

**Casual Water E., LLC v Casual Water Ltd.**

2013 NY Slip Op 31687(U)

July 22, 2013

Supreme Court, Suffolk County

Docket Number: 14037-12

Judge: Thomas F. Whelan

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 45 - SUFFOLK COUNTY

***P R E S E N T :***

Hon. THOMAS F. WHELAN  
Justice of the Supreme Court

MOTION DATE 1/25/132  
SUBMISSION 6/14/13  
Mot. Seq. # 004 - Mot D  
Hearing Held: 6/6/13  
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-----X		
CASUAL WATER EAST, LLC and CASUAL	:	PHILLIPS LYTELL LLP
WATER BRIDGEHAMPTON, LLC,	:	Attys. For Plaintiff
	:	437 Madison Ave.
Plaintiffs,	:	New York, NY 10022
	:	
-against-	:	
	:	LEWIS, JOHS, AVALLONE, ETAL
CASUAL WATER LTD., GREGORY P.	:	Atty. For Defendants
KIRWAN and MICHAEL HARTMAN,	:	425 Broad Hollow Rd.
	:	Melville, NY 11747
Defendants.	:	
-----X		

**DECISION AFTER HEARING AND ORDER**

Familiarity with this Court's short form orders of June 11, 2012 and July 31, 2012 is presumed. In those motions, the plaintiffs, prior to consolidation, individually sought preliminary injunctive relief on the single cause of action set forth in each complaint. The plaintiffs relied heavily on the claim that the defendants violated the parties' Sale and Non-Compete Agreements by soliciting customers and employees, failing to handle messages properly, and supporting a competing pool service business in the area covered by the sale agreements and asserted that in the Non-Compete Agreements such a violation would entitle the plaintiffs to a preliminary injunction notwithstanding that money damages may also be an available remedy. The defendants opposed asserting that the defendants were entitled to money damages from the plaintiffs due to their purported breach of their obligations to provide top quality service to customers and the restraint in the Agreements from conducting pool construction within the Sold Territories.

In the Order of June 11, 2012, the plaintiff, Casual Water East, LLC, was granted preliminary injunctive relief under CPLR 6311 restraining the defendants from competing with the plaintiff's pool servicing business in the areas identified by zip codes in the moving papers and from aiding and abetting the acquisition of new accounts by any other pool servicing companies who conduct business in the areas identified by said zip codes. A similar Order was granted on July 31, 2012, on behalf of plaintiff, Casual Water Bridgehampton, LLC. The two actions were consolidated by Stipulation and Order dated October 5, 2012.

Thereafter, by motion (#003), originally returnable on October 26, 2012, the plaintiffs moved for an order adjudicating each of the defendants to be in contempt of the preliminary injunction set forth in the prior order dated June 11, 2012. A short form order dated November 28, 2012, set the matter down for a hearing to adjudicate whether the defendants should be held in contempt for violating the preliminary injunction that this Court issued on June 11, 2012. The contempt hearing was held and decided, on the record, on December 21, 2012. The defendants were ordered imprisoned for a definite period of fifteen days upon a finding of civil contempt pursuant to Judiciary Law §§ 770 and 774. On the record, the Court went on to hold:

“Additionally the Court notes that pursuant to Judiciary Law Section 773 that section permits recovery of attorney's fees from the offending party by a party aggrieved by the contemptuous conduct. The intent of that section is to indemnify the aggrieved party for the costs and expenses incurred as a result of the contempt.

The Court therefore will permit the plaintiffs to prepare and to submit a detailed accounting of those fees and expenses to the Court within fifteen days on notice to defendant's counsel.”

By prior order of this Court, dated February 6, 2013, the instant motion (#004) by the plaintiffs for an award of counsel fees incurred in connection with the prior contempt application was adjourned to allow time for the submission of a copy of the transcript of the Court's decision of December 18, 2012, which had been spread upon the record following the conclusion of the contempt hearing. The Court, by order dated April 5, 2013, restored the motion (#004) to the hearing calendar for June 6, 2013, at which time the Court conducted a hearing on the propriety of the fees charged and the reasonable value thereof. In the motion (#004), plaintiffs seek attorney's fees in the sum of \$70,403.69. In the reply papers, plaintiffs raised the amount to \$72,273.69.

