

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-28,799

In re: 6000 13th Street N.W., Unit 111

Ward Three (3)

AHMED, INC.
Housing Provider/Appellant

v.

JUAN AVILA
Tenants/Appellees

ORDER ON TENANT'S MOTION FOR ATTORNEY FEES

January 29, 2013

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.

I. PROCEDURAL HISTORY

This matter is before the Commission on the appeal of Housing Provider/Appellant Ahmed, Inc. (Housing Provider) from a Final Order in favor of the Tenant/Appellee Juan Avila

¹ On October 1, 2006, pursuant to D.C. OFFICIAL CODE § 2-1831 (b-1) (Supp. 2008), the OAH was authorized to hold hearings and issue final orders in rental housing cases previously under the jurisdiction of the Department of Consumer and Regulatory Affairs, Rental Accommodations and Conversion Division (RACD).

(Tenant), issued by Administrative Law Judge John Dean (ALJ).² See Avila v. Ahmed, Inc., 2006-DHCD-TP 28,799 (OAH June 20, 2011). Attorney Edward Allen and student attorneys from the University of the District of Columbia David A. Clarke School of Law (UDC School of Law) represented the Tenant before both OAH and the Commission. On October 9, 2012, the Commission issued a Decision and Order affirming the ALJ's Final Order on all issues. See Ahmed, Inc. v. Avila, RH-TP-06-28,799 (RHC Oct. 9, 2012).

On October 23, 2012, the Tenant filed "Appellee's Motion for Attorney Fees" (Motion for Attorney Fees), requesting fees in the amount of \$4,425.00 for work done before the Commission. See Motion for Attorney Fees at 1. In support of the Motion for Attorney Fees, the Tenant filed a memorandum of points and authorities that included a discussion of the relevant statute, regulations, and case law. See *id.* at 3-15. In addition, Supervising Attorney Edward Allen and Student Attorneys John Millar, Louis Frohman, and Eva Seidelman each submitted an "Affidavit in Support of Tenant's Motion for Attorney's Fees" (Affidavits) in which each itemized his/her time for legal services and provided the applicable information relative to the factors listed in 14 DCMR § 3825.8 (2004).³ See Affidavit of Edward Allen;

² The complete procedural history of this case is contained in the Decision and Order issued by the Commission on October 9, 2012. See Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012).

³ According to 14 DCMR § 3825.8 (2004):

The award of attorney's fees shall be calculated in accordance with the existing case law using the following standards:

- (a) The starting point shall be the lodestar, which is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate.
- (b) The lodestar amount may be reduced or increased after consideration of the following factors:
 - (1) the time and labor required;
 - (2) the novelty, complexity, and difficulty of the legal issues or questions;

Affidavit of John Millar; Affidavit of Louis Frohman; Affidavit of Eva Seidelman. The Housing Provider filed an "Opposition to Appellee's Motion for Attorneys' Fees" (Opposition to Motion for Attorney Fees) with the Commission on November 14, 2012, arguing that the Commission lacked authority over the Motion for Attorney Fees, and that the Tenant's attorneys should not be awarded the full amount of fees requested. *See* Opposition to Motion for Attorney Fees at 1-4.

II. PRELIMINARY ISSUE

The Housing Provider argues in the Opposition to Motion for Attorney Fees that the Commission cannot rule on the Tenant's Motion for Attorney Fees because the case is currently on appeal before the District of Columbia Court of Appeals (DCCA). *See* Opposition to Motion for Attorney Fees at 1-2. The Housing Provider cites Strand v. Frenkel, 500 A.2d 1368 (D.C.

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- (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.

1985)⁴ and Hanson v. D.C. Rental Hous. Comm'n, 584 A.2d 592, 594 (D.C. 1991) in support of its position. *See id.*

As the Commission explained in Tenants of 710 Jefferson St., N.W. v. Loney, SR 20,089 (RHC Dec. 10, 2008), the Commission is not prevented from deciding a motion for attorney's fees simply because the case has been appealed to the DCCA. *See* Tenants of 710 Jefferson St., N.W. v. Loney, SR 20,089 (RHC Dec. 10, 2008). The Commission recognized in Loney that although a decision on attorney's fees during the pendency of an appeal may be rendered moot, consideration of the motion for attorney's fees prior to the resolution of the appeal "is in the interest of the parties and is not a needless expenditure of Commission time and effort." *See id.*

Further, the Commission is not persuaded that the cases cited by the Housing Provider, Strand, 500 A.2d at 1368, and Hanson, 584 A.2d at 592, prevent the Commission from issuing an Order on the Tenant's Motion for Attorney Fees. Neither case involves an appeal from an award of attorney's fees; instead, each addresses the enforcement of a judgment in D.C. Superior Court. *See* Hanson, 584 A.2d at 595; Strand, 500 A.2d at 368. In both cases, the DCCA held that the statute of limitations on an action for enforcement of an RACD or Commission decision in D.C. Superior Court is "held in abeyance" until the right of judicial review is exhausted. *See* Hanson, 584 A.2d at 595; Strand, 500 A.2d at 368. The Commission is satisfied that these two cases do not prevent it from deciding a motion for attorney's fees while the underlying case is on appeal to the DCCA. *See* Hanson, 584 A.2d at 595; Strand, 500 A.2d at 368.

