

Matter of Shapiro v Hayes
2016 NY Slip Op 30112(U)
January 21, 2016
Supreme Court, New York County
Docket Number: 651230/2014
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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In the Matter of an Article 75 Proceeding

STEVEN G. SHAPIRO AND PETER LEWIT,

Petitioners,

-against-

Index No. 651230/2014
Action 1
DECISION & ORDER

DANIEL B. HAYES,

Respondent.

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In the Matter of an Article 75 Proceeding

STEVEN G. SHAPIRO AND PETER LEWIT,

Petitioners,

-against-

Index No.: 650293/2014
Action 2

DANIEL B. HAYES,

Respondent.

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HON. SHIRLEY WERNER KORNREICH, J:

Motion Sequence 005 in the first entitled action (Action 1) and Motion Sequence 006 in the second entitled action (Action 2, with Action 1, Actions) are consolidated for disposition.¹

Motions before the Court

Petitioners Steven G. Shapiro and Peter Lewit (collectively, petitioners) move to modify the report and recommendation of JHO Ira Gammerman, dated July 15, 2015 (Report), that recommended that respondent Daniel B. Hayes is entitled to recover, as a sanction for frivolous

¹ The papers submitted in both Actions are identical.

conduct, \$120,297.50; or alternatively for a new hearing. Hayes opposes and cross-moves in both Actions for a judgment requiring petitioners to pay as a sanction the full amount requested, approximately \$150,000, instead of the amount recommended by the Report; and to clarify that the sanction should include fees and costs incurred after this court's decision dated January 26, 2015 (Decision), which imposed the sanction.² For the reasons that follow, the motions and cross-motions are granted to the extent of lowering the award by \$3145 to \$117,152.50 and disallowing an award for fees incurred after the Decision, and the motions and cross-motions are otherwise denied.

The relevant factors in determining the reasonable value of legal services are the nature and extent of the services, the actual time spent, the necessity therefor, the nature of the issues involved, the professional standing of counsel, and the results achieved. *Jordan v Freeman*, 40 AD2d 656 (1st Dept 1972). A "court may consider its own knowledge and experience concerning reasonable and proper fees." *Id.*, 657.

The Report found that the hourly rates charged by Hayes' attorneys were reasonable, i.e., \$650 and \$550 for partners Yoav Griver and Tracee Davis, respectively, and \$425 for their associate. Griver and Davis have over 20 years' experience. Davis was a law clerk in this court prior to going into private practice 13 years ago. Their associate graduated from law school in 2004. Petitioners contend that because the firm representing Hayes, Zeichner Ellman & Krause (Hayes' Firm) has only 50 lawyers, the reasonable value of their fees should be less than they billed and less than fees charged by a larger firm. They cite numerous federal cases from 2010

² The Decision was affirmed on November 12, 2015. *Matter of Shapiro v Hayes*, 133 AD3d 468 (1st Dep't 2015).

through 2015 and a 2010 Bronx Supreme Court case that awarded lower fees than \$650 an hour for a partner with comparable experience to Griver.

The JHO based his hourly rate decision on his experience with numerous fee application hearings over which he has presided. The court agrees based on its own experience that the rates charged by the Hayes' Firm are in line with the rates charged by other firms of that size in Manhattan. In addition, Hayes notes that Mr. Emery, petitioners' lead counsel in a 20-member firm, charged \$710 per hour in 2009, years before the motion practice that gave rise to the sanction. While Emery argues in reply that he has 40 years' experience, the court notes that the Hayes' Firm succeeded in the litigation, a factor to be considered in awarding a fee. Davis' rate of \$550 is in line with precedents cited by petitioners, and the court considers her years in the court system relevant to her overall experience.

Petitioners also challenge the number of hours spent by the Hayes' Firm as excessive for what they describe as two simple motions on garden variety issues. Would that it had been that simple. Having presided over the motions, hearings and settlement conferences, read the wealth of exhibits needed to document what had happened in the prior arbitration, and been involved with the relentless letter-writing campaign engaged in by counsel, I cannot agree with that description. Petitioners and their attorneys engaged in scorched-earth tactics that created a procedural morass, including, inter alia, commencing litigation in California against Hayes raising the same issues, filing several disciplinary complaints and issuing improper out-of-state subpoenas. For them to now complain that too much time was spent by Hayes defending against this onslaught is ironic at best. This court itself spent many hours researching and writing the Decision.

In addition, Hayes' is correct that petitioners misrepresent some of the time entries, claiming that time entries were limited to a single description, when they were block billings for a

number of different services. Charges challenged by petitioners relating to September 2014 letters and to the California action were germane to the motion to enforce the settlement and salvage Hayes' interest in Prodege. The letters ensued after oral argument of the motion, when Hayes discovered that petitioners had lied to him and to the court about the transferability of the Prodege Interest. Thus, the time charges are recoverable as part of the sanction. Decision, pp 7-11. The California action was a second front opened by petitioners against Hayes to deprive him of distributions relating to the Prodege Interest, the subject of Hayes' motion. Decision, pp 5-6 & 16. The court rejects petitioners' argument that the JHO unfairly refused to consider whether Hayes had paid his bills. Under the circumstances, whether or not he had paid them had no bearing on the reasonable amount of the fees to which he was entitled because he could well have been waiting for the award to pay them.

However, the court does agree that the JHO should not have awarded fees for services after the motions were orally argued on October 15, 2014. That includes 2.3 hours for Griver at \$650 an hour (\$1,495) and 3 hours for Davis at \$550 (\$1,650) per hour, a total of \$3145. Petitioners' Motions, Ex O, last page.³

The court grants the cross-motions to the extent of granting judgment in favor of Hayes for \$117,152.50 and otherwise denies them. The 20% deduction for block billing was reasonable, as were the deductions for the office manager's time. The court agrees with the Report's conclusion that the block billing entries and testimony about them were somewhat vague. Also, the cross-motions are denied because the Decision did not grant a sanction for fees incurred after it was argued. Accordingly, it is

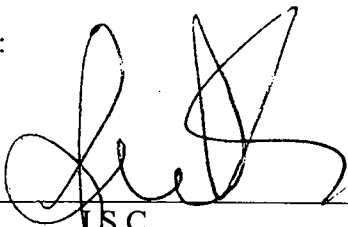
³ The charges for MA and AR, managing clerks of the Hayes' Firm, were disallowed by the JHO, as were charges relating to the appeal of the Decision.

ORDERED that the motions and cross-motions in the above-entitled Actions to modify and confirm in part the JHO's Report are granted to the extent of directing the Clerk, upon service upon him of a copy of this decision and order with notice of entry, to enter judgment in Action 1, Index No. 651230/2014, in favor of Daniel B. Hayes and against Steven G. Shapiro and Peter Lewitt in the amount of \$117,152.50, and the motions and cross-motions are otherwise denied; and it is further

ORDERED that the above-entitled Actions are hereby consolidated under index number 651230/2014 and all papers hereafter filed shall bear the caption in Action 1, and upon service upon them of a copy of this order with notice of entry, the Clerks of the Court and the Trial Support Office shall note the consolidation in their records.

Dated: January 21, 2016

ENTER:



J.S.C.