No Engagement Letter was submitted to the Court. Such does not prevent an attorney from recovering fees in quantum meruit (*see Seth Rubenstein, P.C. v Ganea*, 41 AD3d 54, 833 NYS2d

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566 [2d Dept 2007]). Instead, a chart was provided (Pl. Ex. 1), which set forth the following hourly rate for the attorney rendering service:

Joseph B. Schmit-	\$450.
Peter C. Obersheimer-	\$230.
Aaron M. Schue-	\$230.
Paralegals -	
Stacy E. O'Brien-	\$195.
Heidi M. Millard-	\$165.

A total compilation of hours expended by each attorney or paralegal is set forth in Pl. Ex. 1. Additionally, plaintiffs have submitted with the motion papers redacted invoices and work sheets detailing hours expended by each attorney or paralegal, the work performed, and expenses incurred. The Court has examined each invoice, from the first dated August 16, 2012 to the final prebilling statements, dated January 7, 2013. The invoices show that each plaintiff was billed separately for the same exact amount of hours billed for each legal service rendered. For instance, on November 11, 2012, Peter C. Obersheimer billed each plaintiff 5.5 hours, for a total of 11 hours that day devoted to drafting an email to another counsel in the firm, and work on affidavits and a memorandum of law.

The total hours expended by each attorney, as reflected on Pl. Ex. 1, is as follows:

Joseph B. Schmit-	98.3
Peter C. Obersheimer-	78.6
Aaron M. Schue-	5.
Paralegals -	
Stacy E. O'Brien-	1.2
Heidi M. Millard-	31.2

Here, petitioner has moved this court to fix its attorney's fees, pursuant to Judiciary Law § 773, at \$72,273.69. That section permits recovery of attorney's fees from the offending party by a party aggrieved by the contemptuous conduct (*see Vider v Vider*, 85 AD3d 906, 925 NYS2d 189 [2d Dept 2011]). Counsel fees that are directly related to contemptuous conduct are generally recoverable unless proven excessive or reduced in a court's reasoned decision (*see Guilano v Carlisle*, 236 AD2d 364, 653 NYS2d 635 [2d Dept 1997]). Since the defendants have contested the

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reasonableness of the requested fee and expenses, the issue centers on the reasonable value of the legal services provided.

It has long been recognized that courts have traditional authority to supervise the charging of fees for professional services under the court's inherent and statutory power to regulate the practice of law (see *Greenwald v Scheinman*, 94 AD2d 842, 463 NYS2d 303 [3d Dept 1983]; *Hom v Hom*, 210 AD2d 296, 622 NYS2d 282 [2d Dept 1994]). The attorney's obligations transcend those prevailing in the commercial marketplace (see *Matter of Cooperman*, 83 NY2d 465, 633 NYS2d 1069 [1994]).

In that light, the terms of a retainer agreement no longer serves to establish the sole standard for the attorney's compensation (see *Stair v Calhoun*, 722 FSupp2d 258 [EDNY 2010]). The amount of the fee must be fixed not alone upon the basis of a retainer contract "but also upon a foundation built of the volume and quality of the professional services actually and necessarily performed" (*Tillman v Komar*, 259 NY 133, 136 [1932]). Fair and reasonable value is what must be determined.

New York Courts have broad discretion in determining what constitutes reasonable compensation for legal services. For instance, "[t]he determination of what constitutes reasonable fees is a matter 'within the sound discretion of the Surrogate, who is in a superior position to judge factors such as the time, effort and skills required'" (*Matter of McCann*, 236 AD2d 405, 654 NYS2d 578 [2d Dept 1997], citing *Matter of Papadogiannis*, 196 AD2d 871, 872, 602 NYS2d 68 [2d Dept 1993]). Reasonable attorney's fees are commonly understood to be those fees which represent the reasonable value of the services rendered (see *NYCTL 1998-1 Trust v Oneg Shabbos, Inc.*, 37 AD3d 789, 830 NYS2d 763 [2d Dept 2007]). A court may consider its own knowledge and experience and may form an independent judgment from the facts and evidence before it as to the nature and extent of the services rendered (see *Jordan v Freeman*, 40 AD2d 656, 336 NYS2d 671 [1<sup>st</sup> Dept 1972]).

