

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

SR 20,089

In re: 710 Jefferson St., N.W.

Ward Four (4)

STEVE LONEY
Housing Provider/Appellant

v.

TENANTS OF 710 JEFFERSON STREET, N.W.
Tenants/Appellees

SECOND ORDER ON MOTION FOR ATTORNEY'S FEES FOLLOWING REMAND

January 29, 2013

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD),¹ to the Rental Housing Commission (Commission). 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 to -510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800 - 4399 (2004) govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from RACD and DCRA pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2008). The functions and duties of the RACD were transferred to the Department of Housing and Community Development (DHCD) from DCRA 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**²

On August 6, 2004, Steve Loney, Housing Provider/Appellant (Housing Provider) of a housing accommodation located at 710 Jefferson Street, N.W. (Housing Accommodation), filed Substantial Rehabilitation (SR) Petition 20,089 (Petition) with RACD. *See* Petition at 1-18; Record (R) at 1-18. Counsel from the Legal Aid Society of Washington, D.C. (LAS) represented all of the tenants (Tenants) in the Housing Accommodation at all of the proceedings on SR 20,089 before RACD, before the Commission, and before the District of Columbia Court of Appeals (DCCA). *See* Entry of Appearance at 1; R. at 52. Hearings on the Petition occurred on January 25, February 17, March 24 and April 12, 20 & 28, 2005. *See* Office of the Rent Administrator Hearing Attendance Sheets; R. at 111-127. On July 28, 2005, the hearing examiner issued Loney v. Tenants of 710 Jefferson St., N.W., SR 20,089 (RACD July 28, 2005) (Final Order), ordering that SR 20,089 be granted. *See* Final Order at 1-30; R. at 211-40.

On August 16, 2005, the Tenants, through counsel, filed a Notice of Appeal to the Commission. *See* Notice of Appeal at 1-4. The Commission held a hearing on October 25, 2005. *See* Notice of Scheduled Hearing and Notice of Certification of Record at 1. On September 3, 2008, the Commission issued its Decision and Order in Tenants of 710 Jefferson St., N.W. v. Loney, SR 20,089 (RHC Sept. 3, 2008) (Decision and Order), reversing the hearing examiner's Final Order and denying the Housing Provider's Petition for failing to meet the requirements for substantial rehabilitation and a rent ceiling increase for the subject Housing

² A detailed description of the RACD and RHC proceedings can be found in the Decision and Order. A detailed description of the proceedings regarding attorney's fees thus far can be found in Tenants of 710 Jefferson Street, N.W., SR 20,089 (RHC June 6, 2012).

Accommodation under the Act. Decision and Order at 1-61. *See* D.C. OFFICIAL CODE §§ 42-3501.03(34), 42-3502.14 (2001); 14 DCMR §§ 4212.1-.12 (2004).

On September 23, 2008, the Housing Provider filed an appeal with the DCCA. Thereafter, on October 7, 2008, pursuant to D.C. OFFICIAL CODE § 42-3509.02 (2001) and 14 DCMR §§ 3825.1-.12 (2004), LAS filed “Tenants’/Appellants Motion for Reasonable Attorney’s Fees” (Tenants’/Appellants Motion for Attorney’s Fees) with the Commission. *See* Tenants’/Appellants Motion for Attorney’s Fees at 0031. On October 28, 2008, the Housing Provider filed “Housing Provider’s/Appellee’s Opposition to Tenant Petitioner Appellants’ (sic) Motion for Reasonable Attorneys Fees” (Housing Provider’s/Appellee’s Opposition to Motion for Attorney’s Fees). *See* Housing Provider’s/Appellee’s Opposition to Motion for Attorney’s Fees at 1-3.

On December 10, 2008, the Commission issued its order on attorney’s fees for LAS. Tenants of 710 Jefferson St., N.W. v. Loney, SR 20,089 (RHC Dec. 10, 2008) (Order on Motion for Attorneys’ Fees). *See* Order on Motion for Attorneys’ Fees at 1-15. The Commission determined that, under D.C. OFFICIAL CODE § 42-3509.02 (2001) and applicable Commission cases, it was authorized to award attorney’s fees to LAS for legal services and time expended in regard to representation on matters only before the Commission, and not before RACD, unless the award of attorney’s fees was raised by LAS before RACD and, subsequently, as an issue in its appeal of the RACD final decision. *See* Order on Motion for Attorneys’ Fees at 4 - 5. The Commission rejected LAS’s proposal to determine the appropriate hourly rate for representation based on the “Laffey Matrix,”³ instead adopting the fee provision in the federal Equal Access to

³ In the absence of a customary, hourly billing rate applicable to client representation by LAS in rent control cases under the Act, LAS proposed to establish the prevailing hourly rate for its representation by means of the “Laffey

Justice Act (EAJA), 28 U.S.C. § 2412 (d)(2)(A) (2007), to determine reasonable attorney's fees in the absence of customary, hourly billing rate evidence under 14 DCMR § 3825.8(b) (2004).

Id. at 14 - 15.⁴

While the Housing Provider's September 23, 2008 appeal of the Commission's Decision and Order was pending, LAS cross-appealed on the grounds that the Commission had erred in determining that it did not have authority under the Act to grant attorney's fees for the work performed before the RACD, and in its rejection of the hourly rate proposed by the Tenants under the Laffey Matrix in favor of the rate under the Equal Access to Justice Act, 28 U.S.C. § 2412 (d)(2)(A) (2007).

On September 23, 2010, the DCCA affirmed the Commission's Decision and Order to deny the substantial rehabilitation petition. Loney v. District of Columbia Rental Hous. Comm'n, 11 A.3d 753 (D.C. 2010), *rehearing en banc denied*, 08-AA-1203 (D.C. Feb. 17, 2011).⁵ The DCCA reversed the Commission's Decision and Order on the LAS' attorney's fees

Matrix." See Tenants'/Appellants' Motion for Reasonable Attorney's Fees at 5. The Laffey Matrix is "a fee schedule prepared by the Civil Division of the United States' Attorney's Office for the District of Columbia for use in calculating fee awards for government attorneys." *Id.* (citing Covington v. District of Columbia, 57 F.3d 1101, 1109 (D.C. Cir. 1995) (approving use of Laffey Matrix for *pro bono* attorneys)).

