

New York Disaster Interfaith Servs., Inc. v Bostick

2023 NY Slip Op 32465(U)

July 21, 2023

Supreme Court, New York County

Docket Number: Index No. 150249/2020

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LORI S. SATTLER PART 02TR

Justice

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NEW YORK DISASTER INTERFAITH SERVICES, INC.

Plaintiff,

- v -

TANYA BOSTICK,

Defendant.

-----X

INDEX NO. 150249/2020

MOTION DATE 05/03/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

In this post-judgment breach of contract action, Plaintiff moves to confirm the Report and Recommendations of the Special Referee, who recommended awarding Plaintiff counsel fees of \$80,068.87. Defendant did not respond to the motion.

Defendant lives in the Arverne neighborhood of the Rockaways, and her single-family home sustained significant damage during Superstorm Sandy. She enrolled in the Build It Back Program (“BIB Program”) managed through the Mayor’s Office of Housing Recovery Operations (“HRO”), which rebuilt participants’ homes and provided temporary housing during construction. Plaintiff is a not-for-profit organization that administered the temporary housing as part of the program and entered into several agreements with Defendant for that purpose.

As set forth more fully in the Court’s Decision and Order dated February 18, 2022 (NYSCEF Doc. No. 36), there was a difference of opinion between the BIB Program and Defendant as to whether construction on her home was complete. After a temporary Certificate of Occupancy was issued, two key turnover dates were scheduled and ultimately Defendant was removed from the program. Defendant contended the work was not complete and refused to

accept the keys. She remained in the temporary housing for approximately five months after she was removed from the program in violation of her agreement with Plaintiff, before voluntarily leaving the unit.

Plaintiff commenced this action seeking damages for breach of contract and unjust enrichment, including its counsel fees. In the February 18, 2022 Decision and Order, the Court granted Plaintiff's motion for summary judgment on both its causes of action and dismissed Defendant's counterclaims and affirmative defenses, finding that Defendant had remained in Plaintiff's temporary housing in contravention of the parties' agreements. The Court found that Defendant's argument that the motion should be denied because non-party HRO had agreed to provide her housing during the construction pursuant to a separate agreement was insufficient to raise an issue of fact as to her obligations under the agreement with Plaintiff. The Court further found that there was no issue of fact as to the amount of Plaintiff's damages for Defendant's having remained in Plaintiff's housing and directed entry of judgment in the amount of \$29,951.82 plus interest. The Court referred the issue of counsel fees to the Special Referee Part for a hearing.

A hearing was held on February 9, 2023. Both parties were represented by counsel. Plaintiff sought fees of \$90,068.07 and introduced evidence to support having incurred that amount. Plaintiff's counsel, Deborah Riegel, Esq. of Rosenberg & Estis LLP, was the only witness and gave a narrative testimony. Ms. Riegel testified that the issues addressed in the motion for summary judgment were "complicated by defendant's election" (NYSCEF Doc. No. 50, Hearing Transcript, at 19). She stated:

So the time we spent in crafting the motion for summary judgment and the motion to dismiss the counterclaim was complex. It was a relatively novel issue because it all arose out of a program that was program that purely related to Hurricane Sandy. . . . So the issues were, in fact, complicated and complex, required us to

have some pretty extensive discussions with our client to understand how the larger program worked because it was only in delving into that and really understanding the program that we could refute the defendant's claim. So the work that was involved through the filing of the motion for summary judgment was not simply, you know. Here's our \$27,000 claim and here's our invoices and we're done [].

(*id.* at 21-22).

Defendant's counsel declined to cross-examine her. Defendant did not call any witnesses, however counsel put her own bills into evidence, which show that counsel billed a total of 16.5 hours on the case for which she charged \$3,752.88. She represented on the record that, because Defendant received social security disability, the firm billed at a reduced rate and that otherwise the bills would have totaled between \$5,000 and \$6,000. In her closing, Defendant's counsel argued the bills were unreasonable relative to the complexity of the matter, as evidenced in part by the disparity between their bills, and that some work was duplicative.