The fixation of lawyers' fees is to be determined on the following factors: time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved (*In re Freeman's Estate* 34 NY2d 1, 355 NYS2d 336 [1974]; *In re Sucheron*, 95 AD3d 892, 894 [2d Dept. 2012]).

As a general rule, the “reasonable hourly rate [for an attorney] should be based on the customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented” (*Gamache v Steinhaus*, 7 AD3d 525, 776 NYS2d 310 [2d Dept 2004], quoting *Getty Petroleum Corp. v G.M. Triple S. Corp.*, 187 AD2d 483, 483–484, 589 NYS2d 577 [2d Dept 1992]; see also *Gutierrez v Direct Mktg. Credit Servs.*, 267 AD2d 427, 701 NYS2d 116 [2d Dept 1999]). The burden is on the fee applicant to establish the prevailing hourly rate for the work performed (*id.*, *Gutierrez v Direct Marketing Credit Services, Inc.*). The appropriate hourly rates are also influenced by the court's consideration of such factors as the time and labor required to obtain the ultimate objective, the novelty and complexity of the issues, whether the fee is fixed or contingent, and comparable awards in similar cases in the community (see *In re Freeman's Estate* 34 NY2d 1, *supra*).

Federal courts, upon an examination of New York case law, have created case-specific criteria to be followed in ascertaining “the presumptively reasonable fee.” In assessing the amount of an attorney's fee on a quantum meruit basis, a court should consider: (1) “the difficulty of the matter”; (2) “the nature and extent of the services rendered”; (3) “the time reasonably expended on those services”; (4) “the quality of performance by counsel”; (5) “the qualifications of counsel”; (6) “the amount at issue”; and (7) “the results obtained (to the extent known)” (*Sequa Corp. v GBJ Corp.*, 156 F3d 136, 148 [2d Cir 1998]). In calculating a reasonable attorney's fee, courts should also apply what was formerly referred to as the “lodestar” method, but more recently called “the presumptively reasonable fee” (see *Arbor Hill Concerned Citizens Neighborhood Assn. v County of Albany*, 522 F3d 182, 190 [2d Cir 2008]). To reach a specific dollar figure for the value of the services rendered, the presumptively reasonable fee is comprised of a reasonable hourly rate multiplied by a reasonable number of expended hours (see *Finkel v Omega Communication Servs., Inc.*, 543 FSupp2d 156, 164 [EDNY 2008]; see also *Arbor Hill Concerned Citizens Neighborhood Assn. v County of Albany*, 522 F3d at 189, *supra*; *Melnick v Press*, 2009 WL 2824586 [EDNY 2009]).

The court should assess the case-specific considerations at the outset and factor them into its determination of a reasonable hourly rate, which is then multiplied by a reasonable number of hours expended to reach the presumptively reasonable fee (see *McDaniel v City of Schenectady*, 595 F3d 411, 420 [2d Cir 2010]). In summary, the hours actually expended and the rates actually charged are not dispositive of the amount at which an attorney fee should be fixed.

Although an award of an attorney's fee is within the discretion of the court, such award must be based upon a showing of the hours reasonably expended and the prevailing hourly rate for similar legal work in the community (*Gamache v Steinhaus*, 7 AD3d 525, *supra*, citing *Gutierrez v Direct*

*Mktg. Credit Servs.*, 267 AD2d 427, *supra* at 428). The burden is on the party seeking attorney's fees to submit sufficient evidence to support the hours worked and the rates claimed (*see Hensley v Eckerhart*, 461 US 424, 453, 103 SCt 1933, 76 LEd2d 40 [1983]). Finally, as instructed by the Supreme Court in *Fox v Vice*, –US–, 131 SCt 2205, 2216, 180 LEd2d 45 (2011), when trial courts examine a fee application, they “need not, and indeed should not, become green-eyeshade accountants.”