⁴ The Commission applied the following fee provision from the version of the EAJA, 28 U.S.C. § 2412 (d)(2)(A) (2007), applicable at the time of the Commission's consideration of the LAS motion :

"[a]ttorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee."

See Order on Motion for Attorneys' Fees at 14.

⁵ The DCCA's opinion only addressed the Commission's decisions that (1) the hearing examiner failed to make requisite findings of fact on the Housing Provider's proposed scope of work, (2) the finding that the housing provider submitted a "detailed" list of renovation costs was not supported by substantial evidence in the record, and (3) the hearing examiner erred in determining that the substantial rehabilitation was in the Tenants' interest. Loney, 11 A.3d at 755 and n.1.

on two (2) grounds. *Id.* First, contrary to the Commission's reasoning, the DCCA determined that :

[W]e agree with the [T]enants that they could not have raised the [fee] issue previously (before the hearing examiner or in their appeal to the Commission) because they were not the prevailing party until the Commission had ruled in their favor. Consequently, they did not waive the issue and should not be prevented from recovering attorney's fees on the basis that the Commission does not have jurisdiction.

Id. at 760. Second, the DCCA concluded that:

[W]here [the Housing Provider] did not propose an alternative hourly rate and the Commission's only justification for substituting its own [Equal Access to Justice Act] rate is that it has "traditionally used" that rate without any consideration of the Frazier factors (footnote omitted), the rejection of the [T]enants' proposed [Laffey Matrix] constituted an abuse of discretion.

*Id.*⁶ The DCCA remanded the case to the Commission (or OAH) for further proceedings on the following two (2) determinations on appropriate attorney's fees for LAS:

1. Determination of the amount of hours spent by LAS attorneys in representing the [T]enants of the Housing Accommodation before the RACD⁷ and the Commission; and
2. Determination of the appropriate hourly rate for attorney's fees in light of the DCCA's recommendations regarding the necessity of evaluating the respective merits

⁶ The Frazier factors to which the DCCA refers in Loney, 11 A.3d at 760, are twelve (12) factors developed by the DCCA for consideration by trial courts and administrative law judges in determining an appropriate attorney fee award when authorized by statute. Frazier v. Franklin Inv. Co., 468 A.2d 1338, 1341 n.2 (D.C. 1983) (*cited in Alexander v. D.C. Rental Housing Comm'n*, 542 A.2d 359, 361 and n.8 (D.C. 1988)). These factors are practically identical to those contained in 14 DCMR § 3825.8(b) (2004) which the Commission applied to its determination of attorney fees in the instant case. *See, e.g.*, Order on Motion for Attorneys' Fees at 7 - 12. *See Loney*, SR 20,089 (June 6, 2012) at 12 – 13, 79 - 87.

⁷ The DCCA noted that the number of compensable hours that the Commission calculated for LAS' representation before the Commission was not contested by LAS either before the Commission or on appeal. Loney, 11 A.3d at 760 and n. 3. Therefore, the number of hours that the Commission determined for LAS representation before the Commission – 23.5 billable hours – will be used in the calculation of LAS' total legal fees for its representation of the Tenants before the Commission. Cf., Bragg v. Owens-Corning Fiberglass Corp., 734 A.2d 643, 653 (D.C. 1999) (noting that an assertion made for the first time on appeal is not entitled to consideration by the DCCA.); D.D. v. M.T., 550 A.2d 37, 48 (D.C. 1988); Miller v. Avirom, 384 F.2d 319, 321-322 (D.C. Cir. 1967).

of alternative compensation schemes (like the Laffey Matrix) and establishing “prevailing market rates” for the legal services of a non-profit provider like LAS.

Id. at 759 - 760.

On April 20, 2011, the DCCA issued an order on LAS’ cross-motion for attorney’s fees (incurred in prosecuting the DCCA appeal and its response to the Housing Provider’s *en banc* petition). Loney v. District of Columbia Rental Housing Comm’n, Nos. 08-AA-1203 & 08-AA-1603 (D.C. April 20, 2010) (DCCA’s Order on Motion for Attorney’s Fees). According to the DCCA’s Order on the Motion for Attorney’s Fees at 1:

. . . [t]he Clerk shall transmit a copy of the motion for attorney’s fees, the opposition and the reply to the D.C. Rental Housing Commission for calculation of the reasonable number of hours and hourly rate the agency recommends be awarded to cross-petitioner.[citation omitted]

(emphasis added).

LAS filed a brief with the Commission on behalf of the Tenants/Appellants on June 13, 2011. *See* Brief of Tenants/Appellants Regarding Attorney’s Fees. Housing Provider’s counsel filed its brief on July 27, 2011. *See* Housing Provider’s Brief Regarding Attorney’s Fees. The Commission conducted its hearing on October 5, 2011; counsel for both parties attended the hearing. Both parties filed post-hearing submissions.⁸

On June 6, 2012, the Commission issued an Order on Motion for Attorney’s Fees Following Remand, Loney, SR 20,089 (RHC June 6, 2012) (Order on Attorney’s Fees Following Remand), ordering the Housing Provider to pay LAS legal fees in the amount of \$36,185.60. *See* Order on Attorney’s Fees Following Remand at 90. For proceedings before RACD, the

⁸ On October 18, 2011, LAS filed Tenants/Appellants Supplement to Motion for Reasonable Attorneys’ Fees and Tenants/Appellants’ Motion to Supplement the Record with the Affidavit of Adrienne M. DerVartanian. On November 1, 2011, The Housing Provider filed Housing Provider’s Opposition to Motion to Supplement the Record with the Affidavit of Adrienne M. DerVartanian.

