

Reveyoso v Town Sports Intl. LLC
2018 NY Slip Op 32939(U)
November 15, 2018
Supreme Court, New York County
Docket Number: 157500/2012
Judge: William Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 157500/2012

JOAN REVEYOSO

MOTION DATE 09/13/2018

Plaintiff,

MOTION SEQ. NO. 006

- v -

TOWN SPORTS INTERNATIONAL LLC, D/B/A NEW YORK
SPORTS CLUB,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128, 129, 130

were read on this motion to/for ATTORNEY - FEES

BACKGROUND

In this discrimination action the jury awarded plaintiff damages in the amount of \$30,000, finding that defendant New York Sports Club ("NYSC") did not provide a reasonable accommodation for plaintiff, who is sightless, to work out in defendant's facility, in violation of New York City Human Rights Law ("NYCHRL"). Following the trial were post-trial motions to set aside the verdict and a cross motion seeking attorneys' fees and costs, in the amount of \$151,093.94, which amount has been supplemented and now totals \$240,889.78.

The court assumes familiarity with the facts of the underlying case, which were fully set forth in this court's decision and order, ruling on plaintiff's and defendant's post-trial motions. (NYSCEF Doc. No. 106). This court granted defendant's motion to set aside the verdict as against the weight of the evidence and as such, did not address the motion seeking attorneys' fees. The Appellate Division reversed this court's decision, reinstated the jury's verdict and remanded the matter to this court to resolve plaintiff's motion for attorneys' fees, now seeking

the original amount of \$151,093.44 in fees and costs, plus an additional \$71,838.84, as the prevailing party. *Reveyoso v. Town Sports Intl., LLC*, 162 AD3d 510 (1st Dept. 2018).

Defendant NYSC opposes the motion.

STANDARD OF REVIEW/ANALYSIS

The NYCHRL, Administrative Code of City of NY §8-502(g), provides that the court, in its discretion, may award the prevailing party costs and reasonable attorneys' fees. *Fornuto v. Nisi*, 84 AD3d 617, 923 NYS2d 493 (1st Dept. 2011). When considering a prevailing party's fee application under this section, the court is to interpret the state law consistently with federal precedent. *Sayigh v. Pier 59 Studios, L.P.*, No. 11-CV-1453-RA, 2015 U.S. Dist. LEXIS 27139, at *17 (S.D.N.Y. Mar. 5, 2015) (quoting *McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 428-29 (2004)). Once a plaintiff establishes that she is entitled to attorneys' fees as the prevailing party, she must demonstrate that the amount of the fee requested is "reasonable." The fee applicant bears the burden to present evidence of the reasonableness of both the hours and the rates. See *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984); *Hensley v Eckerhart*, 461 U.S. 424, 433 (1983).

Ordinarily, the starting point for calculating a fee award is the lodestar method, which multiplies the number of hours the prevailing party's attorney expended on the case by the reasonable hourly rate charged for similar work by attorneys of like skill in the jurisdiction. See *Perdue v. Kenny A.*, 559 U.S. 542, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010). However, "the evaluation of reasonable attorneys' fees and the cutting of fees ... lie within the sound discretion of the court," *Shannon v. Fireman's Fund Ins. Co.*, 156 F. Supp. 2d 279, 298 (S.D.N.Y. 2001), and the lodestar may be adjusted "in light of more subjective factors, such as the risk of the

litigation, the complexity of the issues, and the skill of the attorneys." *N. Y. State Ass'n for Retarded Children, Inc v. Carey*, 711 F.2d 1136, 1140 (2d Cir. 1983).

In exercising its discretion, the court is not obligated to undertake a line-by-line review of the prevailing party's fee application, as it is generally unrealistic to expect a trial court to evaluate and rule on every time entry. See, generally, *Marion S. Mishkin Law Office v. Lopalo*, 767 F.3d 144, 150 (2d Cir. 2014); *U.S. EEOC v. AIC Sec.*, 55F3d 1276, 1288 (7th Cir. 1995). Rather, the court may "use a percentage deduction as a practical means of trimming fat." *McDonald ex rel. Prendergast v. Pension Plan of the NYSA-ILA Pension Trust Fund*, 450 F.3d 91, 96 (2d Cir. 2006); see also *Days Inn Worldwide, Inc. v. Amar Hotels, Inc.*, No 05-cv-10100, 2008 U.S. Dist. LEXIS 37328, 2008 WL 2485407, at *10 (S.D.N.Y. June 18, 2008) (reducing award by 75% because the bill was "grossly excessive relative to the nature of the work performed").