In light of the Court's familiarity with this year long litigation and the nature and quality of the work performed on this counsel fee request, the Court feels particularly qualified to determine this application.

Before turning to the issue of the hourly rate, there are some initial observations. First, is the deduction for hours expended on issues that do not directly flow from the contempt application. A review of the monthly invoices attached to the motion papers (*see* Pl. Exs.1, 2, 3) reveal that time expended on drafting of letters regarding discovery or of a discovery-related letter are sought to be compensated for as part of this application. The Court agrees with defendants' contention that such discovery issues are separate and apart from the contempt application and are not a direct product of the contemptuous conduct (*see Vider v Vider*, 85 AD3d 906, 908, *supra*; *Lembo v Mayendia-Valdes*, 293 AD2d 789, 790, 739 NYS2d 775 [3d Dept 2002]). Therefore the 16.3 hours expended by Joseph B. Schmit (*see e.g.* 7/16/12 to 7/31/12 - two sets of billing; 8/1/12 to 8/3/12 - two sets of billing) and the 1.2 hours by Peter C. Obersheimer (*see e.g.* 7/30/12, - two sets of billing) which dealt with the prior discovery letters, did not deal directly with the contempt application before this Court. Accordingly, these hours are deducted from the attorney fee request.

Secondly, it is noted that certain entries by Joseph B. Schmit contain notations of work that is split between discovery-related issues and time that is directly related to the contemptuous conduct (*see e.g.* 8/8/12; 9/25/12; 9/30/12; 9/19/12; 9/25/12). However, instead of parsing out these hours and notations individually, the Court will address the issue below.

Additionally, the Court notes that throughout the invoices, one can find various examples of attorney conferences, either by telephone or in person, between the several counsel or the “team,” involved on behalf of plaintiffs (*see e.g.* 7/30/12; 9/25/12; 10/4/12; 11/12/12; 11/14/12; 12/14/12; 12/18/12; 12/19/12). However, in light of the Court's determination as set forth below, the Court does not see the need to address this issue directly.

#### Reasonable Hourly Rate

In determining a reasonable hourly rate, courts consider whether “the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable

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skill, experience and reputation” (*Blum v Stenson*, 465 US 886, 895 n. 11, 104 SCt 1541, 79 LEd2d 891 [1984]; see *Savino v Computer Credit, Inc.*, 164 F3d 81, 87 [2d Cir 1998]). Here, the relevant community is Suffolk County, or by extension, the Eastern District of the Federal Court. The reasonable hourly rate should take into account all of the case-specific factors as set forth above.

The burden is on the applicant to establish the prevailing hourly rate for the work performed (see *Gutierrez Direct Mktg. Credit Servs., Inc.*, 267 AD2d 427, *supra*). At the hearing, the Court was offered a resume of Joseph B. Schmit (Pl. Ex. 2), who is listed as Special Counsel to the firm and from Peter C. Obersheimer (Pl. Ex. 2), an associate who graduated law school in May of 2010 and was admitted to the NY State Bar in 2011. Testimony was offered by Joseph B. Schmit, Esq., as to the experience of the attorneys who expended the most hours on this matter, and he further spoke to the reasonableness of the attorney fee requested. Aside from this counsel affirmatively supporting the firm’s fee request and the experience of the attorneys who handled the matter, no other evidence was offered to demonstrate the prevailing market rates in Suffolk County. Moreover, without in any way detracting from the firm’s reputation in the legal community, the Court was troubled by the testimony on this important issue from one who has a self-interest in the outcome. The firm, of which these attorneys are associated with, will benefit from the ruling of the Court. Such casts doubt on the opinion offered to support the claim that the requested rates are in line with those prevailing in the community.

