

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
LISA VINCENTI
Complainants

v.

DOCKET NO. 18-BEM-03398

THE PLYMOUTH EXCHANGE and
PETER B. SMITH
Respondents

**DECISION ON COMPLAINANT VINCENTI'S PETITION
FOR THE AWARD OF ATTORNEYS' FEES**

On February 28, 2024, I issued a Decision of the Hearing Officer in the above-captioned matter finding Respondents, The Plymouth Exchange (“Plymouth Exchange”) and Peter B. Smith (“Mr. Smith”), jointly and severally liable for hostile work environment sexual harassment in violation of M.G.L. c. 151B, § 4(16A) and retaliation in violation of M.G.L. c. 151B, § 4(4). I also found Mr. Smith liable for interfering with Complainant Vincenti’s exercise of rights protected under Chapter 151B in violation of M.G.L. c. 151B, § 4(4A). Plymouth Exchange and Mr. Smith (“Respondents”) were ordered to pay Complainant Lisa Vincenti (“Ms. Vincenti” or “Complainant”) back pay damages in the amount of \$2,172.30 and emotional distress damages in the amount of \$80,000. In addition, I ordered Mr. Smith to undergo training on sexual harassment and retaliation.

Complainant’s Petition for the Award of Attorneys’ Fees (“Petition”) seeks \$59,975 in fees for work performed by a team of attorneys, paralegals, and administrative professionals.¹ The

¹ The Petition does not seek reimbursement for costs.

Petition is supported by an affidavit from Attorney Peter Farrell and attaches a “written schedule and time summary ... together with redacted copies of timesheets.” Affidavit of Peter Farrell, ¶ 8. These records reflect services performed in this case through the completion of a four-day public hearing, and the submission of a post-hearing brief. The Petition seeks \$31,800 in fees for services performed by Attorney Farrell (\$375/hour for 48.2 hours through May 12, 2023, plus \$450/hour for 30.5 hours after June 1, 2023); and \$23,227.50 in fees for services performed by Attorney Matthew Stevens (\$285/hour for 81.5 hours). In addition, the Petition seeks: (1) fees for services performed by other attorneys (total: \$3,476.50²); and (2) fees for paralegal and administrative work (total: \$1,471.00³).

On April 6, 2024, Mr. Smith sent the Commission an email stating: (1) attorneys’ fees should not be allowed because there was no separate hearing on jurisdiction, and (2) “Attorney Farrell took this case fully understanding the contingency agreement made and if successful, that is how he gets paid. Seems to me this is an effort to double dip.” (“April 6 Email”)

I. LEGAL STANDARD

M.G.L. c. 151B, § 5 allows a complainant who prevails after a public hearing before the Commission to recover reasonable attorneys’ fees and costs. 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.

² These include Thomas Cleary (.3 hours at \$375/hour); Bryan Noonan (.4 hours at \$285/hour); Peter Thomas (.3 hours at \$325/hour); and Eric Langfield (9.7 hours at \$325/hour).

³ These include Jillian Boughner (1 hour at \$135/hour); Stefanie Howarth (1.6 hours at \$125/hour); Erin Oliveira (3.1 hours at \$135/hour); Kiran Mistry (2.1 hours at \$150/hour); Emily Bouchard (.2 hours at \$125/hour); Arlena O’Connor (.52 hours at \$125/hour); Tyler Mills (2.4 hours at \$125/hour) and Matthew Gruneberg (.1 hours at \$125/hour).

Wal-Mart Stores, Inc. (No. 2), 455 Mass. 1024, 1025 (2010) (1:28) (Haddad); Massachusetts Comm’n Against Discrimination and Sun v. Univ. of Massachusetts, 36 MDLR 85, 88 (2014) (Full Commission) (“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 Comm’n Against Discrimination v. Pipefitters Association of Boston, Local 537, 44 MDLR 22 (2022) (Full Commission). 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 Sch. Comm., 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; Sch. Comm. of Norton v. Massachusetts Comm’n Against Discrimination, 63 Mass. App. Ct. 839, 854 (2005)

