

Rodriguez v Joseph Eletto Transfer, Inc.

2016 NY Slip Op 32592(U)

December 15, 2016

Supreme Court, Nassau County

Docket Number: 5431/16

Judge: Jeffrey S. Brown

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X
**CARLOS RODRIGUEZ, on behalf of himself and all
others similarly situated,**
Plaintiff(s),

-against-

**JOSEPH ELETTO TRANSFER, INC. and
I. WILLIAMS ASSOCIATES, INC.,**
Defendant(s).
-----X

TRIAL/IAS PART 13

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Motion Date 12.12.16
Submit Date 12.12.16**

XXX

The following papers were read on this motion:	Papers Numbered
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	1,2,3
Supplemental Affidavit.....	4,5
Memorandum of Law.....	6

On September 6, 2016, the court granted plaintiff's application for preliminary approval of a class action settlement in this action. Presently before the court is plaintiff's unopposed motion for final approval of the class action settlement, including approval of an incentive payment to the named plaintiff, Carlos Rodriguez, and approval of attorneys' fees and expenses. The court has reviewed the motion for final approval including the affirmation of Troy L. Kessler, the supplemental affirmation of Troy L. Kessler, explaining the fees of Shulman Kessler LLP,, and the affirmation of Thomas Fowler, explaining the fees of Lichten & Liss-Riordan, P.C..

The class settlement amount is \$400,000.00 out of which the named plaintiff seeks \$15,000 as an incentive payment. Class counsel Shulman Kessler LLP, Lichten & Liss-Riordan, P.C., and Marchetti Law, P.C. seek \$133,333.33 in attorneys' fees, inclusive of costs, representing 33 and 1/3 percent of the total settlement or the lodestar amount adjusted by a multiplier of 3.1.

With respect to attorneys' fees,

"Under the general rule in New York, attorneys' fees are deemed incidental to litigation and may not be recovered unless supported by statute, court rule or written agreement of the parties (*Hooper Assoc. v. AGS Computers*, 74 N.Y.2d 487, 491 [1989]). An attorney is not entitled to legal fees from persons other than his or her client merely because such other persons were benefitted by his or her services (*Matter of Loomis*, 273 N.Y. 76 [1937]). There are certain exceptions to the general rule, including an award of counsel fees for class actions brought on behalf of all members of a class.

'Such an award is embodied in CPLR 909, which provides:

'If a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys' fees to the representatives of the class based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class' (emphasis added)' (*Fleming v Barnwell Nursing Home and Health Facility*, 15 NY3d 375 [2010]).

"The amount awarded in attorney's fees must be based on the 'reasonable value of legal services rendered' (CPLR 909). The burden of showing the reasonableness of the fee lies with the claimant (*see Matter of Karp [Cooper]*, 145 AD2d 208, 216), and '[t]he determination of what constitutes a reasonable fee involves extensive consideration of the nature and value of the services rendered by the plaintiffs' attorneys' (*Friar v. Vanguard Holding Corp.*, 125 AD2d 444, 447 [1986]). Although the claimant is not required to tender contemporaneously-maintained time records, 'the court will usually, and especially in a matter involving a large fee, be presented with an objective and detailed breakdown by the attorney of the time and labor expended, together with other factors he or she feels supports the fee requested' (*Matter of Karp [Cooper]*, *supra* at 216). Otherwise stated, '[t]he valuation process requires definite information, not only as to the way in which the time was spent (discovery, oral argument, negotiation, etc.), but also as to the experience and standing of the various lawyers performing each task (senior partner, junior partner, associate, etc.)' (*Washington Fed. Sav. & Loan Assoc. v. Village Mall Townhouses, Inc.*, 90 Misc.2d 227, 230-231 [Sup. Ct. Queens County, Kassoff,

J., 1977]; see also *Sheridan v. Police Pension Fund*, Art. 2 of City of N.Y., 76 AD2d 800 [1980]).”
 (*Klein v Robert's American Gourmet Food, Inc.*, 28 AD3d 63 [2nd Dept. 2006]).

The two accepted methods to determine attorneys' fees are the percentage approach and the lodestar method, whereby the court determines the reasonable hourly rate and multiplies it by the reasonable number of hours expended, then adjusts the fee based upon certain subjective criteria. *Flemming v. Barnwell Nursing Home and Health Facilities, Inc.*, 56 AD3d 162 [3d Dept 2008]). An award of 1/3rd of the common fund created by the class litigation is within the range of reasonableness previously approved in similar cases when considered in light of the risks undertaken with contingency fee cases and the work that was performed on behalf of the class. (See *id.*; see also *Hart v. RCI Hospitality Holdings, Inc.*, 2015 WL 557713 [S.D.N.Y. Sept. 22, 2015]; *DeLeon v. Wells Fargo Bank, N.A.*, 2015 WL 2255394 [S.D.N.Y. May 11, 2015]).

In reviewing the billing records submitted, the court finds that class counsel have established their significant experience prosecuting employment class actions and their work performed in representing the interests of the class members. Accordingly, the court will approve the requested attorneys' fee, inclusive of costs and expenses, in the amount of \$133,333.33.

The court finds the remaining terms of the settlement to be fair, adequate, and reasonable.

For the foregoing reasons, it is hereby:

ORDERED, that the plaintiff's motion is **granted**; and it is further

ORDERED, that the court grants final approval of the \$400,000.00 settlement memorialized in the Settlement Agreement, attached to the Affirmation of Troy L. Kessler as Exhibit A; and it is further

ORDERED, that the payment of \$15,000.00 to plaintiff Carlos Rodriguez from the class settlement fund is approved; and it is further

ORDERED, that the attorneys' fees in the amount of \$133,333.33, inclusive of costs and expenses expended on the litigation and administration of the settlement, to class counsel Shulman Kessler LLP, Lichten & Liss-Riordan, P.C. and Marchetti Law, P.C. to be paid from the class settlement fund is approved; and it is further

ORDERED, that if no individual or party appeals this order, the "Effective Date" of the settlement will be thirty (30) days after the entry of this order; and it is further

ORDERED, that this matter is closed, plaintiff to submit judgment on notice.

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

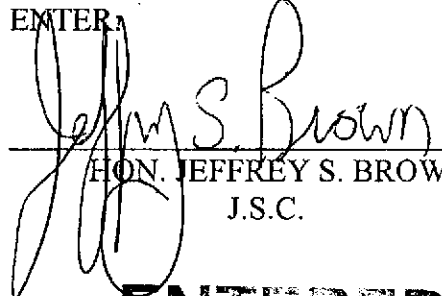
Dated: Mineola, New York
December 15, 2016

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ENTERED

HON. JEFFREY S. BROWN
J.S.C.

ENTERED
DEC 16 2016
NASSAU COUNTY
COUNTY CLERK'S OFFICE