Since the argument at the hearing was of little help to the “case-specific inquiry” that must be conducted to determine the prevailing market rates for counsel of similar experience and skill, and no other evidence of the prevailing market rates in Suffolk County was forthcoming, the Court is required to turn to case law to guide its determination. The Court has researched the prevailing market rates in the Eastern District of New York. In *Melnick v Press*, 2009 WL 2824586 at \*9 (collecting cases), *supra*, Judge Bianco performed an exhaustive review of the case law discussing the “prevailing market rates in the Eastern District of New York for lawyers in comparable cases involving real property disputes.” Judge Bianco concluded that “the range of appropriate billing rates is \$200- \$375 per hour for partners and \$100- \$295 per hour for associates” (*id.*). Numerous courts have followed Judge Bianco’s conclusions in ascertaining a reasonable hourly rate (see *Barney v Con Edison*, 2010 WL 8497627 [EDNY 2010]; *4B’s Realty 1530 CR39, LLC v Toscano*, 818 FSupp2d 654 [EDNY 2011]; *Gesualdi v Diacomelli Tile Inc.*, 2010 WL 1049262 [EDNY 2010]; *Penberg v Healthbridge Mgt.*, 2011 WL 1100103, at \*6 [EDNY 2011]).

With regard to the hourly rate of Joseph B. Schmit, Esq., it is noted that he is not a partner, but Special Counsel to the firm and, therefore, does not command partner rates. As such, the Court will consider his status as a senior associate. The average current rate for senior associates in the Eastern District is \$200- \$295. This Court certainly believes that he has an outstanding amount of

experience and can be expected to command hourly rates near the top of the scale. However, his experience does not support an hourly rate in excess of the prevailing rate for non-partner attorneys in this community involved in commercial litigation, once one examines the case-specific factors listed above. The Court finds that the hourly rate of \$280 takes into account his legal experience but also the uncomplicated nature of the contempt application itself. The support for the contempt was not difficult to acquire, since the defendants, in their various submissions to the Court, continued to argue that the Agreements were breached by plaintiffs' actions and that they were free to act accordingly.

With regard to the hourly rate of Peter C. Obersheimer, Esq., and upon an examination of the seven factors listed above, the Court must express some reservations. First, he is a newly admitted associate. As more detailed later in this decision, on occasion, not all of the actions undertaken by Mr. Obersheimer, or for that matter, even Mr. Schmit, were reasonable. Upon detailed examination by this Court of the factors, in particular, "the difficulty of the matter", "the nature and extent of the services rendered", and "the time reasonably expended on those services", one can not expect the legal services provided herein to command hourly rates near the top of the scale.

Therefore, the Court will reduce his rate to \$150 (*see Pilitz v Incorporated Vil. of Freeport*, 762 FSupp2d 580, 583 [EDNY 2011] [\$100- \$200 per hour for junior associates]). Since no biographical information was offered to support the reasonableness of the rate of Aaron M. Schue, the Court may use its discretion to award fees at a lower rate than requested. Based upon his limited involvement with this matter, the Court will similarly set his rate at \$150. Upon consideration of the case-specific factors, the Court finds that any rate higher than these are not warranted. The firm has submitted no evidence to justify departure from these market rates.

Finally, as to the hourly rate for the paralegals, Stacy E. O'Brien and Heidi M. Millard, the Court holds that based upon applicable case law, the rate should be set at \$80 (*see L.I. Head Start Child Dev. Servs., Inc. v Economic Opportunity Commn. of Nassau County, Inc.*, 865 FSupp2d 284, 293 [EDNY 2012] [\$75 per hour]; *Penberg v Healthbridge Mgt.*, 2011 WL 1100103 at \*6-7 [EDNY 2011] [\$70- \$80 per hour]; *Brady v Wal-Mart Stores, Inc.*, 2010 WL 4392566 at \*5 [EDNY 2010] [\$70- \$100 for paralegal assistants]; *Stair v Calhoun*, 722 FSupp2d 258 [EDNY 2010] [\$80 per hour]).