Commission awarded Attorney Jennifer L. Berger 41.04 hours at a rate of \$225 per hour and awarded Attorney Adrienne DerVartanian 33.86 hours at a rate of \$225 per hour. *See id.* at 78. For proceedings on the appeal before the Commission, the Commission awarded Ms. Berger 23.50 hours at a rate of \$225 per hour. *See id.* For proceedings before the DCCA, the Commission awarded Attorney Julie H. Becker 41.86 hours at a rate of \$335 per hour. *See id.*

The Commission determined that LAS had not met its burden of proof in documenting and otherwise providing sufficient evidence that the proposed rates from the Laffey Matrix for certain attorneys were reasonable based upon the Commission's standard for determining attorney's fees in accordance with prevailing market rates. *See id.* at 88. The rates at issue were the following: (1) Eric Angel's proposed hourly rate of \$420 in the appeal of the Commission's Decision and Order to the DCCA; (2) Bonnie Robin-Vergeer's proposed hourly rates of \$420 in the appeal of the Commission's Decision and Order to the DCCA and \$475 in opposing the *en banc* petition before the DCCA; (3) Ms. Becker's proposed hourly rate of \$420 rate in opposing the *en banc* petition before the DCCA and \$435 in the Commission proceedings on remand; and (4) John C. Keeney's proposed rate of \$495 in the Commission proceedings on remand. *See id.* at 88-89.

The Commission ordered LAS and the Housing Provider to submit affidavits on prevailing hourly rates from attorneys of comparable experience to Ms. Becker, Mr. Angel, Ms. Robin-Vergeer and Mr. Keeney, respectively, who are ordinarily and customarily engaged in the practice of litigating actions in the specialized field of rent control and rental housing under the Act similar to the instant case. *See id.* at 89.

The Tenants filed their “Supplemental Brief and Affidavit Per Commission Order of June 6, 2012” (Tenants’ Supplemental Brief and Affidavit) on August 17, 2012. *See* Tenants’ Supplemental Brief and Affidavit at 1-12. The Tenant’s argued that their attorneys should be compensated at the full Laffey Matrix rates, between \$420 and \$495 per hour. *See id.* at 1. In support of their position, Tenants submitted the affidavit of Eric Von Salzen, an attorney with over forty (40) years of experience in private practice in the District. *See* Declaration of Eric Von Salzen at 1. Mr. Von Salzen stated that his current hourly rate for “rent control and similar work” is \$400 per hour. *See id.* at 2.

The Housing Provider filed “Housing Provider’s Brief on Hourly Rates for Attorneys Who Handle Rent Control Cases” (Housing Provider’s Brief on Hourly Rates) on August 17, 2012, and a “Supplement to Memorandum on Attorneys Fees” (Housing Provider’s Supplement to Memorandum) on August 23, 2012. *See* Housing Provider’s Brief on Hourly Rates at 1-3; Housing Provider’s Supplement to Memorandum at 1-3. The Housing Provider argued that the Commission should apply “[t]he hourly rates the RHC determined in its October 6, 2012 Order.” *See* Housing Provider’s Brief on Hourly Rates at 1-2. In support, the Housing Provider submitted the Affidavits of Carol Blumenthal and Bernard Gray. *See* Affidavit of Carol Blumenthal; Affidavit of Bernard Gray. Ms. Blumenthal’s Affidavit states that she has been practicing law for over thirty (30) years, and that she has regularly represented both landlords and tenants in administrative forums. *See* Affidavit of Carol Blumenthal at 1. Ms. Blumenthal states that she charges \$295 per hour for her services. *See id.* at 2. Mr. Gray states that he has been practicing law for thirty-four (34) years and that he has regularly handled representation of landlords and tenants in tenant petitions, hardship proceedings, a substantial rehabilitation

proceeding, and negotiating voluntary agreements. *See* Affidavit of Bernard Gray at 1. Mr. Gray states that he charges \$250 per hour for his services. *See id.* at 2.

The Commission's consideration of the rates for Mr. Angel's work before the DCCA, Ms. Robin-Vergeer's work before the DCCA, Ms. Becker's work before the DCCA and before the Commission on remand, and Mr. Keeney's work before the Commission on remand is discussed below.

II. **LEGAL ANALYSIS**

Under D.C. OFFICIAL CODE § 42-3509.02 (2001),⁹ the Rent Administrator, the Commission, or a court of competent jurisdiction may award reasonable attorney's fees to the prevailing party in any action under the Act, except for evictions. 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 actions. *See Loney*, 11 A.3d at 759; *Hampton Courts Tenants' Ass'n v. D.C. Rental Hous. Comm'n*, 573 A.2d 10, 12 - 13 (D.C. 1990).

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). *See also Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Copeland v. Marshall*, 641 F.2d 880, 892 (D.C. Cir. 1980) (*en banc*); *Reid v. Sinclair*, TP 11,334 (RHC Dec. 1, 1988) at 15 - 19. After the Commission has determined a lodestar amount

⁹ The Act, D.C. OFFICIAL CODE § 42-3509.02 (2001), provides as follows:

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.

for attorney's fees, the Commission may make adjustments to the "lodestar" amount upon consideration of the factors contained in 14 DCMR § 3825.8(b) (2004), listed *infra* at 22.

The determination of the amount of reasonable attorney's fees is committed to the sound discretion of the Commission. *See Lively v. Flexible Packaging Ass'n*, 930 A.2d 984, 988 (D.C. 2007); *Maybin v. Stewart*, 885 A.2d 284, 288 (D.C. 2005); *Hampton Courts Tenants Ass'n*, 599 A.2d 1113, 1115 (D.C. 1991); *Alexander v. D.C. Rental Hous. Comm'n*, 542 A.2d 359, 361 (D.C. 1988) (holding that the same discretionary standard of review applies to attorney's fees determinations by an administrative agency). The setting aside of a determination of attorney's fees requires a "very strong showing of abuse of discretion." *Lively*, 930 A.2d at 988; *Maybin*, 885 A.2d at 288 (*quoting Steadman v. Steadman*, 514 A.2d 1196, 1200 (D.C. 1986)).

A. CALCULATION OF THE LODESTAR

1. NUMBER OF HOURS REASONABLY EXPENDED

The Commission previously determined the number of hours reasonably expended for the attorneys in question, as follows: (1) 2.25 hours by Mr. Angel related to the appeal of the Commission's Decision and Order to the DCCA; (2) 3.75 hours by Ms. Robin-Vergeer for the appeal of the Commission's Decision and Order to the DCCA, and 1.5 hours related to opposing the *en banc* petition before the DCCA; (3) 8.11 hours by Ms. Becker related to opposing the *en banc* petition before the DCCA, and 7.08 hours for the Commission proceedings on remand; and (4) 3.75 hours by Mr. Keeney for the Commission proceedings on remand. *See Order on Attorney's Fees Following Remand* at 34-57.

