

<b>Pearson v Fort Schuyler House, Inc.</b>
2019 NY Slip Op 33898(U)
August 6, 2019
Supreme Court, Westchester County
Docket Number: 50386/2017
Judge: Terry Jane Ruderman
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE WESTCHESTER

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BRENTLY PEARSON,

Index No.: 50386/2017

Plaintiff,

-against-

**DECISION AND ORDER**

FORT SCHUYLER HOUSE, INC.,

Motion Sequence No. 5

Defendant .

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RUDERMAN, J.

The following papers were considered in connection with plaintiff's motion for an award of reasonable attorney's fees pursuant to Labor Law §§ 198 (1-a) and 663(1):

<u>Papers<sup>1</sup></u>	<u>Numbered</u>
Order to Show Cause, Feinstein Affirmation, Exhibit 1,	
El Hag Affirmations, Exhibits 1 - 4, and Memorandum of Law	1
Affirmation in Opposition, Exhibit A	2

Following the jury verdict in plaintiff's favor on his Labor Law claims for underpayment of wages and unpaid overtime wages, as well as his common law breach of contract claim, plaintiff is entitled to an award of reasonable attorney's fees under Labor Law §§ 198 (1-a) and 663(1). Defendant does not dispute the statutory entitlement; it merely challenges the reasonableness of the amounts sought.

The parties do not disagree on the applicable standards to be applied. "[T]he lodestar

<sup>1</sup> Plaintiff's reply affirmation and exhibit thereto is disregarded, inasmuch as the order to show cause by which plaintiff's motion was brought did not authorize reply papers.

method — the product of a reasonable hourly rate and the reasonable number of hours required by the case — creates a 'presumptively reasonable fee'" (*Millea v Metro-North R.R. Co.*, 658 F3d 154, 166 [2d Cir 2011] [quoting *Arbor Hill Concerned Citizens Neighborhood Assn. v County of Albany*, 522 F3d 182, 183 [2d Cir 2007]). "[C]ourts will take into account case-specific factors to help determine the reasonableness of the hourly rates and the number of hours expended" (*Cabrera v Schafer*, 2017 US Dist LEXIS 24606, \*4 [ED NY 2017]).

Defendant protests that since the "presumptively reasonable fee" is "what a reasonable paying client would be willing to pay" (*Cabrera v Schafer*, 2017 US Dist LEXIS 24606 at \*3, citing *Arbor Hill Concerned Citizens*, 522 F3d at 183), this Court must consider that the plaintiff in this matter would not be able to afford the fees now sought by counsel for plaintiff. However, it would be contrary to the purpose of the statute's fee provisions to factor in what the client could have afforded. Nor should a statutory fee award be adjusted to make it proportionate to the amount of damages actually recovered (*see Kalloo v Unlimited Mechanical Co. of NY*, 977 F Supp 2d 209, 211 [ED NY 2013], citing *City of Riverside v Rivera*, 477 US 561, 574 [1986]). The fee determination focuses on the reasonableness of the attorney's hourly rate, in view of the community's market rates and the particular attorney's experience, and the reasonableness of the hours expended.

Counsel for plaintiff, Jordan El-Hag, Esq., and his co-counsel for the trial, Steven D. Feinstein, Esq., have submitted supporting affirmations and annexed time records. El-Hag asserts that he expended 220.7 hours in this litigation, and states that his hourly rate is \$350.00; consequently, he calculates his fee at \$76,737.50, along with incurred costs of \$10,396.85. As to his experience, he states that he has approximately 18 years of experience in industrial labor

relations, representing union members in tribunals and litigating labor and employment violations. Yet, he goes on to state that he has been admitted to practice law for 7 ½ years. He does not explain the nature of his employment for the other 10 ½ years, or how that work related to litigation. Nor does he include any information about prevailing market rates in the community in which this Court is located. The cases he cites, from the Southern District of New York, do not provide complete information regarding whether the rates they have adopted apply throughout the counties in the Southern District, or are limited to Manhattan (*see e.g. Gamero v Koodo Sushi Corp.*, 328 F Supp 3d 165, 173 [SD NY 2018] [adopting a \$400 hourly rate for a law firm partner who stated that he charged \$450 per hour, and a \$300 hourly rate for an associate asking \$375 per hour]). Also, notably, in referring to past cases he has handled, El-Hag included a cite to a single New York State case (*see Vargas v Qualitypro Pest & Wildlife Services, Inc.*, Westchester County Index No. 53226/2017), in which he stipulated to a discontinuance without any fee award. Based upon the information provided to this Court, and based on this Court's location, the hourly rate of \$275 is adopted as reasonable for El-Hag.

As to the reasonableness of the claimed expenditure of hours, this Court has carefully reviewed El Hag's time records, and determined that there were certain excesses for which an award of attorney's fees would not be reasonable, primarily in excessive time spent on motions. "[T]he 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" (*Craven v Verify Med., Inc.*, 2001 US Dist LEXIS 23833, \*13 [ED NY 2001], quoting *Kirsch v Fleet Street Ltd.*, 148 F.3d 149, 173 [2d Cir 1998]). A 15% reduction in the total number of hours claimed results in a fee award based on a more reasonable 187.6 hours of work (220.7 hours less 15% = 187.6 hours).

This brings El-Hag's fee award to \$51,590 (187.6 hours x \$275 per hour). His claimed costs of \$10,396.85 are awarded in their entirety as reasonable.

Trial co-counsel Feinstein states that he expended 59.5 hours, and that his hourly rate is \$450.00, so that the total award he seeks comes to \$26,775.00. Initially, given defendant's use of a two-attorney team to defend it in this action, this Court cannot conclude that it was unreasonable for El-Hag to seek the assistance of another, more experienced attorney for trial.

While Feinstein's claims of experience and ability are accepted for these purposes, this Court has not been provided with information about prevailing market rates, beyond citation to cases from the Southern District of New York, as discussed above. Rates in this community being generally slightly lower than those for litigation in Manhattan, Feinstein's reasonable fee award in this matter will be based on an hourly rate of \$375.00. Review of his documentation of hours expended reflects the inclusion of some time for which fees should not be awarded, including a full day charged after jury selection was complete and no trial judge was available, as well as time unnecessarily spent on motions in limine and additional motion papers. Upon imposing a 15% reduction in the total number of hours claimed, a reasonable amount of time for which to compensate Feinstein will result: 59.5 less 15% comes to 50.575 hours.

Applying the hourly rate of \$375 to those hours brings Feinstein's fee to \$18,965.

Accordingly, it is hereby

ORDERED that the motion for an award of attorney's fees is granted in accordance with the foregoing, and it is further

ORDERED that plaintiff is awarded an attorney's fee award totaling \$70,555.00, plus

\$10,396.85 in costs, and the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
August 6, 2019

  
HON. TERRY JANE RUDERMAN, J.S.C.