#### Hours Expended

In determining the presumptively reasonable fee, a court may adjust the hours actually billed to a number the court determines to have been "reasonably expended on the litigation" (*Hensley v Eckerhart*, 461 US at 433, *supra*). The number of hours claimed must not be excessive or

duplicative and courts can exclude hours not “reasonably expended” (*id.* at 434). In reviewing fee applications, it is unrealistic to expect courts to “evaluate and rule on every entry in an application” (*New York State Assn. For Retarded Children, Inc. v Carey*, 711 F2d 1136, 1146 [2d Cir 1983]). Where a court finds the claim to be excessive, or that the time spent was wasteful or otherwise unnecessary, it may decrease or disallow certain hours or order an across-the-board percentage reduction in compensable hours (*see Gierlinger v Gleason*, 160 F3d 858, 882 [2d Cir 1998]; *Kirsch v Fleet Street, Ltd.*, 148 F3d 149, 173 [2d Cir 1998]; *Stair v Calhoun*, 722 FSupp2d 258 [EDNY 2010]). Hours that reflect inefficiency (*see Seigel v Merrick*, 619 F2d 160, 164, n. 9 [2d Cir 1980]) or padding, that is, hours that are excessive or otherwise unnecessary, are disallowed (*see Matter of Rahmey v Blum*, 95 AD2d 294, 300-01, 466 NYS2d 350 [2d Dept 1983]; *see also Quarantino v Tiffany & Co.*, 166 F3d 422, 425 [2d Cir 2009]).

As recently noted in an article entitled, “Does hourly billing encourage padding of legal bills?,” in the *Suffolk Lawyer*, May 2013 edition, (Allison C. Shields, p 17 col 1):

“Padding” legal bills, even unintentionally, is an inherent problem when hours are used as the basis for fees. It is human nature to want to make more money, and hourly billing encourages making more money by putting in more hours, whether those hours are valuable to the client and the ultimate result or not. Instead of emphasizing results, service and outcomes, hourly billing rewards expenditure of time - and that is always going to result in some level of ‘padding.’

In arriving at a determination of whether the claimed hours were reasonably expended, the Court must examine the case-specific factors noted above. With regard to the factor concerning the results obtained, it is noted that the instant litigation remains pending and the result was the incarceration of the defendants for a short period of time. However, where, as here, a party achieved, only limited success in the litigation, the award of fees should be reasonable in relation to the results obtained.

Knowing that hourly billing rewards expenditure of time, it is left to this Court to determine whether those hours are valuable to the client and the ultimate result.

This was not a difficult case, since, as set forth above, the actions of the defendants were blatant. The contempt application did not involved extensive discovery, depositions, or expert witnesses. The Court believes that the motion practice and the work performed thereon could have been performed in substantially less time and more efficiently. The hours listed reflects some level of excessiveness and inefficiency (*see Francis v Atlantic Infiniti, Ltd.*, 34 Misc3d 1221(A), 950

NYS2d 608 [Sup Ct Queens County 2012]). The amount of time devoted to the preparation for the contempt hearing, noted to be 72 hours, seems excessive (*see e.g. Antonmarchi v Consolidated Edison Co. of New York, Inc.*, 2010 WL 3359477 [SDNY 2010]). The Court finds that the time spent by counsel was not entirely reasonable or productive. Moreover, the services rendered were often routine, straightforward, and relatively simple. The services did not involve any novel or complex issues.

A review of the record and the case-specific factors, leads to the conclusion that the nature, extent, and quality of the work was not reasonable. It has been held that a loser “should not have to pay for a limousine when a sedan could have done the job” (*Simmons v New York City Tr. Auth.*, 575 F3d 170, 177 [2d Cir 2009]).

Additionally, in reviewing the billing records, the Court notes block-billed entries or mixed entries in the billing statements. Block billing - the “lumping together of discrete tasks” - “makes it difficult for the court to allocate time to individual activities in order to gauge the reasonableness of time expended on each activity” (*Penberg v Healthbridge Mgt.*, 2011 WL 1100103 at \*9 [EDNY 2011]). There exists a substantial and repeated use of block-billing in the hours of Mr. Schmit and Mr. Obersheimer. Under such circumstances, courts have utilized percentage reductions “as a practical means of trimming fat from a fee application” (*New York State Assn. For Retarded Children, Inc. v Carey*, 711 F2d at 1146, *supra*). Just on the single issue of substantial use of block-billing, courts have ordered a 15% reduction to billed hours (*see Melnick v Press*, 2009 WL 2824586 at \*6 [EDNY 2009] [compilation of cases]), or even a 25% reduction (*see Penberg v Healthbridge Mgt.*, 2011 WL 1100103 at \*9 [EDNY 2011]).