2. REASONABLE HOURLY RATE

The second element of the “lodestar” is the determination of a “reasonable hourly rate” for the LAS’ attorneys’ representation before RACD, the Commission and the DCCA, “as measured by prevailing market rates in the relevant community for attorneys of similar experience and skill.” 14 DCMR § 3825.8(a) (2004). *See Hampton Courts Tenants Ass'n*, 599 A.2d at 1115 & n.7; *Reid*, TP 11,334 at 15-16. LAS, as the fee applicant, has the burden of documenting the reasonable hourly rate. *See id.* at 1115 – 1116 (*citing Hensley*, 461 U.S. at 437); *District of Columbia v. Jerry M.*, 580 A.2d 1270, 1281 (D.C.1990). The Commission has elaborated the standard as follows:

In *Reid v. Sinclair*...[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.

Loney, SR 20,089 (Order on Attorney’s Fees Following Remand); Hampton Courts Tenants’ Ass’n v. William C. Smith Co., CI 20,176 (RHC July 20, 1990) at 6 - 7.

In the Order on Attorney’s Fees Following Remand, the Commission was persuaded by LAS’ legal arguments and evidence that the Laffey Matrix provides an appropriate standard for setting hourly rates for an LAS attorney’s representation of the Tenants before RACD, the Commission and the DCCA.¹⁰ *See Order on Attorney’s Fees Following Remand* at 70. Having

¹⁰ 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

accepted the Laffey Matrix as the appropriate rate standard for LAS' legal fees in the instant case, the Commission must further determine the "reasonableness" of a proposed hourly rate from the Laffey Matrix by assessing the prevailing hourly billing rates for attorneys of comparable experience practicing in the "specialized field" of rent control and rental housing under the Act. Hampton Courts Tenants Ass'n, 599 A.2d at 1116; Hampton Courts Tenants' Ass'n, CI 20,176 at 6 – 7; Reid, TP 11,334 at 15 – 16.

LAS has requested the following rates based on the Laffey Matrix: (1) \$420 per hour for Mr. Angel's work on the appeal of the Commission's Decision and Order to the DCCA; (2) \$420 per hour for Ms. Robin-Vergeer's work on the appeal of the Commission's Decision and Order to the DCCA, and \$475 per hour for opposing the *en banc* petition before the DCCA; (3) \$420 per hour for Ms. Becker's work on opposing the *en banc* petition before the DCCA, and \$435 per hour for the Commission proceedings on remand; and (4) \$495 per hour for Mr. Keeney's work on the Commission proceedings on remand. *See* Tenants' Supplemental Brief and Affidavit at 1-2. The Commission is satisfied that LAS has appropriately selected its proposed rate(s) for each attorney in accord with the applicable standards and rates from the Laffey Matrix. However, the Commission does not concur with LAS' assertion that the proposed rates are "presumptively" or automatically reasonable, without the further possibility of adjustments to be made by the Commission in accordance with its well-settled fee standard. *See Lively*, 930 A.2d at 990; Hampton Courts Tenant Ass'n, 599 A.2d at 1116. *See also Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995); Heller, 832 F. Supp. 2d 32, 45 (D.D.C. 2011).

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 Laffey Matrix is “merely a starting point,” and a court may, in its discretion, adjust the rates upward or downward to arrive at a final fee award that reflects “the characteristics of the particular case (and counsel) for which the award is sought.” *See Laffey*, 572 F. Supp. 354, 361 (D.D.C. 1983) (*citing Copeland*, 641 F.2d at 880)); *Lively*, 930 A.2d at 990. *See also, e.g.*, *Young v. District of Columbia*, 2012 U.S. Dist. LEXIS 139622 (D.D.C. Sept. 28, 2012) (stating that full Laffey Matrix rates will not be appropriate in every case); *Moss v. District of Columbia*, 2012 U.S. Dist. LEXIS 109987 (D.D.C. July 12, 2012) (stating that Laffey Matrix rates may be discounted on grounds other than simplicity of the case); *Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 96 (D.D.C. 2012) (noting that “[L]affey Matrix rates are the presumed maximum rates appropriate for complex federal litigation”); *Jones v. District of Columbia*, 859 F. Supp. 2d 149 (D.D.C. 2012) (using Laffey Matrix rates as a starting point for the determination of a reasonable hourly rate); *Huntley v. District of Columbia*, 859 F. Supp. 2d 25, 31 (D.D.C. 2012) (noting that “[F]ederal courts do not automatically have to award Laffey [Matrix] rates but instead they can look at the complexity of the case and use their discretion to determine whether such rates are warranted”); *Winston & Strawn, LLP v. FDIC*, 841 F. Supp. 2d 225, 229-30 (D.D.C. 2012) (rejecting upward departure from Laffey Matrix rates); *Rooths v. District of Columbia*, 802 F. Supp. 2d 56, 61 (D.D.C. 2011) (finding Laffey Matrix rates “the highest rates that will be presumed to be reasonable”); *Muldrow v. Re-Direct, Inc.*, 397 F. Supp. 2d 1 (D.D.C. 2005) (reducing attorney’s fees by 25% “to ensure the award is reasonable” in a negligence case).

The Commission stated in the Order on Attorney’s Fees Following Remand that LAS had not submitted sufficient evidence of prevailing market rates for attorneys who practice in the

“specialized field” of rent control and rental housing under the Act. *See* Order on Attorney’s Fees Following Remand at 77. *See also* Hampton Courts Tenants Ass’n, 599 A.2d at 1116; Hampton Courts Tenants’ Ass’n, CI 20,176 at 6 – 7; Reid, TP 11,334 at 15 – 16. This conclusion was based on the Commission’s review of the Brief of Tenants/Appellants Regarding Attorney’s Fees as well as affidavits submitted “from private attorneys with several years of experience in complex and other litigation from prominent, large firms in the District of Columbia.” *See id.* at 64-67. However, the Commission was not persuaded by the affidavits submitted because “each of the attorneys who submitted an affidavit practices at a large multi-regional, or multi-national, law firm that typically do not represent clients under the Act...such large law firms customarily have billing rates which are among the higher or highest levels in this jurisdiction.” *See* Order on Attorney’s Fees Following Remand at 74 (*citing Heller*, 832 F. Supp. 2d at 46-47).