The court's evaluation of a reasonable fee application, ultimately "boils down to 'what a reasonable, paying client would be willing to pay,' given that such a party wishes 'to spend the minimum necessary to litigate the case effectively.'" *Simmons v. N.Y. City Transit Auth.*, 575 F.3d170-, No. 08 Civ. 4079, 2009 U.S. App. LEXIS 17079, 2009 WL 2357703, at *3 (2d Cir. Aug. 3, 2009) (quoting *Arbor Hill*, 493 F.3d at 112, 118). It is essential that attorneys exercise "billing judgment," i.e., that they review time spent and adjust the hours prior to submission of the fee petition to the court. See *Hensley v. Eckerhart*, 461 U.S. at 434 ("[h]ours that are not properly billed to one's client also are not properly billed to one's adversary").

With respect to hours, if a court finds that the fee applicant's claim is excessive, or that time spent was wasteful or duplicative, it may decrease or disallow certain hours or, order an across-the-board percentage reduction in compensable hours. *Spalluto v. Trump Int'l Hotel &*

Tower, No. 04 Civ. 7497 (RJS) (HBP), 2008 U.S. Dist. LEXIS 77701, 2008 WL 4525372, at *6 (S.D.N.Y. Oct. 2, 2008) (quoting *Santa Fe Natural Tobacco Co. v. Spitzer*, Nos. 00 Civ. 7274 (LAP), 00 Civ. 7750 (LAP), 2002 U.S. Dist. LEXIS 5384, 2002 WL 498631 at *3 (S.D.N.Y. Mar. 29, 2002)); see also *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) ("If the court determines that certain claimed hours are excessive, redundant, or otherwise unnecessary, the court should exclude those hours in its calculation[.]") (internal quotation marks and citation omitted).

Plaintiff asks this court to exercise its discretion and award it fees and costs in excess of \$240,000 in a matter that was concluded after the jury heard two and a half days of testimony, and rendered a verdict in favor of plaintiff in the sum of \$30,000. The jury's damage award represented compensation for plaintiff's emotional pain and mental anguish as a result of defendant's failure to provide someone to assist her to and from the exercise bicycle where she would work out at defendant's facility.

The court has undertaken a detailed review of the billing records submitted in support of this motion indicating that five attorneys, three paralegals and a professional typist, billed a total of 503.85 hours, totaling \$240,889.78 in fees and costs. The court notes that Ms. Boop spent a total of 230.65 hours, billed at a rate of \$550; Mr. Alterman spent a total of 10.6 hours, billed at a rate of \$550; Mr. Bergstein spent a total of 92 hours, billed at a rate of \$400; Ms. Peterson spent 89.5 hours, billed at a rate of \$300; and Ms. Denver spent a total of 4 hours, billed at a rate of \$350.

Here, defendant opposes plaintiff's request for attorneys' fees claiming that the fees sought are excessive and a blatant attempt to have defendant "foot the bill" in a case where the jury's verdict did not act as a catalyst to effect policy change and there is no interest to the

general public in the verdict rendered. Defendant also contends that the degree of success plaintiff achieved was modest because the settlement demand greatly exceeded the jury's award and argues that the court should deny the entirety of the fee application.

Plaintiff contends that this case had several aspects unique to discrimination law. Plaintiff frames the issue presented as whether a private entity that initially provided a reasonable accommodation to a plaintiff and then revokes it without justification has violated the NYCHRL. Plaintiff contends that the defendant reversed its litigation strategy and argued post-trial and on appeal that plaintiff did not engage in an interactive process with defendant, and as such there was no violation of the NYCHRL. Plaintiff contends that the issues on the post-trial motions and the subsequent appeal required voluminous hours of research, writing and preparation but then concedes that there were few reported decisions that addressed the legal issues relevant to the post-trial submissions. (NYSCEF Doc. No. 126, p.20).

Plaintiff further claims that the post-trial motions and appeal required a detailed review of the record to support her contention that the court's decision, vacating the verdict as against the weight of the evidence, was erroneous. As such, plaintiff defends the additional fees and costs incurred post-trial, totaling \$71,838.84, notwithstanding the fact that the record is admittedly not voluminous, reflecting the relative straightforwardness of the underlying dispute. Moreover, plaintiff contends that the Appellate Division ruling provides clarity on the issue presented and confirms her status as a prevailing party entitled to recover attorney's fees under the statute.

While the court agrees that plaintiff, as the prevailing party, is entitled to recover reasonable fees and costs, defendant correctly notes that this was not a lengthy or complicated trial and that this court should exercise its discretion to deny the fee application in its entirety or in the alternative, greatly reduce the hours billed. Defendant does not object to the hourly rates

charged by the five attorneys who worked on the case, nor does defendant question the costs incurred in the matter and as such, the court will limit its review to the reasonableness of the hours billed in litigating this case.