An additional factor supports a reduction of the hours expended. The Court notes entries that warrant additional deductions, that is, hours expended in traveling to the various court dates (*see e.g.*, 10/26/12 [total of 6 hours billed]; 12/21/12 [total of 16 hours billed]). Presumably, some amount of the time billed was for travel time between counsel’s Manhattan office and Riverhead. “Travel time is appropriately compensated at half of the counsel’s normal billing rate” (*Rozell v Ross-Holst*, 576 FSupp2d 537, 540 [SDNY 2008]; *Barfield v NY Health & Hosp. Corp.*, 537 F3d 132, 139 [2d Cir 2008]; *Riverhead Sanitation & Carting Corp. v Hampton Hills Golf & Country Club*, 2013 WL 1401263 [Sup Ct Suffolk County 2013]).

Moreover, as previously noted, numerous entries by Mr. Schmit and Mr. Obersheimer contain notations of telephone conferences between each other or the “team.” These in-house conference calls are a common occurrence on the billing records. No explanations are offered and the Court is left to surmise that these conferences were devoted to discussing, reviewing, revising, and rewriting work performed by the new associates. Here, the Court is not persuaded that such activities added value to the plaintiffs’ case and they should be substantially discounted.

Finally, as noted above, the billing records disclose instances where billing for the contempt related work activities are lumped together with or other non-relevant issues. These hours must be deducted from the fee request.

For the reasons discussed above, the Court directs an across-the-board percentage reduction in the hours expended of 25%, on account of the excessive and unnecessary billings and other deductions, as set forth above (*see Estiverne v Esernio-Jenssen*, 908 FSupp2d 305, 312 [EDNY 2012] [25% reduction in hours billed]; *see also Zhaov State Univ. of New York*, 2011 WL 3625133 [EDNY 2011][30% reduction in hours billed]; *Antonmarchi v Consolidated Edison Co. of New York, Inc.*, 2010 WL 3359477 [SDNY 2010] [35% reduction in hours allowed for lead counsel]; *McDonald v Pension Plan*, 450 F3d 91, 96-97 [2d Cir 2006] [35% reduction in hours billed]; *L.I. Head Start Child Dev. Servs., Inc. v Economic Opportunity Commn. of Nassau County, Inc.*, 865 FSupp2d 284 [EDNY 2012] [35% reduction in fees requested]; *Cho v Koam Med. Serv.*, 524 FSupp2d 202, 207-208 [EDNY 2007] [40% reduction in hours billed]; *Francis v Altantic Infiniti, Ltd.*, 34 Misc3d 1221(A), 950 NYS2d 608 [Sup Ct Queens County 2012] [45% reduction in fees requested]; *LaBarbera v D & R Materials, Inc.*, 588 FSupp2d 342, 349 [EDNY 2008] [45% reduction in hours billed]; *Daniels v Guntert*, 256 AD2d 940, 681 NYS2d 880 [3d Dept 1998] [nearly 50% reduction in attorney fees on a contempt application]; *Southampton Day Camp Realty, LLC v Gorman*, 2012 WL 5893907 [Sup Ct Suffolk County 2012] [50% reduction in hours allowed for lead counsel]; *Finkel v Omega Communication Servs., Inc.*, 543 FSupp2d 156 [EDNY] [50% reduction in hours billed]; *Days Inn Worldwide, Inc. v Amar Hotels, Inc.*, 2008 WL 2485407, at \*10 [SDNY 2008] [75% reduction in fees requested]; *Riverhead Sanitation & Carting Corp. v Hampton Hills Golf & Country Club*, 2013 WL 1401263 [Sup Ct Suffolk County 2013] [88% downward adjustment to the hours allowed]; *Dialcom LLC v AT & T Corp.*, 37 Misc3d 1228(A), 964 NYS2d 58 [Sup Ct Kings County 2012] [100% reduction in fees requested]).

