provider has not contested that the hours logged by Counsel are "reasonable" for purposes of 14 DCMR § 3825.8(a). See Opposition to Motion for Attorney's Fees.

- (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 Counsel, the Commission will proceed to consider whether any adjustments to the lodestar amount are warranted under 14 DCMR § 3825.8(b). The Commission's determination will be based upon its review of the record, fee awards in other cases under the Act, and its "past experience with attorney services in the rental housing area." See Kuratu, 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 Counsel in the instant case. See *supra* at 14-16. The Commission is satisfied that this factor does not warrant any adjustment of the lodestar amount.

(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 Counsel in the instant case to be of unusual or extraordinary

novelty, complexity or difficulty – both in the context of practitioners in the specialized field of rent control and rental housing under the Act and in the context of typical actions brought under the provisions of the Act applicable to this case.

(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 Counsel to perform his 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 Counsel performed the requisite litigation, research, evidentiary and argument skills in a very professional manner in the instant case, the Commission does not regard the required legal skills 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 observes that Counsel has conceded that he was not precluded from other employment due to his acceptance of this case. Motion for Attorney's Fees, Exhibit 1 at 5. The Commission is satisfied 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 rate for Counsel in the instant case. *See supra* at 8-13. *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. The Commission is satisfied that this factor does not warrant any adjustment of the lodestar amount.

(6) Whether the fee is fixed or contingent

This factor has been addressed by the Commission in its determination of the appropriate hourly rate for Counsel in the instant case. *See supra* at 8-13. The Commission is satisfied that this factor does not warrant any adjustment of the lodestar amount.

(7) Time limitations imposed by the client or circumstances

The Commission observes that Counsel has conceded that there were no time limitations imposed on him by his clients or the circumstances of this case. Motion for Attorney's Fees, Exhibit 1 at 6. The Commission is satisfied that this factor does not 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

The calculation of attorney's fees may be adjusted based on "the results obtained, when the moving party did not prevail on all the issues." 14 DCMR § 3825.8(b)(13). The Commission observes that the attorney's fees during the period of March 11, 2014 through July 3, 2014 arise out of two (2) separate proceedings on the Tenant Petition: the OAH proceedings on remand ("OAH Proceedings on Remand"), and the Housing Provider's second appeal to the Commission ("Second Appeal").

The Commission is satisfied that the Tenants were the prevailing parties in the OAH Proceedings on Remand. The ALJ adjusted the damages awarded to the Tenants in accordance with the Commission's Decision and Order, but otherwise the Final Order remained unaltered. *See* Final Order on Remand at 1-4; R. at 403-406. *See supra* at 3. The Commission is likewise satisfied that the Tenants prevailed in the Second Appeal. In the Second Appeal, the Housing

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

Provider raised eight (8) issues. Second Notice of Appeal at 2-4. The Commission affirmed the Final Order on Remand in its entirety. Decision and Order Following Remand at 16.

The Commission determines in its discretion that no adjustment of the lodestar amount of fees is warranted based on this factor.

(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 Counsel did not require or otherwise necessitate enhanced or unusual legal experience, reputation and abilities in the context of all attorneys who are customarily engaged in the representation of clients in similar cases in the specialized field of rent control under the Act. 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 agrees with the Tenants that the amounts of money involved in rental housing cases under the Act may typically be smaller than in other real estate cases, and that such cases thus may not be considered desirable on these and fee grounds for private attorneys representing tenants. *See* Motion for Attorney's Fees, Exhibit 1 at 7. Indeed, the Commission has stated that the purpose of the Act's presumptive award of attorney's fees under D.C. OFFICIAL CODE is to encourage attorneys to accept cases brought under the Act by tenants and tenant associations, especially by lower and moderate income tenants. *See Cascade Park Apartments*, TP 26,197 (citing *Ungar v. D.C. Rental Hous. Comm'n*, 535 A.2d 887, 892 (D.C.

1987)); Loney v. Tenants of 710 Jefferson Street, N.W., SR 20,089 (RHC Jan. 29, 2013) (Second Order on Motion for Attorney's Fees Following Remand); Lizama, RH-TP-07-29,063; Kuratu, RH-TP-07-28,985; Avila, RH-TP-28,799. Nevertheless, the Commission determines in its discretion that this appeal is not of such a degree of "undesirability" within the context of all tenant petitions and appeals under the Act as to warrant adjustment of the lodestar amount of fees. *See, e.g.*, Loney, SR 20,089 (Second Order on Motion for Attorney's Fees Following Remand); Lizama, RH-TP-07-29,063; 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 Counsel does not appear to the Commission to be unusual in length, difficulty or in substance in the context of attorneys ordinarily and customarily practicing before the Commission in the specialized field of rent control. *See* Hampton Courts Tenants' Ass'n, 599 A.2d at 16-17; Town Ctr. Mgmt. Corp., TP 23,538; Hampton Courts Tenants' Ass'n, CI 20,176. Therefore, the Commission in its discretion does not consider this factor to warrant any adjustment of the lodestar amount.

(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.*, Lizama, RH-TP-07-29,063; Kuratu, RH-TP-07-28,985; Avila, RH-TP-28,799.

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

The discussion of this factor was incorporated in the Commission's consideration of factor eight (8) under 14 DCMR § 3825.8(b). *See supra* at p. 19 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 Tenants in the instant case by Counsel. The Commission's review of the record indicates that Counsel 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, determines that his representation of the Tenants does not warrant any adjustment to the lodestar amount of fees under 14 DCMR § 3825.8(b).

IV. CONCLUSION

In light of the time and labor expended, and the prevailing fee rates for attorneys with similar experience in the specialized field of rent control, the Commission in the exercise of its reasonable discretion grants the Tenants' request for attorney's fees in part and denies it in part.

The Commission denies the Tenants' request for attorney's fees during the period of February 27, 2007 through February 28, 2014, for their failure to meet their burden of proof with respect to the reasonable hourly rate during these time periods.

The Commission grants the Tenants' request for attorney's fees for the period of March 11, 2014 through July 3, 2014, and awards \$3,140 in attorney's fees to the Tenants for legal services performed by Counsel in such time period. *See, e.g., Lizama*, RH-TP-07-29,063; *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, provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

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

D.C. Court of Appeals
Office of the Clerk
430 E. Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION FOR ATTORNEY'S FEES** in RH-TP-14-28,794 was mailed, postage prepaid, by first class U.S. mail on this **19th day of August, 2014** to:

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