II. CALCULATION OF REASONABLE ATTORNEYS’ FEES

A. Reasonable Hourly Rate

The Petition seeks the following hourly rates for attorneys performing services in this matter: Attorney Farrell - \$375 (for services before June 1, 2023) and \$450 (for services after June 1, 2023); Attorney Stevens - \$285; Attorney Cleary - \$375; Attorney Noonan - \$285; Attorney Langfield - \$325; and Attorney Peter Thomas - \$325. Attorney Farrell has “nearly twenty-one years’ experience as a trial lawyer and litigator.” Farrell Affidavit, ¶ 20 The other attorneys in this

matter have admission years to the Massachusetts Bar as follows: Attorney Stevens (2021); Attorney Cleary (2008); Attorney Noonan (2015); and Attorney Langfield (2013).⁴

Ms. Vincenti bears the burden of establishing that the requested hourly rates are reasonable. Babu and Massachusetts Comm’n Against Discrimination v. Aspen Dental Management, Inc., 42 MDLR 99, 103 (2020) Ideally, petitions for fees should include information about the attorneys’ experience – both as to the number of years they have been practicing and the type of work they have done in the past. Haddad, 455 Mass. at 1025-1026 (“A 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) In addition, petitions for fees should contain specific information about the average rate in the community for similar work by attorneys with *similar years’ experience*. Tuli v. Brigham & Women’s Hosp., Inc., 2009 WL 10693567 (D. Mass. 2009) (reasonable rate measured by comparing counsel’s regular rates with those of the marketplace); Massachusetts Comm’n Against Discrimination and Cleveland Coats v. Massachusetts State Police, 46 MDLR 1 (2024) (Full Commission), citing Haddad, 455 Mass. at 1025-26. A fee petition should include materials that corroborate the fees requested such as model fee charts, matrices, reports, other reliable sources and/or affidavits from other attorneys with knowledge of rates charged by attorneys in the community with similar years of experience performing similar work. See, e.g. Haddad, 455 Mass. at 1026 (several affidavits from experienced practitioners in the field set forth comparable hourly billing rates)

⁴ With the exception of Attorney Farrell, the Petition did not provide information about the experience of the other attorneys, resulting in my review of the public information on the Massachusetts Board of Bar Overseers (BBO) website to obtain the respective years in which such attorneys became licensed to practice in Massachusetts as a proxy for their years of experience

I could not identify the date that Attorney Peter Thomas was admitted to the Massachusetts Bar as there are several “Peter Thomases” listed on the BBO website and as such, **I am not awarding fees for services provided by Peter Thomas.**

In this case, the Petition states:

The usual price charged for similar legal services by other attorneys in this jurisdiction is \$450 per hour as said hourly rate is commensurate with market or prevailing hourly rates for similar cases in the Metropolitan Boston, Massachusetts area. I have conducted research into awards of attorney's fees in similar cases within this jurisdiction. Based on my review, the amounts awarded in comparable cases support the reasonableness of the fees requested in this case. Farrell Affidavit, ¶¶ 21-22.

In addition to omitting information about the years of experience of the attorneys (other than Attorney Farrell) or a description of their experience, the Farrell affidavit does not include information about hourly rates charged by other attorneys in the relevant community *with similar years' experience as Attorney Farrell and the other attorneys*.

Notwithstanding these deficiencies, based on a review of hourly rates approved by the Commission⁵ and my own experience⁶, I have concluded that a reasonable hourly rate for Attorney Farrell is \$375 for all his services rendered in this case.⁷

⁵ See e.g. Hernandez v. Beautiful Rose Corp. d/b/a Strega Waterfront Restaurant et al., 42 MDLR 139 (2020). In this case, the Commission found that \$375/hour was a reasonable rate for a “veteran civil rights attorney” with 25 years of experience. The Commission further noted that the Massachusetts Law Reform Institute’s fee scale, which was submitted in support of the request, reflected an hourly rate of \$414-425 for attorneys with *24-26 years of experience*. Attorney Farrell has less than 21 years of experience.