The Referee placed a report with recommendations on the record at the conclusion of the hearing. The Referee then issued a written order on March 1, 2023, to which the hearing transcript and report were annexed. The Referee found Ms. Riegel to be credible and discounted Defendant's argument that the case was straightforward. He found that the approximately \$90,000 in fees would not have been reasonable simply to collect an approximately \$29,000 judgment, however he credited Ms. Riegel's testimony that Defendant's counterclaims "were novel in the sense that they arose not from ancient rules of property and tenancy law, but rather arose from Hurricane Sandy and the programs that the City created . . . []" (*id.* at 31-32, 35). However, he also credited some of Defendant's argument that Plaintiff's counsel's bills for the "typically ministerial" tasks of filing and enforcing the money judgment were excessive. He recommended that \$10,000 be deducted from the \$90,068.07 sought and that \$80,068.07 be awarded to Plaintiff.

Where the findings contained in a Special Referee's report "are supported by the record and the referee has clearly defined the issues and resolved matters of credibility," the report should be confirmed (*Busche v Grover*, 180 AD3d 559, 559 [1st Dept 2020], citing *Nager v Panadis*, 238 AD2d 135, 135-36 [1st Dept 1997]). However, the Court is not bound by a recommendation and may reject findings to the extent they are not supported by the record (*King v King*, 183 AD2d 479, 479 [1st Dept 1992]).

The Court finds that the record does not support a finding that a counsel fee award of \$80,068.07 is reasonable under the circumstances. Although the contract at issue in this action arose out of the BIB Program administered by the City, no city agency was a part of this action and any contracts between either party and HRO had no bearing on the claims in this action. While Ms. Riegel testified that Defendant's counterclaims made an otherwise straightforward action complex, the firm billed just \$6,500, approximately, to review and prepare the reply to Defendant's counterclaims. Furthermore, its opposition to Defendant's cross-motion for summary judgment on her counterclaims and in further support of Plaintiff's motion for summary judgment on its causes of action, for which the firm billed approximately \$15,250, included a 24-page Memorandum of Law, only one page of which was devoted to Defendant's cross-motion. The Court finds that the record supports a finding that Defendant's counterclaims required additional work, but that the issues raised were not so complex as to justify the amount of fees charged.

The record demonstrates that the action was commenced in January 2020. An answer with counterclaims was filed in March of that year, and Plaintiff replied to the counterclaims in September. Although Plaintiff served a discovery notice in January 2021, it does not appear that the parties engaged in any discovery. A Preliminary Conference was never held. Plaintiff

moved for summary judgment in September 2021, which was granted. The Court notes that Defendant’s counsel billed less than \$4,000 for their work, and even accounting for their reduced billing rate, the work performed prior to the action’s filing, and the additional burdens that a plaintiff has, the disparity in counsel fees incurred is unjustified. Accordingly, the Report and Recommendation is hereby modified to direct that Defendant pay \$40,000 as and for Plaintiff’s counsel fees.

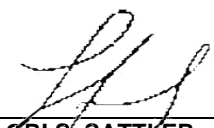
Accordingly, it is hereby,

ORDERED that the Report of the Referee dated February 9, 2023 is modified as set forth herein; and it is further

ORDERED that Defendant shall pay the sum of \$40,000 to Rosenberg & Estis, LLP as and for Plaintiff’s counsel fees within sixty days of service of this Decision and Order with Notice of Entry; and it is further

ORDERED that, in the event of non-payment, the Clerk of the Court, upon service of a copy of this Decision and Order with Notice of Entry and an Affidavit of Nonpayment, shall enter a money judgment against Defendant Tanya Bostick and in favor of Rosenberg & Estis, LLP in the amount of \$40,000 as set forth herein and Rosenberg & Estis, LLP shall have execution thereon without further order of this Court.

This constitutes the Decision and Order of the Court.

<u>7/21/2023</u> DATE	 LORI S. SATTLER, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> REFERENCE