

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION AGAINST
DISCRIMINATION and RAPHAELA THOMAS,
Complainants

v.

DOCKET NO. 20BPA02269

STASH’S PIZZA,
Respondent

DECISION ON PETITION FOR REASONABLE ATTORNEY’S FEES AND COSTS

Raphaela Thomas filed a complaint with the Massachusetts Commission Against Discrimination against Stash’s Pizza pursuant to Section 98 of M.G.L. c. 272. Among other things, Section 98 prohibits a place of public accommodation from treating its patrons differently because of race or color and from retaliating against patrons who oppose such treatment.

On May 24-26, and June 2, 2023, I presided over a public hearing addressing whether Thomas was treated differently because of her race or color by Stash’s Pizza, a place of public accommodation, and whether Stash’s Pizza retaliated against her for opposing such treatment, in violation of Section 98. In a decision dated January 25, 2024, I found in Thomas’ favor on both claims and ordered Stash’s Pizza to pay Thomas \$105,000 in damages for emotional distress.

During the hearing, Attorney Robert Johnson Jr. (“Johnson”) was the lead counsel for Thomas and conducted all witness examinations. Attorney Deborah Bondzie (“Bondzie”) served as an associate assisting Johnson with trial preparation, examination of witnesses and research. On February 1, 2024, Thomas filed a petition seeking reasonable attorney’s fees and costs (“Petition”). Thomas seeks attorney’s fees of \$340,182.50 calculated as follows: fees of Johnson of \$298,751 (333.8 hours at an hourly rate of \$895) and fees of Bondzie of \$41,431.50 (83.7 hours at an hourly rate of \$495). Thomas also seeks costs. In support of the Petition, Johnson and

Bondzie each submitted an affidavit, resume and contemporaneous time records. Documentation supporting the requested costs was also submitted. Stash's Pizza did not respond to the Petition.

I. REASONABLE ATTORNEY'S FEES

The "purpose of G. L. c. 151B, which is to discourage unlawful discrimination, as well as the requirement that the statute be broadly construed, see G. L. c. 151B, § 9, indicate an expressed legislative intent to encourage competent counsel to seek [] relief for discrimination claims. [Citations omitted]" Haddad v. Wal-Mart Stores, Inc. (No. 2), 455 Mass. 1024, 1025 (2010) (rescript) See also Sun and Massachusetts Commission Against Discrimination v. University of Massachusetts, Dartmouth, 36 MDLR 85, 88 (2014) ("in awarding attorneys' fees, the Commission recognizes the strong public interest in allowing claims to proceed with competent counsel to vindicate the public interest to discourage unlawful discrimination") The Commission has adopted the lodestar methodology for fee computation. See e.g. Reed and Massachusetts Commission Against Discrimination v. Pipefitters Association of Boston, Local 537, et. al., 44 MDLR 22 (2022). The Commission has explained the lodestar methodology as follows.

The determination of whether a fee sought is reasonable is subject to the Commission's discretion and includes such factors as the time and resources required to litigate a claim of discrimination in the administrative forum. *Baker v. Winchester School Committee*, 14 MDLR 1097 (1992). The Commission has adopted the lodestar methodology for fee computation. *Id.* By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by an hourly rate it deems reasonable. The Commission then examines the resulting figure, known as the "lodestar," and adjusts it either upward or downward or determines that no adjustment is warranted depending on various factors, including complexity of the matter. *Id.*

Reed, 44 MDLR at 23 See School Committee of Norton v. Massachusetts Commission Against Discrimination, 63 Mass. App. Ct. 839, 850 (2005), further review denied, 445 Mass. 1103 (2005) ("The MCAD was well within its discretion to apply the lodestar method.")

A. Number of Hours Reasonably Expended

In determining the number of hours reasonably expended in this case, the following principles apply:

Only those hours that are reasonably expended are subject to compensation under MGL c. 151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. [Citation omitted] Compensation is not awarded for work that appears to be duplicative, unproductive, excessive, or otherwise unnecessary to the prosecution of the claim. Hours that are insufficiently documented may also be subtracted from the total. [Citations omitted]

Reed, 44 MDLR at 23 (2022) As noted, the Petition includes contemporaneous time records for Johnson and Bondzie. Based on review of the time records, I have no exception as to the entries or times listed in those records. Johnson's compensable time is 333.8 hours and Bondzie's compensable time is 83.7 hours.