⁶ Juan Juan Chen v. Wen Jing Huang, 2016 WL 4729307 (Mass. Sup. Ct. September 7, 2016); cf. Heller v. Silverbranch Constr. Corp., 376 Mass. 621, 629 (1978) (judge may rely on her “own experience as a judge and expertise as a lawyer” in setting reasonable attorneys’ fees); Borne v. Harverhill Golf & Country Club, Inc., 58 Mass. App. Ct. 306, 325 (2003) (judge can use own experience to determine an award of legal fees). See Handy v. Penal Institutions Comm’r of Boston, 412 Mass. 759, 767 (1992) (affirming fee award based on affidavits and single justice’s “own personal knowledge of hourly rates in the Boston area at all relevant historical times”); Garcia-Goyco v. Law Env’tl. Consultants, 428 F.3d 14, 22 (1st Cir. 2005) (court may rely on “its own knowledge and experience regarding attorneys’ rates and the local market”)

⁷ I find unpersuasive the notion that an increase in Attorney Farrell’s hourly rate from \$375 to \$450 is justified based on his formation of a firm. Farrell Affidavit, ¶ 9 (“As of June 1, 2023, I started my own law firm, Farrell Lavin PLLC. As a result, my hourly rate increased to \$450 per hour.”) Attorney Farrell may have started a law firm, but his years of experience did not materially change. The services rendered in this case, for which an hourly rate of \$450 is sought, were completed within less than one year after the formation of the firm. See Petition dated April 4, 2024

As for Attorney Stevens (\$285/hour), Attorney Noonan (\$285/hour), and Attorney Langfield (\$325/hour), I find their respective requested hourly rates to be reasonable based on their years of experience and my familiarity with other Commission cases.⁸ Finally, I find the rates requested by the administrative and paralegal support to be reasonable.⁹

B. Number of Hours Reasonably Expended

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

Only those hours that are reasonably expended are subject to compensation under M.G.L. 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. Grendel's Den v. Larkin, 749 F.2d 945, 952 (1st Cir.1984); Brown v. City of Salem, 14 MDLR 1365 (1992). The party seeking fees has a duty to submit detailed and contemporaneous time records to document the hours spent on the case. Denton v. Boilermakers Local 29, 673 F. Supp. 37, 53 (D. Mass. 1987); Baker v. Winchester Sch. Comm., 14 MDLR 1097 (1992).

Reed, 44 MDLR at 23. I have concluded, with limited exceptions identified below, that the number of hours expended by the attorneys and administrative support professionals in this case is reasonable.¹⁰

1. Description of Services Provided

The descriptions of the services for four entries in the time records were entirely redacted. For two of those entries – dated 9/20/22 and 1/9/23 - no charge is sought and no action need be taken regarding these. The other two entirely redacted entries were for Attorney Stevens (1/5/23

⁸ The one exception for Peter Thomas is set out herein, n. 4.

⁹ The rates charged for paralegal and administrative support were in a range between \$125 and \$150.

¹⁰ I am cognizant that conservative criteria is in order where the party “other than the one who hired the lawyer is required to pay the fee.” City Rentals, LLC v. BBC Co., 79 Mass. App. Ct. 559, 566–67 (2011) (citations omitted)

for 1.4 hours) and Attorney Cleary (5/18/23 for .3 hours) Those two entries lack sufficient detail to allow for a determination as to whether those services rendered were necessary and the amount of time expended reasonable. As it is not possible to validate those two entries, I reduce the compensable hours for Attorney Stevens by 1.4 and reduce the compensable hours for Attorney Cleary by .3.

2. Attorney Stevens Services as Second Chair at Hearing

This case was tried over the course of four days. Attorney Farrell was “lead counsel” and attended each day of the hearing. Attorney Stevens was “second chair” and attended three days of the hearing. Attorney Farrell gave the opening statement, questioned and cross-examined every witness and addressed every objection and evidentiary issue. Based on my observations, Attorney Stevens did not engage in oral advocacy during the hearing.¹¹

Awarding fees to two attorneys for their time spent at a hearing where both had *active* roles at the hearing is appropriate. Neal v. City of Boston, 2022 WL 303492, at *7 (Mass. Super. Jan. 18, 2022); MCAD & Sun v. Univ. of Massachusetts, 36 MDLR at 85. In cases like the present one, however, where the “second chair” attorney does not have a role in questioning witnesses in any capacity, does not handle objections or evidentiary issues, and does not present an opening statement, a reduction in compensable hours for the “second chair” attorney for time spent at the hearing is in order. Massachusetts Comm’n Against Discrimination and Joseph v. Massachusetts Dep’t of Children and Families, 2024 WL 940057 (2024); Massachusetts Comm’n Against Discrimination and Carta v. Wingate Healthcare, Inc., 42 MDLR 79, 84 (2020)¹² Attorney

¹¹ Attorney Stevens assisted in the presentation of an audio recording which was used in a cross-examination.