In response to the Commission’s Order on Attorney’s Fees Following Remand, LAS submitted the Declaration of Eric Von Salzen with Tenants’ Supplemental Brief and Affidavit. Mr. Von Salzen stated in his Declaration that he had over forty (40) years of experience in private practice in the District of Columbia; that he had practiced with Hogan & Hartson¹¹ for nearly forty (40) years, and that since 2009 he has practiced with McLeod, Watkinson & Miller; that his career has focused on real estate matters, “particularly government regulation of real estate transactions and real estate related litigation;” that his hourly rate for “rent control and other related work” while at Hogan & Hartson was \$550 per hour; and that he currently charges \$400 per hour with McLeod, Watkinson & Miller. *See* Declaration of Eric Von Salzen.

¹¹ The firm of Hogan & Hartson is now named Hogan Lovells following a merger. Because Mr. Von Salzen’s Declaration refers to his tenure at Hogan & Hartson, the Commission will refer herein to his firm as Hogan & Hartson.

The Housing Provider submitted the respective affidavits of Carol Blumenthal, Esquire, and Bernard Gray, Esquire. *See* Housing Provider's Brief on Hourly Rates. Ms. Blumenthal stated that she has been admitted to practice in the District of Columbia for over thirty (30) years; that she has regularly represented landlords and tenants in administrative forums as well as the Superior Court of the District of Columbia and the DCCA; that she is familiar with the Act's provisions and regulations, the decisions of the Commission, hearing examiners, and administrative law judges; and that her billing rate in 2004 was \$190 per hour, which has increased to a current billing rate of \$295 per hour. *See* Affidavit of Carol Blumenthal. Mr. Gray stated that he has been admitted to practice in the District of Columbia for over thirty (30) years; that he represents tenants and landlords in proceedings under the Act; and that his billing rate in 2004 was \$150 per hour, which has increased to \$250 per hour since 2010. *See* Affidavit of Bernard Gray.

The Commission determines that substantial evidence in the record does not support LAS' contention that its requested Laffey Matrix rates represent reasonable hourly rates for attorneys of comparable experience to that of LAS attorneys in the specialized field of rent control and rental housing under the Act. *See* Hampton Courts Tenants Ass'n, 599 A.2d at 1116; Hampton Courts Tenants' Ass'n, CI 20,176; Reid, TP 11,334.¹² Mr. Von Salzen's affidavit submitted by LAS notes that his hourly billing rate at Hogan & Hartson was \$550. *See*

¹² The Commission's standard of review of the ALJ's decision is contained in 14 DCMR § 3807.1 (2004):

[T]he Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

Declaration of Eric Von Salzen. The Commission observes that Hogan and Hartson has been a large, prominent law firm in the District of Columbia for several decades, and, like other firms of its size, customarily has billing rates which are among the higher or highest levels in this jurisdiction. *See Heller*, 832 F. Supp. 2d at 46-47 (stating that "[t]he market generally accepts higher rates from attorneys at firms with more than 100 lawyers than from those at smaller firms - presumably because of their greater resources and investments, such as attorneys, librarians, researchers, support staff, information technology, and litigation services") (*quoting Wilcox v. Sisson*, 2006 U.S. Dist. LEXIS 33404, at *8 (D.D.C. May 25, 2006). *See also Chambless v. Masters, Mates & Pilots Pension Plan*, 885 F.2d 1053, 1058 - 1059 (2d Cir. 1989) (declining to award the rates requested by the plaintiff's small-firm practitioners, where the requested rates were "usually reserved for attorneys in larger law firms") (*cited by Tlacoapa v. Carregal*, 386 F. Supp. 2d 362, 369-70 (S.D.N.Y. 2005) ("[c]ourts have recognized that the size of the firm representing a plaintiff seeking attorney's fees is a factor in determining a reasonable attorney's fee[.]")). Based upon its "past experience with attorney services in the rental housing area," *see Hampton Courts Tenants' Ass'n*, CI 20,176 at 8 - 9; *Reid*, TP 11,334 at 17, the Commission in its Order on Motion for Attorney's Fees Following Remand determined that the prevailing hourly billing rates that such large firms like Hogan & Hartson regard as customary or ordinary are not typically representative of the lower prevailing rates of smaller firms, or individual practitioners. *Loney*, SR 20,089 (Order on Motion for Attorney's Fees Following Remand). *See Heller*, 832 F. Supp. 2d at 46-47 (*citing Algie v. RCA Global Commc'n, Inc.*, 891 F. Supp. 875, 895 (S.D.N.Y. 1994), *aff'd*, 60 F.3d 956 (2d Cir. 1995) (noting that "[i]f the movant is represented by a small or medium-size firm, the appropriate rates are those typically charged by

such firms, whereas a movant may obtain higher compensable rates if represented by a large urban firm, since such firms typically charge more per hour to cover a higher overhead.").

The Commission's determination about different hourly billing rates at large and small law firms in this jurisdiction in its Order on Motion for Attorney's Fees Following Remand is supported by Mr. Von Salzen's hourly billing rate of \$400 as a member of his current law firm - McLeod, Watkinson & Miller. *See also Heller*, 832 F. Supp. 2d at 46-47. Mr. Von Salzen's current firm is not only substantially smaller than Hogan & Hartson, but his current hourly billing rate of \$400 is more than 25% less than his former hourly billing rate of \$550 at Hogan & Hartson. *See Declaration of Eric Von Salzen*. Furthermore, Mr. Von Salzen's current hourly billing rate of \$400 is more than 25% greater than the respective hourly billing rates of both Ms. Blumenthal (\$295) and Mr. Gray (\$250), whose respective practice groups are considerably smaller than Mr. Von Salzen's current firm. *See id.* *See also Affidavit of Carol Blumenthal; Affidavit of Bernard Gray.*

The Commission notes that the even the "lowest" hourly rate proposed by LAS for its attorneys according to the Laffey Matrix in the amount of \$420 is 5% higher than Mr. Von Salzen's current hourly billing rate of \$400, and over 25% higher than Ms. Blumenthal's hourly billing rate of \$295 and Mr. Gray's hourly billing rate of \$250, respectively. *See Declaration of Eric Von Salzen; Affidavit of Carol Blumenthal; Affidavit of Bernard Gray*. Alternatively, LAS' proposed hourly billing rate for its least experienced attorneys under the Laffey Matrix (\$420) is still higher than the current billing rates of three attorneys - Mr. Von Salzen, Ms. Blumenthal and Mr. Gray - who are among the most experienced attorneys in the specialized field of rent

control in this jurisdiction. *See* Declaration of Eric Von Salzen, Affidavit of Carol Blumenthal and Affidavit of Bernard Gray.