⁴ The Commission notes that the Opposition to Motion for Attorney Fees actually references "Strand v. Frankel, 500 A.2d 368 (D.C. 1985)." *See* Opposition to Motion for Attorney Fees at 1. The Commission's review of cases issued by the DCCA reveals no case matching the spelling and the citation provided by the Housing Provider. However, the Commission did identify Strand v. Frenkel, 500 A.2d 1368 (D.C. 1985), which closely matches the Housing Provider's citation. For the purposes of this Order, the Commission will assume that the Housing Provider intended to cite Strand v. Frenkel, 500 A.2d 1368 (D.C. 1985).

Based on the foregoing, the Commission determines that it may rule on the Tenant's Motion for Attorney Fees, and will proceed with a discussion of the issues presented.

III. DISCUSSION OF THE ISSUES

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. 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). 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).⁶ *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

⁵ 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.

⁶ The regulation states:

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).

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 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 Attorney Fees requested attorney's fees for Student Attorneys, John Millar, Louis Frohman, and Eva Seidelman, and Supervising Attorney Edward Allen.⁷

1. Hours Requested By Student Attorneys John Millar, Louis Frohman and Eva Seidelman

⁷ The Tenant's Motion for Attorney Fees indicates that Attorney Daniel Clark, and Student Attorney Erika Dupree also provided representation; however, the Tenant's Motion for Attorney Fees does not request compensation for their work. *See* Affidavit of Eva Seidelman at 3; Affidavit of Edward Allen at 3.

The Affidavit of John Millar indicates that he is a full-time student at the UDC School of Law, and was enrolled in the Housing and Consumer Law Clinic from January 20, 2012 through May 10, 2012. *See* Affidavit of John Millar at 1. Mr. Millar's Affidavit indicates that he began working on the Tenant's case on January 20, 2012, and his primary responsibilities were to "research, prepare for and present oral arguments on the appeal of this case before the Rental Housing Commission." *See id.* Mr. Millar's Affidavit contains one and a half (1.5) pages of contemporaneous time entries detailing the work that he performed in relation to the Tenant's case before the Commission. *See id.* at 2-3. Where more than one task was performed on a particular date, Mr. Millar has indicated how much time was spent on each individual task. *See id.* The time entries in Mr. Millar's Affidavit actually total 50.4 hours, although his own calculations stated a total of 40.6 hours. *See id.* at 2-3. Irrespective of this discrepancy, Mr. Millar substantially discounted the total number of hours for which he is seeking fees to 13.8 hours. *See id.* at 3.

The Affidavit of Louis Frohman indicates that he is a full-time student at the UDC School of Law, and was enrolled in the Housing and Consumer Law Clinic from January 20, 2012 through May 10, 2012. *See* Affidavit of Louis Frohman at 1. Mr. Frohman's Affidavit indicates that he began working on the Tenant's case on January 20, 2012, and his primary responsibility was to "draft Appellee/Respondent's Motion to Expedite the Hearing Date." *See id.* Mr. Frohman's Affidavit contains a half page of contemporaneous time entries detailing the work that he performed in relation to the Tenant's case before the Commission. *See id.* at 2. Mr. Frohman's Affidavit states that he logged a total of 4.4 hours, but is only requesting 2.2 hours. *See id.*

The Affidavit of Eva Seidelman indicates that she is a full-time student at the UDC School of Law, and has been enrolled in the Housing and Consumer Law Clinic from August 20, 2012 through the date of her Affidavit, October 23, 2012. *See* Affidavit of Eva Seidelman at 1. Ms. Seidelman's Affidavit indicates that she began working on the Tenant's case on August 20, 2012, and her primary responsibilities have been to "draft portions of the Memorandum of Points and Authorities attached to the Motion for Attorney's Fees to the Rental Housing Commission and conduct all related research and the drafting of attached affidavits." *See id.* Ms. Seidelman's Affidavit contains one and a half (1.5) pages of contemporaneous time entries detailing the work that she performed in relation to the Tenant's case before the Commission. *See id.* at 2-3. Where more than one task was performed on a particular date, Ms. Seidelman has indicated how much time was spent on each individual task. *See id.* Ms. Seidelman's Affidavit states that she logged a total of 38.5 hours, but is only requesting 7.7 hours. *See id.*

In the Opposition to Motion for Attorney Fees, the Housing Provider objects the following entries: (1) 4.8 hours logged by Mr. Millar for practicing for oral argument, (2) 1.7 hours logged by Mr. Millar on April 26, 2012 for copying Commission decisions, (3) 16.8 hours of Mr. Millar's time logged for listening to hearing tape, and (4) the hours claimed by Mr. Frohman generally (as being excessive and duplicative of Mr. Allen's time.) *See* Opposition to Motion for Attorney Fees at 2-3. Further, the Housing Provider objects to all of the time requested by Ms. Seidelman because her time was only spent seeking attorney's fees and not "help[ing] Mr. Avila to enforce any rights he may have." *See* Opposition to Motion for Attorney Fees at 4.

The Commission observes that the difference between Mr. Millar's time logged (whether 50.4 or 40.6 hours, respectively) and time requested (13.8) is (in either case) greater than the