B. Reasonable Hourly Rates

The "determination of a reasonable hourly rate begins with 'the average rates in the attorney's community for similar work done by attorneys of the same years' experience.' (Citation omitted)" Haddad, 455 Mass. at 1025-1026 (when "the award is provided for by statute and is assessed against the party having no contractual relationship with the attorney involved, the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth." [Citation omitted])

Thomas has the burden of establishing that the respective requested hourly rates for Johnson and Bondzie are reasonable. Babu and Massachusetts Commission Against Discrimination v. Aspen Dental Management, Inc., 42 MDLR 99, 103 (2020) The Petition establishes that Johnson has over 40 years of legal experience; has specialized in employment litigation for over 30 years; and has been a partner at Johnson & Associates since 1996. The Petition establishes that Bondzie

became an attorney in 2012; her practice concentrates on “issues of race discrimination, real estate, care & protection, child requiring assistance, guardianship and probate matters”; and she has been a solo practitioner since January 2018. However, the Petition contains limited support for the assertion that Johnson’s hourly rate of \$895 and Bondzie’s hourly rate of \$495 are reasonable. The Petition does not contain any benchmarks, whether surveys, case law or otherwise, against which the requested hourly rates can be compared, nor does it contain any affidavits from other attorneys regarding market rates for attorneys in the Boston area and/or the reasonableness of the rates requested in this case.¹ In light of the lack of information, it is necessary to examine Commission and Massachusetts court decisions regarding petitions for attorney’s fees. I have found five cases in which the Commission has awarded an attorney an hourly rate of \$475 or more, and in the two most recent, the Commission has respectively approved an hourly rate of \$528 and \$575.² Research regarding Massachusetts state and federal

¹The paucity of supporting material as to the reasonableness of the requested hourly rates is illustrated by comparison with the ample supporting material provided in the following cases. Haddad, 455 Mass. at 1026 (material included a “number of affidavits from experienced practitioners in the field of employment litigation describ[ing] the excellent reputations and extensive experience of plaintiff’s counsel, as well as the successful outcomes they obtained in other cases, and set[ting] forth comparable hourly billing rates charged ordinarily by attorneys in this field”); Babu, 42 MDLR at 103 (2020) (material included an affidavit “from another experienced employment attorney, market survey information published in Massachusetts Lawyers Weekly, a schedule of rates provided by the Civil Division of the United States Attorney’s Office for the District of Columbia and Massachusetts court decisions”); Chase, Eason, and Massachusetts Commission Against Discrimination v. Crescent Yacht Club and John McCarthy, 42 MDLR 8, 10 (2020) (“supported by affidavits by other attorneys in the same area”); Bridges v. Commonwealth of Massachusetts, Alcoholic Beverages Control Commission, 30 MDLR 124, 127 (2008) (material included affidavits from three other attorneys “stating that the rates charged are well within the norm for attorneys of comparable experience and expertise”)

²Joseph and Massachusetts Commission Against Discrimination v. Massachusetts Department of Children and Families, 46 MDLR 18 (2024) (awarding hourly rate of \$528); Coats and Massachusetts Commission Against Discrimination v. Massachusetts State Police, 46 MDLR 1 (2024) (awarding hourly rate of \$575 to “attorney with 30 years of experience” and “extensive litigation experience, including in the areas of employment and civil rights law”); Chase, 42 MDLR at 10 (awarding hourly rate of “\$475.00 for work performed between September of 2012 until January 1, 2014 and [hourly] rate of \$500.00 [for work performed] from January 1, 2014, until” filing of petition); Diiorio and Massachusetts Commission Against Discrimination v. Willowbend Country Club, Inc., et. al., 33 MDLR 166, 170 (2011) (awarding “rate of \$425 per hour until November of 2008 and thereafter at an hourly rate of \$475”); Bridges, 30 MDLR at 127 (awarding \$475 per hour)

court attorney's fee decisions under M.G.L. c. 151B and Title VII evidence somewhat higher hourly rates.³

Applying prior decisions regarding attorney's fees to the Petition is not a straightforward comparison. First, solo practitioners like Bondzie, or attorneys from small firms like Johnson,⁴ command a lower hourly rate than their counterparts in medium or large firms.⁵ Second, other factors, such as differing levels of complexity between cases, whether the hourly rates were contested in other cases, and the degree of factual support provided in support of the requested hourly rate(s) in other cases, demand caution when applying awarded rates in other cases to this case. Riley v. Massachusetts Department of State Police, 2019 WL 4973956, at *2 (D. Mass. Oct. 8, 2019) Having a reliable, non-case specific, benchmark to apply as a cross-check in assessing reasonable hourly rates would be advantageous.