As noted *supra* at 11, “[t]he community that we [the Commission] look to determine reasonable hourly rates in the specialized field of rent control is the community of practitioners in that field.” *See Hampton Courts Tenants’ Ass’n*, CI 20,176 at 8 - 9; *Reid*, TP 11,334 at 17. Based upon the substantial evidence in the record, its “past experience with attorney services in the rental housing area,” *see Hampton Courts Tenants’ Ass’n*, CI 20,176 at 8 - 9; *Reid*, TP 11,334 at 17, and its sound discretion, *see Lively*, 930 A.2d at 988; *Maybin*, 885 A.2d at 288, the Commission determines (1) that the respective hourly billing rates from the Laffey Matrix as requested herein by LAS for its attorneys are too high to meet the Commission’s prevailing legal standards for “reasonableness,” and (2) that the Commission will thus make downward adjustments to the billing rates from the Laffey Matrix requested by LAS to ensure that LAS’ rates are reasonable under the Act in that they appropriately reflect the evidence, attorneys and other “characteristics” of the instant case. *See, e.g., Laffey*, 572 F. Supp. at 361; *Lively*, 930 A.2d at 990; *Moss*, 2012 U.S. Dist. LEXIS 109987; *Huntley*, 859 F. Supp. 2d at 31; *Agapito v. District of Columbia*, 525 F. Supp. 2d 150, 155 (D.D.C. 2007).

For reductions in fees, generally, a reviewing court may attempt to identify specific hours that should be eliminated, *see Hensley*, 461 U.S. at 436 – 437; *ACLU v. Barnes*, 168 F.3d 423, 433 (11th Cir. 1999), or may reduce the award by a fixed percentage. *See Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 973 (D.C. Cir. 2004) (reducing fee request from multiple counsel by 50% for inadequate documentation of hours and legal work, failure to properly justify and describe the time entries, and inconsistent and improper billing); *In re Espy*

(Townsend Fee Application), 346 F.3d 199, 203 - 204 (D.C. Cir. 2003) (reducing requested fee by over 50% for, *inter alia*, inadequate documentation that "makes it impossible for the court to verify the reasonableness of the billings, either as to the necessity of the particular service or the amount of time expended on a given legal task"); Okla. Aerotronics, Inc. v. U.S., 943 F.2d 1344, 1347 (D.C. Cir. 1991) (upholding reduction in requested hours by 40% for excessive, redundant and otherwise unnecessary claims and charges). Following its review of the substantial evidence in the record, in its sound discretion, *see Lively*, 930 A.2d at 988; *Maybin*, 885 A.2d at 288, and based upon its "past experience with attorney services in the rental housing area," *see Hampton Courts Tenants' Ass'n*, CI 20,176 at 8 - 9; *Reid*, TP 11,334 at 17, the Commission will reduce each of the respective fee requests by LAS for its attorneys as follows: (1) Mr. Angel's proposed hourly fee for his work on the appeal of the Commission's Decision and Order to the DCCA is hereby reduced from \$420 to \$335 (or by approximately 20%); (2) Ms. Robin-Vergeer's proposed hourly fee for her work on the appeal of the Commission's Decision and Order to the DCCA is hereby reduced from \$420 to \$335 (or by approximately 20%), and her proposed hourly fee for her work on opposing the *en banc* petition before the DCCA is hereby reduced from \$475 to \$375 (or by approximately 20%); (3) Ms. Becker's proposed hourly fee for her work on opposing the *en banc* petition before the DCCA is hereby reduced from \$420 to \$335 (or by approximately 20%), and her proposed hourly fee for her work on the Commission proceedings on remand is hereby reduced from \$435 to \$345 (or by approximately 20%); and (4) Mr. Keeney's proposed hourly fee for his work on the Commission proceedings on remand is hereby reduced from \$495 to \$395 (or by approximately 20%). *See supra* at 12. Based upon substantial evidence in the record, the Commission determines that the adjusted hourly rates

above are reasonable representations of the hourly rates of attorney-practitioners in the specialized field of rent control with comparable legal experience to that of the LAS attorneys, respectively.¹³ See, e.g., Young, 2012 U.S. Dist. LEXIS 139622 (D.D.C. Sept. 28, 2012); Jones, 859 F. Supp. 2d at 149; Rooths, 802 F. Supp. 2d at 61; Muldrow, 397 F. Supp. 2d at 1; Laffey, 572 F. Supp. at 36; Lively, 930 A.2d at 990.

3. LODESTAR AMOUNTS

Having determined both elements of the lodestar calculation, the reasonable hours and reasonable hourly rate, below is the Commission's calculation of the total attorney's fees due to LAS:

(A) For Mr. Angel and Ms. Robin-Vergeer in the appeal of the Commission's Decision and Order to the DCCA:

MR. ANGEL

| | | | | | |
|----------------------|------|---|-----------|---|----------|
| TOTAL BILLABLE HOURS | 2.25 | X | \$335/hr. | = | \$753.75 |
|----------------------|------|---|-----------|---|----------|

+

MS. ROBIN-VERGEER

| | | | | | |
|----------------------|------|---|-----------|---|-------------------|
| TOTAL BILLABLE HOURS | 3.75 | X | \$335/hr. | = | <u>\$1,256.25</u> |
|----------------------|------|---|-----------|---|-------------------|

TOTAL **\$2,010.00**

¹³ Although the hourly billing rates approved by the Commission for the LAS attorneys exceed the billing rates of Ms. Blumenthal and Mr. Gray as stated in their respective affidavits, the Commission is satisfied that its exercise of discretion in awarding fees is supported by substantial evidence in the record, including the characteristics of the instant case, the nature and qualities of the representation by the LAS attorneys, and the variability and range of fees charged by experienced attorneys in the specialized field of rent control. See, e.g., Laffey, 572 F. Supp. at 361; Lively, 930 A.2d at 990; Moss, 2012 U.S. Dist. LEXIS 109987; Huntley, 859 F. Supp. 2d at 31; Agapito, 525 F. Supp. 2d at 155. Cf. Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012) (noting that an administrative court's decision will be upheld so long as it is supported by substantial evidence in the record, despite "the existence of substantial evidence to the contrary"); WMATA v. D.C. Dep't of Emp't Servs., 926 A.2d 140, 147 (D.C. 2007); Young v. D.C. Dept. of Emp't Servs., 865 A.2d 535, 540 (D.C. 2005).