The trial was conducted over five days, within which only two and a half days were spent taking witness testimony; this is reflected in the fact that the entire trial transcript consists of only 346 pages. (NYSCEF Doc. No. 97). Defendant maintains that the fees plaintiff is seeking to recover are patently unreasonable given the limited amount of pre-trial discovery and the fact that the only documents marked at trial were plaintiff's membership records from the facility. Even plaintiff concedes that the factual record in this matter was not voluminous as plaintiff had only been a member of the defendant's facility from October 2011 to April 5, 2012, and during that time had only visited the facility on approximately five occasions. (NYSCEF Doc. No. 81, pp 1-2).

Defendant also maintains that the hours and amounts billed for trial preparation, given the paucity of discovery and documents involved, are patently unreasonable, excessive and duplicative, noting that in September/October, 2016 plaintiff's counsel billed for 42.60 hours (\$23,455.00) for trial preparation when the case did not go forward and then in January, 2017 plaintiff's counsel billed an additional \$25,000 for trial preparation which includes the same review of the same limited documents. (NYSCEF Doc. No. 86, pp. 68-70, 74-79).

The court notes that the time records submitted in support of this motion, consist of multiple exhibits that do not plainly parse out or describe with clarity the nature of the work performed; for instance, there are multiple entries for "trial preparation" without any specific description of what that preparation involved, making it difficult to assess the reasonableness of that preparation in the context of the overall litigation. (NYSCEF Doc. No. 68). Likewise, there

are multiple entries indicating that three attorneys met to discuss "status update" and several entries indicating that multiple attorneys are billing for the same work and court appearances. (NYSCEF Doc. No. 86, p.20). These entries do not aid the court in understanding the nature of the work performed and whether the work involved research, review, revision, or a combination of any of those or other tasks.

Based on a review of the records submitted, five attorneys, three paralegals and a professional typist, billed a total of 503.85 hours, totaling \$240,889.78 in fees and costs; of this amount, \$151,093.94 was billed from the commencement of the action, on October 23, 2012 through March 30, 2017, the date the post-trial motion seeking attorney's fees was filed. An additional \$71,838.84 in attorney's fees was billed from March 31, 2017 through August 1, 2018, encompassing the appeal and the current motion seeking to recover fees.

When reviewing the overall reasonableness of a fee application, the "court is not required to 'set forth item-by-item findings concerning what may be countless objections to individual billing items[.]'" *Reiter v. Metro. Transp. Auth. of N.Y.*, No. 01 CIV 2762G, 2007 U.S. Dist. LEXIS 71008, 2007 WL 2775144, at *13 (S.D.N.Y. Sept. 25, 2007) (quoting *Lunday v. City of Albany*, 42 F.3d 131, 134 (2d Cir. 1994)); see *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (recognizing that "the court has discretion simply to deduct a reasonable percentage of the number of hours claimed "as a practical means of trimming fat from a fee application") (internal citation omitted); *Anello v. Anderson*, 191 F. Supp. 3d 262, 283 (W.D.N.Y. 2016) ("[T]he district court is not obligated to undertake a line-by-line review of [an] extensive fee application . . . In that regard, [a] court has discretion to impose an across-the-board reduction if an attorney has billed excessive, redundant, or unnecessary hours.") (internal citations omitted); *Gagasoules*, 296 F.R.D. at 111; see also *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 188 F.

Supp. 3d 333, 344 (S.D.N.Y. 2016) ("It is common practice in this Circuit to reduce a fee award by an across-the-board percentage where a precise hour-for-hour reduction would be unwieldy or potentially inaccurate.") (quoting *Ass'n of Holocaust Victims for Restitution of Artwork & Masterpieces v. Bank Austria Creditanstalt AG*, No. 04-CV-3600, 2005 U.S. Dist. LEXIS 28880, 2005 WL 3099592, at *7 (S.D.N.Y. Nov. 17, 2005), reconsideration denied, 2009 U.S. Dist. LEXIS 106384, 2009 WL 3816976 (S.D.N.Y. Nov. 10, 2009)).

Accordingly, the court will not parse the contemporaneous billing records line-by-line here. Rather, if upon review of the contemporaneous time records the court "determines that the number of hours expended was excessive, redundant or otherwise unnecessary, the court [in its discretion] may . . . account for such over-billing in an across-the-board percentage deduction." *Gagasoules*, 296 F.R.D. at 111 (quoting *Manzo v. Sovereign Motor Cars, Ltd.*, No. 08 Civ. 1229, 2010 U.S. Dist. LEXIS 46036, 2010 WL 1930237, at *8 (E.D.N.Y. May 11, 2010)); *KGK Jewelry LLC v. ESD Network*, No. 11-CV-9236, 2015 U.S. Dist. LEXIS 59425, 2015 WL 2129703, at *2 (S.D.N.Y. May 6, 2015); see also *Congregation Rabbinical Coll. of Tartikov, Inc.*, 188 F. Supp. 3d at 344 ([i]mpos[ing] a 30% reduction of the total number of hours for which compensation is sought"); *Saks Inc. v. Attachmate Corp.*, No. 14-CV-4902, 2015 U.S. Dist. LEXIS 64072, 2015 WL 2358466, at *5 (imposing a 30% across-the-board fee reduction given the "excessive" hours expended in light of the "relative simplicity of the underlying dispute and the brief period during which this dispute was ongoing").