³Gavin v. City of Bos., 2022 WL 847409, at *8, 9 (D. Mass. Mar. 22, 2022) (c. 151B; awarding hourly rate of \$500); Neal v. City of Boston, 2022 WL 303492 at *1, 7 (Mass. Sup. Ct., Jan. 18, 2022) (c. 151B; awarding hourly rate of \$525 to "an attorney with almost 40 years of experience [and] extensive trial experience, including in the areas of employment and civil rights law, with considerable knowledge in the area of employment discrimination"); Smith v. City of Boston, 496 F. Supp. 3d 590, 592, 599 (D. Mass. 2020) (Title VII disparate impact claim; awarding respective hourly rates of \$700, \$600, \$400 and \$300); Riley v. Massachusetts Department of State Police, 2019 WL 4973956, at *1–2 (D. Mass. Oct. 8, 2019) (Title VII; awarding respective hourly rates of \$600, \$525 and \$350); Toussaint v. Brigham & Women's Hosp., 2018 WL 4760536, at *1, 2 (Mass. Super. Aug. 21, 2018) (c. 151B; "\$600 per hour is at the high end of prevailing rates within the employment bar, for counsel of [such] years of varied experience under similar circumstances.... I find a reasonable hourly rate to be awarded in this case to be \$550"); Lopes v. City of Brockton, 2017 WL 4872538, at *1, 8 (Mass. Super. May 25, 2017), judgment entered, (Mass. Super. 2017) (c. 151B; awarding hourly rates of \$575 and \$500)

⁴Based on his resume, it appears Johnson is not the only attorney at his firm. Based on the fact that Johnson had a practitioner from another firm (Bondzie) working with him on this case, I infer that the size of his firm is small.

⁵Neal v. City of Boston, 2022 WL 303492 at *7 (Mass. Sup. Ct., Jan. 18, 2022) (if attorney "was practicing in a large firm, with a host of associates to manage, his hourly rate would likely be much higher"); Long Bay Mgmt. Co., Inc. v. Haese, LLC, 2013 WL 7018941, at *6 (Mass. Sup. Ct., Dec. 3, 2012), aff'd, 88 Mass. App. Ct. 1113 (2015) ("These rates are in line with those of highly regarded small-to mid-sized Boston firms for litigation work, and substantially below the rates of similarly qualified attorneys at larger firms"); Tuli v. Brigham & Women's Hosp., Inc., 2009 WL 10693567, at *2 (D. Mass. June 8, 2009), aff'd sub nom. Tuli v. Brigham & Women's Hosp., 656 F.3d 33 (1st Cir. 2011) ("reasonable rate is measured by comparing counsel's regular rates with those of the marketplace. Brown Rudnick requests rates of.... These are the rates of large law firms.")

Very recently, a Hearing Commissioner utilized a survey in deciding a petition for attorney's fees. In Joseph and Massachusetts Commission Against Discrimination v. Massachusetts

Department of Children and Families, 46 MDLR 18 (2024), the Hearing Commissioner relied upon the Wolters Kluwer 2022 Real Rate Report ("Report").⁶ The Commissioner determined that the following nine "median hourly rate" data points from the Report were pertinent:

(1) Boston area partners in employment and labor matters - \$578; (2) Boston partners practicing litigation without limitation by subject area - \$681; (3) partners in the Boston area with fewer than 21 years of experience - \$650; (4) partners practicing ADA litigation - \$502; (5) partners practicing litigation in firms with fewer than 50 attorneys - \$345; (6) partners practicing labor and employment - \$535; (7) partners practicing discrimination, retaliation, and harassment/EEO litigation - \$365; (8) partners practicing labor and employment litigation, with fewer than 21 years of experience - \$475; and (9) partners practicing labor and employment litigation in firms with fewer than 50 attorneys - \$398. The average hourly rate of those nine data points was \$503. The Commissioner adjusted that hourly rate upward to \$528 to account for inflation for the period between the date through which the data was collected in the Report (June 30, 2022) and the filing date of the petition for attorney's fees, using an inflation rate of 5% per annum. I am persuaded by the Commissioner's analysis regarding those nine data points and find that utilizing the Report as a cross-check against hourly rates referenced in the above decisions will assist in determining reasonable hourly rates for Johnson and Bondzie in this case. Applying the Report to this case, a reasonable hourly rate for Johnson would be \$565.⁷

⁶"Several courts have relied on [Wolters Kluwer Real Rate Reports] because of their large sample size and accurate reflection of market rates." Muehe v. City of Boston, 569 F. Supp. 3d 80, 86 (D. Mass. 2021); Tyler v. Michaels Stores, Inc., 150 F. Supp. 3d 53, 70 n. 32 (D. Mass. 2015) But see, e.g. Cortes v. Juquila Mexican Cuisine Corp., 2021 WL 1193144, at *5 (E.D.N.Y. Mar. 29, 2021) ("the helpfulness of the Real Rate Report is less than certain")