(B) For Ms. Robin-Vergeer and Ms. Becker for work opposing the *en banc* petition before the DCCA:

Ms. ROBIN-VERGEER

| | | | | | |
|----------------------|------|---|-----------|---|----------|
| TOTAL BILLABLE HOURS | 1.50 | X | \$375/hr. | = | \$562.50 |
|----------------------|------|---|-----------|---|----------|

+

Ms. BECKER

| | | | | | |
|----------------------|------|---|-----------|--------------|-------------------|
| TOTAL BILLABLE HOURS | 8.11 | X | \$335/hr. | = | <u>\$2,716.85</u> |
| | | | | TOTAL | \$3,279.35 |

(C) For Ms. Becker and Mr. Keeney in the Commission proceedings on remand:

Ms. BECKER

| | | | | | |
|----------------------|------|---|-----------|---|------------|
| TOTAL BILLABLE HOURS | 7.08 | X | \$345/hr. | = | \$2,442.60 |
|----------------------|------|---|-----------|---|------------|

+

MR. KEENEY

| | | | | | |
|----------------------|------|---|-----------|--------------|-------------------|
| TOTAL BILLABLE HOURS | 3.75 | X | \$395/hr. | = | <u>\$1,481.25</u> |
| | | | | TOTAL | \$3923.85 |

TOTAL OF ATTORNEYS' LODESTAR FEES: **\$9,213.20**

Pursuant to 14 DCMR § 3825.8(a) (2004), the Commission approves the following "lodestar" amount of fees: (1) \$753.75 for Mr. Angel for the appeal of the Commission Decision and Order to the DCCA; (2) \$1,256.25 for Ms. Robin-Vergeer for the appeal of the Commission Decision and Order to the DCCA, and \$562.50 for opposing the *en banc* petition before the DCCA; (3) \$2,716.85 for Ms. Becker for opposing the *en banc* petition before the DCCA, and \$2,442.60 for the Commission proceedings on remand; and (4) \$1,481.25 for Mr. Keeney for the

Commission proceedings on remand. The total amount of the lodestar fees for the four (4) LAS attorneys, collectively is \$9,213.20.

B. LODESTAR ADJUSTMENT FACTORS

As noted *supra* at 9-10, according to 14 DCMR § 3825.8(b) (2004), the Commission may make adjustments to the “lodestar” amount of fees 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; and
- (12) the award in similar cases; and
- (13) the results obtained, when the moving party did not prevail on all the issues.

Having calculated the lodestar amount of fees for Mr. Angel, Ms. Robin-Vergeer, Ms. Becker, and Mr. Keeney, respectively, the Commission will proceed to consider whether any adjustments to the lodestar amounts are warranted for these LAS attorneys under 14 DCMR

§ 3825.8(b) (2004). 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 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 LAS in the instant case. *See supra* at 10.

(2) The novelty, complexity, and difficulty of the legal issues or questions

As stated in greater detail in the Order on Attorney's Fees Following Remand, after its review of the record, the Commission does not regard the issues or questions addressed by LAS' attorneys in the DCCA proceedings or Commission proceedings on remand to be so unusual or of such extraordinary novelty, complexity or difficulty to warrant any adjustment of the lodestar amount. *See* D.C. OFFICIAL CODE §§ 42-3501.03(34), -3502.14 (2001), 14 DCMR § 4212 (2004). *See also* Order on Attorney's Fees Following Remand at 80-81.

(3) The skill requisite to perform the legal service properly

The Commission is satisfied, based upon its review of the record, that the LAS attorneys performed the requisite litigation, research, evidentiary and argument skills before the DCCA as well as the Commission on remand in a very professional manner; however, the Commission does not regard the legal skills required of the LAS attorneys to perform their services properly under the provisions of the Act to warrant any adjustment of the lodestar amount. *See* D.C. OFFICIAL CODE §§ 42-3501.03(34), -3502.14 (2001), 14 DCMR § 4212 (2004).

(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 LAS plays 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. The Commission also is aware that, consequently, the demands for LAS' attorney services is high. However, based upon its review of the record and in the absence of specific information that the LAS attorneys involved in the instant case were precluded from undertaking other representation, the Commission is unable to determine that this factor warrants 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 an appropriate hourly rate for LAS in the instant case. *See supra* at 11-20.

(6) Whether the fee is fixed or contingent

As a non-profit provider of legal services, LAS does not operate on 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 any evidence that time limitations were imposed by the Tenants or the circumstances before the DCCA or before the Commission on remand. The Commission does not consider this factor to warrant any adjustment of the lodestar amount.

(8) The amount involved and the results obtained (including results obtained, when the moving party did not prevail on all the issues)¹⁴

¹⁴ The discussion regarding this factor also incorporates consideration of factor thirteen (13) under 14 DC MR

In Loney, 11 A.3d at 757 - 759, the DCCA affirmed the following determinations in the Commission's Decision and Order: (1) the RACD hearing examiner failed to make requisite findings of fact on the Housing Provider's proposed scope of work; (2) the RACD finding that the Housing Provider submitted a "detailed" list of renovation costs was not supported by substantial evidence in the record; and (3) the hearing examiner erred in determining that the substantial rehabilitation was in the Tenants' interest. Because of its ruling on these issues, the DCCA asserted that it did not review four (4) other issues on appeal. Loney, 11 A.3d at 755 n.1.

Based on its review of the record, the Commission is satisfied that the Tenants and LAS prevailed on their issues on appeal before the DCCA and before the Commission on remand.

See Loney, 11 A.3d at 760-61; Order on Attorney's Fees Following Remand at 90.