Having conducted a thorough review of the time records, the court finds that the 503.85 hours billed to be excessive. The time records submitted in support of this application contain many entries that reflect excessive and/or duplicative time spent on certain tasks without sufficient explanation, such as the numerous time entries that refer only to "status update" or

"trial preparation". The court questions whether the length of time spent on discrete tasks was otherwise reasonable. Most significantly however, the straightforward nature of this matter, which consisted of a trial with only two and a half days of testimony and a trial transcript totaling 346 pages, demonstrates that the 503.85 hours billed are simply not reasonable. *Francois v. Mazer*, 523 Fed. Appx. 28 (2d Cir. 2013) (The district court, in imposing a 40% reduction in plaintiff's counsel's hours—a reduction which we deem to be reasonable under the circumstances—acted well within its discretion in awarding attorney's fees).

Similarly, the post-trial submissions involved discrete legal issues and a very limited record; the court notes further that the appeal was perfected, argued and decided in less than a year. These facts demonstrate most significantly the excessiveness of the hours billed, relative to the underlying dispute, giving rise to this fee application.

While the use of multiple attorneys is not unreasonable per se, "assigning numerous attorneys to a simple and straightforward matter presents a serious risk of inefficiency, duplication, and unnecessary billing." *Tackney v. WB Imico Lexington Fee, LLC*, 10 Civ. 2734 (PGG), 10 Civ. 2735 (PGG), 2015 U.S. Dist. LEXIS 32001, 2015 WL 1190096 at *6 (S.D.N.Y. Mar. 16, 2015) (Gardephe, D.J.) (citations omitted). Defendant has identified instances of duplication of effort in plaintiff's time records, noting an excessive amount billed for inter-office meetings, 16 time entries on January 2, 2014 and February 3, 2014 for meetings between Ms. Boop and her associates, and an entry on September 27, 2013 noting two attorneys preparing for a compliance conference. Additionally, defendant has identified excessive billing for deposition preparation, 13 hours, for depositions that were completed in less than 2 hours and yielded less than 100 pages of testimony.

The court certainly appreciates the practicality of litigation and the intention of plaintiff's counsel to be thoroughly prepared for court appearances, trial and oral argument, as well as the need to collaborate with other attorneys in her office. Nevertheless, the issues in this case were not complex and were sufficiently narrow in scope, considering that plaintiff only used the defendant's facility on five separate occasions before she terminated her membership. In the final analysis, the court does not believe that any reasonable paying client would be willing to pay \$240,889.78 in attorneys' fees and costs, for a straightforward case, with limited discovery and a trial that involved only two and a half days of testimony, concluding in an award of \$30,000. (NYSCEF Doc. No. 65). Nor is it reasonable to conclude that a plaintiff would pay her attorney over \$70,000 in fees and costs to preserve such a verdict.

CONCLUSION

Accordingly, based on a detailed review of the fee application, and in the exercise of this court's discretion, a reduction in fees is appropriate. The court finds that a 50% reduction in the overall hours expended by the five lawyers who worked on this matter is appropriate. See *Luciano v. The Olsten Corp.*, 109 F.3d 111, 116 (2d Cir. 1997) (In making its determination, the Court "examines the particular hours expended by counsel with a view to the value of the work product of the specific expenditures to the client's case."). Specifically, reducing the hours by 50%, the court awards reasonable attorneys' fees as follows: Ms. Boop's hours are reduced to $115.3 \times \$550 = \$63,415$; Mr. Bergstein's hours are reduced to $46 \times \$400 = \$18,400$; Mr. Alterman's hours are reduced to $5.3 \times \$550 = \$2,915$; Ms. Peterson's hours are reduced to $44.75 \times \$300 = \$13,425$; Ms. Denver's hours are reduced to $2 \times \$350 = \700 ; Total Fees = \$98,855; and Total Costs = \$17,917.28.

Based upon the foregoing, it is

ORDERED that plaintiff's motion sequence no. 006, seeking \$240, 889.78 in attorneys' fees and costs is granted, in part, and denied in part, as the court has reduced the award in accordance with this decision; and it is further

ORDERED that plaintiff is awarded \$98,855 in reasonable attorney's fees and \$17,917.28 in costs; and it is further

ORDERED that the Clerk shall enter judgment in accordance herewith.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

11/15/2018
DATE

WFP
W. FRANC PERRY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	<input type="checkbox"/>
			<input checked="" type="checkbox"/>	OTHER	
			<input type="checkbox"/>	REFERENCE	