⁷The hourly rate of \$565 was extrapolated as follows. First, two of the nine data points from the Report utilized in Joseph regard years of experience. In Joseph, complainants' attorneys had less than 21 years of experience – unlike

Taking all of the above into account, I find a reasonable hourly rate for services performed by Johnson in this case is \$585. Because Bondzie has substantially less legal experience than Johnson and served as an associate in this case, reducing Johnson's hourly rate by 25% will result in a reasonable hourly rate for services performed by Bondzie. I find a reasonable hourly rate for services performed by Bondzie in this case to be \$438.75.⁸

C. Calculation of Lodestar

Johnson's portion of the lodestar is derived by multiplying 333.8 compensable hours at an hourly rate of \$585 which equals \$195,273. Bondzie's portion of the lodestar is derived by multiplying 83.7 compensable hours at an hourly rate of \$438.75 which equals \$36,723.38. Thus, the total lodestar is **\$231,996.38**. Having determined the lodestar, I now address whether the lodestar should be adjusted. By-and-large, this case was a straight-forward place of public accommodation discrimination and retaliation case. I have determined that an adjustment to the lodestar is not warranted.

II. COSTS

The requested costs of **\$5,641.09** have been documented, are reasonable and are allowed.⁹

Johnson. Adjusting those two points for an attorney with "21 or more years" of experience, the \$650 data point is replaced with \$719, and the \$475 data point is replaced with \$585, resulting in an average hourly rate approximating \$523. Second, again extrapolation from Joseph, I applied an inflation rate of 8% for the nineteen-month period between the date (June 30, 2022) through which the data was collected in the Report and the time of the filing of the Petition (February 1, 2024). With these adjustments, an hourly rate of \$565 results.

⁸I apply a single hourly rate for each attorney and use a rate appropriate to the time of the filing of the Petition (February 1, 2024). See Sun, 36 MDLR at 88, n. 4; M. Berenson Co. v. Faneuil Hall Marketplace, Inc., 671 F. Supp. 819, 831 (D. Mass. 1987) ("The use of current market rates may compensate the attorneys for the delay in payment of their fees, that is, for inflation and interest, as well as simplify the task of the district court.")

⁹The material submitted by Thomas contains two different numbers for costs – \$5,641.09 and \$5,442. Because the supporting documentation totals \$5,641.09 for costs, I shall assume the reference to \$5,442 was inadvertent. The material also makes a reference to "nontaxable" costs. This decision does not address issues of taxation.

III. INTEREST

Thomas seeks interest on the awarded attorney's fees and costs at a rate of 12% per annum. Interest on an award of attorney's fees and costs after a public hearing pursuant to Section 5 of M.G.L. c. 151B is post-judgment interest that accrues on the date of the decision awarding the attorney's fees and costs.¹⁰ Thomas is entitled to post-judgment interest at a rate of 12% per annum for the period commencing on the date of this decision and ending on payment of the awarded attorney's fees and costs.

IV. ORDER

Based on the authority granted me by Section 98 of M.G.L. c. 272 and Section 5 of M.G.L. c. 151B, I order Stash's Pizza to pay Raphaela Thomas **\$231,996.38** in attorney's fees and **\$5,641.09** in costs, with post-judgment interest at a rate of 12% per annum for the period commencing on the date of this decision and ending upon payment of the awarded attorney's fees and costs.

V. NOTICE OF APPEAL

Pursuant to 804 CMR 1.12(19), a Hearing Officer decision on a request for award of attorneys' fees and costs is a final decision appealable to the Full Commission pursuant to 804 CMR 1.23(1)(a), regardless of whether a party has appealed the underlying hearing decision to the Full Commission. Any party aggrieved by this decision may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal within 10 days of receipt of this decision and file a Petition for Review within 30 days of receipt of this decision. 804 CMR 1.23 (2020). If a party files a Petition for Review, the other party has the right to file a Notice

¹⁰Department of Correction v. Massachusetts Comm'n Against Discrimination, 2018 WL 7075235, at *4 (Mass. Super. Nov. 27, 2018) ("Like a Superior Court in a §9 case, the decision of the MCAD in a §5 case is reviewable but potentially final. Because that is so, it is the MCAD's decision on attorneys fees and costs, and not a potential subsequent decision by the Superior Court, which draws the line between interest that is pre- and postjudgment.")

of Intervention within 10 days of receipt of the Petition for Review and shall file a brief in reply to the Petition for Review within 30 days of receipt of the Petition for Review. 804 CMR 1.23 (2020) All filings referenced in this paragraph shall be made with the Clerk of the Commission with a copy served on the other party.

So ordered this 22nd day of March 2024

Jason B Barshak

Jason Barshak
Hearing Officer