Nonetheless, the positive results that the LAS achieved were not extraordinary under the Act – they were the ordinary and customary results under the Act in light of the denial of the substantial rehabilitation petition at issue in this case. *See D.C. OFFICIAL CODE § 42-3502.14* (2001). Furthermore, before the DCCA, LAS was ably assisted by the District of Columbia's Office of the Attorney General, which represented the interests of the Commission on appeal. *See Loney*, 11 A.3d at 753. The Commission does not consider the results obtained in this case to be of such a level of achievement to warrant any upward adjustment of the lodestar amount.

(9) The experience, reputation, and ability of the attorney

Based upon its review of the record, the Commission does not regard the proper representation of the Tenants by LAS before the DCCA and before the Commission on remand in the instant case to necessitate enhanced or unusual legal experience, reputation and/or

§ 3825.2(b) (2004).

abilities, especially when compared to the ordinary experience level, reputation and abilities of attorneys in the specialized field of rent control and rental housing under the Act who are customarily engaged in the representation of clients in similar cases under the Act. In the Commission's view this factor does not warrant any adjustment of the lodestar amount.

(10) The undesirability of the case

As noted *supra*, the Commission recognizes the important public function and role that LAS plays 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. Based upon its review of the record, the Commission determines that the instant case would be largely undesirable to most attorneys from private firms because the client's income status would not allow it to pay private attorney's fees. However, it is for that reason – the inability of many low income clients to pay prevailing legal fees – that government, non-profit and *pro bono* providers fill an important societal need for the provision of legal services to those who would otherwise go unrepresented. Because LAS was established to take on "undesirable cases" inasmuch as LAS' clients are low income and unable to afford private law firms for legal services, the instant case appears to fit appropriately within the type of "undesirable" case that LAS would ordinarily undertake. While this factor fits the instant case, the Commission does not regard the instant case to be of such a degree of undesirability to warrant any adjustment of the lodestar amount.

(11) The nature and length of the professional relationship with the client

As noted *supra*, LAS represents clients of low and moderate income where legal representation of such individuals would otherwise be wanting for a client's lack of financial

resources. Based upon its review of the record, the Commission does not observe evidence that the nature of the professional relationship between LAS and the Tenants before the DCCA or before the Commission on remand was anything other than a typical lawyer-client relationship. The Commission 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, the Commission was unable to derive from LAS' contentions sufficient information about this factor to warrant any adjustment of the lodestar amount.

(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) (2004). *See supra* at 24-25.

The Commission has given careful consideration to each of the factors in 14 DCMR § 3825.2(b) (2004) with respect to the representation of the Tenants in the instant case by each of the four (4) LAS attorneys currently under consideration: Mr. Angel, Ms. Becker, Ms. Robin-Vergeer and Mr. Keeney. The Commission's review of the record indicates that each of the LAS attorneys provided the Tenants with a high quality of legal services. However, for the reasons stated herein, the Commission does not deem their representation of the Tenants to warrant any adjustments to the lodestar amounts of their respective fees for any of the LAS attorneys under 14 DCMR § 3825.2(b) (2004).

III. CONCLUSION

Regarding the elements of the “lodestar” for the award of attorney’s fees under the Act under 14 DCMR § 3825.8(a)-(b) (2004), the Commission makes the following determinations based upon the evidence in the record.

First, the Commission concludes that the following hours were “reasonably expended” for purposes of 14 DCMR § 3825.2(b) (2004): (1) 2.25 hours for Mr. Angel for the appeal of the Commission Decision and Order to the DCCA; (2) 3.75 hours for Ms. Robin-Vergeer for the appeal of the Commission Decision and Order to the DCCA, and 1.50 hours related to opposing the *en banc* petition; (3) 8.11 hours for Ms. Becker related to opposing the *en banc* petition before the DCCA and 7.08 hours for the Commission proceedings on remand; and (4) 3.75 hours for Mr. Keeney for the Commission proceedings on remand.

Second, the Commission concludes that the following hourly rates from the Laffey Matrix are “reasonable” for purposes of 14 DCMR § 3825.2(b) (2004): (1) \$335 per hour for Mr. Angel for the appeal of the Commission Decision and Order to the DCCA; (2) \$335 per hour for Ms. Robin-Vergeer for the appeal of the Commission Decision and Order to the DCCA, and \$375 per hour related to opposing the *en banc* petition before the DCCA; (3) \$335 per hour for Ms. Becker for opposing the *en banc* petition before the DCCA, and \$345 per hour for the Commission proceedings on remand; and (4) \$395.00 per hour for Mr. Keeney for the Commission proceedings remand.

Third, following careful consideration of the lodestar adjustment factors in 14 DCMR § 3825.8(a) (2004) with respect to the legal services provided, and fees charged, by each LAS attorney in litigating the instant case, the Commission does not deem the representation of the

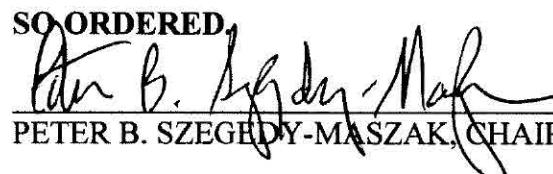
Tenants by any of the LAS attorneys to warrant any adjustments to the lodestar amounts of his/her respective fees under 14 DCMR § 3825.2(b) (2004).

Finally, the Commission approves the following amount of fees: (1) \$753.75 for Mr. Angel for the appeal of the Commission Decision and Order to the DCCA; (2) \$1,256.25 for Ms. Robin-Vergeer for the appeal of the Commission Decision and Order to the DCCA, and \$562.50 for opposing the *en banc* petition before the DCCA; (3) \$2,716.85 for Ms. Becker for opposing the *en banc* petition before the DCCA, and \$2,442.60 for the Commission proceedings on remand; and (4) \$1,481.25 for Mr. Keeney for the Commission proceedings on remand. The total amount of the lodestar for the four (4) LAS attorneys collectively is \$9,213.20.

IV. ORDER

The Commission hereby orders the Housing Provider to pay LAS legal fees in the amount of \$9,213.20 for the services of LAS attorneys Eric Angel, Bonnie Robin-Vergeer, Julie Becker and John Keeney, as described herein.

SO ORDERED,


PETER B. SZEGEDY-MASZAK, CHAIRMAN

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR §3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

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
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **SECOND ORDER ON MOTION FOR ATTORNEY'S FEES FOLLOWING REMAND** was mailed postage prepaid by priority mail, with delivery confirmation on this 29th day of January, 2013 to:

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