¹² The substance of this case was not complicated, and I did not observe Attorney Farrell and Attorney Stevens conferring on a significant enough number of occasions to alter this conclusion. Mustapha v. DaimlerChrysler Co., Inc., 2007 WL 4878914, *19 (Mass. Super. January 15, 2007)

Stevens charged 31.4 hours for time at the hearing.¹³ I exercise my discretion to reduce the compensable number of Attorney Stevens' hours at public hearing by 40%, resulting in a reduction of 12.56 compensable hours for Attorney Stevens.

C. Interrelatedness of claims

In appropriate circumstances, attorneys' fees may be reduced where the complainant is not successful on all claims. Ms. Vincenti was successful on three of the four certified claims in this matter: (1) hostile work environment sexual harassment; (2) retaliation; and (3) individual liability. She was not successful on the *quid pro quo* sexual harassment claim. However, where a complainant's successful and unsuccessful claims are inextricably intertwined and based on a common nucleus of facts, a reduction in attorneys' fees is not required. Massachusetts Comm'n Against Discrimination and Kevin O'Leary v. Brockton Fire Dep't and Deputy Chief Brian Nardelli, 43 MDLR 15, 17-18 (2021) The facts in support of the *quid pro quo* claim and hostile work environment claim were highly interrelated and intertwined. Blue v. Aramark Corp., 27 MDLR 73 (2005). As a result, I decline to reduce attorneys' fees on the basis that Ms. Vincenti did not prevail on the *quid pro quo* sexual harassment claim.

C. April 6 Email

I reject the arguments in the April 6 Email that attorneys' fees should not be allowed because there was no separate hearing on jurisdiction and that Attorney Farrell took this case on contingency and thus is "double dipping." The absence of a separate jurisdictional hearing in this case has no bearing on the decision of whether to award attorneys' fees. Moreover, even where

¹³ Regarding attendance at the hearing, Attorney Stevens seeks: 7.8 hours on April 3, 2023; 11.5 hours on April 4, 2024; and 12.1 hours on April 10, 2023.

attorneys have a contingency fee agreement, a prevailing client is entitled to seek an award of fees under M.G.L. c. 151B. Powers v. H.B. Smith Co. Inc., 42 Mass. App. Ct. 657, 667 (1997)

D. Calculation of Lodestar

For the reasons stated above, I have calculated the lodestar by multiplying the number of hours reasonably expended by the reasonable hourly rates for a total of \$53,498.90.¹⁴ As this case was a relatively straight-forward case of sexual harassment and retaliation in employment, I have determined that an adjustment to the lodestar is not warranted.

III. ORDER

Pursuant to M.G.L. c. 151B, § 5, Respondents Plymouth Exchange and Peter Smith are ordered to pay to Ms. Vincenti a total of **\$53,498.90** in fees - with post-judgment interest accruing at a rate of 12% per annum for the period commencing on the date of this decision and ending on payment of the awarded fees.

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Person performing services	Reasonable Number of Hours	Reasonable Hourly Rate	Subtotal
Attorney Farrell	78.7	\$375	\$ 29,512.50
Attorney Stevens	67.54 [81.5 - 12.56 (duplicative services) -1.4 (entirely redacted entry)]	\$285	\$ 19,248.90
Attorney Noonan	.4	\$285	\$ 114.00
Attorney Langfield	9.7	\$325	\$ 3,152.50
Paralegal/Administrative Support			\$ 1,471.00
Total			\$ 53,498.90

IV. 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 Order 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 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 3rd day of July, 2024

Simone Liebman

Simone R. Liebman
Hearing Officer