#### Fee on the Fee Application

The same rationale applies with respect to the fee award on this fee application. The Court notes that in the moving papers Joseph B. Schmit claims 9.6 hours, Peter C. Obersheimer claims 4.6 hours, and the paralegal Heidi M. Millard claims 2.8 hours. In the reply papers, Joseph B. Schmit claims an additional 3.8 hours. For all the reasons stated above, these hours are excessive for the work produced. The Court will apply the same 25% deduction in total hours expended by the firm in making the instant application (*see generally Southampton Day Camp Realty, LLC v Gorman*, 2012 WL 5893907 [Sup Ct Suffolk County 2012]).

After careful review of the record, the Court finds that the petitioner is entitled to an award of attorney's fees for the reasonable value of the services rendered for the contempt application, subject to the elimination of the hours listed which did not deal directly with the contempt

application (the 16.3 hours expended by Joseph B. Schmit and the 1.2 hours by Peter C. Obersheimer), a 25% deduction in total hours expended by the firm, after the deduction of 2.1 hours as conceded in par. 8 of the reply affirmation of Joseph B. Schmit, dated January 24, 2013, and a reduction in the hourly rate for each attorney, as discussed above.

	Summary				
	Billed		Allowed		
	Hrs.	Rate	Rate	Hrs.	
Joseph B. Schmit-	98.3	\$450.	\$280.	$98.3 - 16.3 - 2.1 = 79.9 - 25\% = 60$	$= \$16,800$
Peter C. Obersheimer-	78.6	\$230.	\$150.	$78.6 - 1.2 = 77.4 - 25\% = 58$	$= \$8,700$
Aaron M. Schue-	5.	\$230.	\$150.	$5 - 25\% = 3.75 \times 150 =$	$\$562.50$
Paralegals -					
Stacy E. O'Brien-	1.2	\$195.	\$80.	$1.2 - 25\% = .9 \times 80 =$	$\$72$
Heidi M. Millard-	31.2	\$165.	\$80.	$31.2 - 25\% = 23.4 \times 80 =$	$\$1,872$
	Total = \$28,006.50				

#### Costs and Expenses

The Court has examined the invoices and calculated the disbursements and costs incurred in prosecuting the action, which consists largely of the court filing fees, investigation service charges, postage, and computerized legal research. Defendants do not dispute the requests for costs and expenses (*see Stair v Calhoun*, 722 FSupp2d at 276, *supra*). The Court's review finds the expenditures to be reasonable (*see Irushalmi v Ostroff*, 38 AD3d 608, 830 NYS2d 669 [2d Dept 2007][investigation costs are chargeable]). However, the Court does not believe that the cost for the entire transcript of the contempt hearing was a necessary expense, since all that was needed was the decision portion that was placed upon the record the day of the hearing. Therefore, the Court will deduct \$1,000.00 from the transcript cost, leaving \$105 as a proper charge. The total that the Court finds to be reasonable is \$2,323.69 (*see* par. 16 of Joseph B. Schmit affirmation dated January 7, 2013) plus the \$105 for the transcript of the decision. Therefore, the Court will permit the sum of \$2,428.69 as expenses allowed. The combined attorney fee figure is \$30,435.19.

The Court considered the post-hearing letters, dated June 13, 2013 and June 14, 2013, from each counsel in this determination.

In view of the foregoing, it is

**ORDERED** that the amount of the reasonable attorney's fees to which the plaintiffs are jointly entitled pursuant to Judiciary Law § 773 is hereby fixed and determined in the amount of

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\$28,006.50 30, together with the sum of \$2,428.69 for the plaintiffs' reasonable costs and/or expenses; and it is further

**ORDERED** that the aggregate sum of \$30,435.19 is jointly awarded to the plaintiffs pursuant to Judiciary Law § 773 by reason of the defendants' contempt as previously adjudicated by order of this court; and it is further

**ORDERED** that the defendants are granted sixty (60) days leave from service of a copy of this order with notice of its entry to tender payment of the above amounts to counsel for the plaintiffs; and it is further

**ORDERED** that in the event that the defendants fail to timely tender the full amount due, the plaintiffs may docket this order as a judgment of joint and several liability against the defendants pursuant to CPLR 2222, upon the plaintiffs' presentation of this order to the Clerk for such purposes.

DATED: 7/22/13

  
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THOMAS F. WHELAN, J.S.C.