

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Ann M. Soltis,

Complainant,

v.

Metropolitan Training and Consulting,

Respondent.

**AWARD OF LITIGATION COSTS  
AND ATTORNEY'S FEES**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on May 8, 9 and 17, 1996, at the Office of Administrative Hearings, 100 Washington Square, Minneapolis, Minnesota, 55401.

J. Thomas Church, Attorney at Law, 133 West Baker Street, St. Paul, Minnesota, 55107, appeared on behalf of Ann Soltis ("Complainant"). Harold LeVander, Jr., Attorney at Law, Maun & Simon, 2300 World Trade Center, 30 East 7th Street, St. Paul, Minnesota 55101-4904, appeared on behalf of Metropolitan Training and Consulting ("Respondent").

On October 16, 1996, a decision was issued in the above case in which the Administrative Law Judge found that the Respondent had discriminated against the Complainant, Ann Soltis, in her employment and awarded damages for violation of the Minnesota Human Rights Act. As part of the Order, the Administrative Law Judge determined that it was appropriate to award costs and reasonable attorney's fees. Because those issues were not addressed in the post-hearing briefs, counsel for the Complainant was permitted thirty days to file a petition for reimbursement of costs and attorney's fees, and the Respondent was given an opportunity to respond to the Complainant's petition within twenty calendar days of his receipt of the petition.

The Complainant filed a Petition for attorney's fees on November 13, 1996. The Respondent filed an Affidavit and Response to the Petition for Attorney's Fees on December 4, 1996, whereupon the record with respect to the attorney's fees issue closed.

STATEMENT OF ISSUES:

The following issues are presented:

1. whether the costs submitted on behalf of the Complainant are reasonable and properly taxable to the Respondent;
2. whether the attorney's fees submitted on behalf of Complainant are reasonable; and

3. what, if any, additional amount of litigation costs should be awarded.

Based upon all of the files, records, and arguments of counsel, the Administrative Law Judge makes the following:

FINDINGS OF FACT:

1. On June 21, 1994, Complainant filed a charge of discrimination against Metropolitan Training and Consulting with the Department of Human Rights ("Department").

2. On November 9, 1995, the Department referred the charge to the Office of Administrative Hearings for a contested case hearing.

3. A hearing on this matter took place over three days on May 8, 9 and 17, 1996. Testimony was received from five witnesses and eighteen exhibits were introduced as evidence in the proceeding.

4. On October 16, 1996, the Administrative Law Judge issued an Order finding that the Respondent had engaged in reprisal against the Complainant in violation of the Minnesota Human Rights Act. The Judge ordered Respondent to pay Complainant \$2,000 as damages for mental anguish and suffering and \$8,500 for punitive damages. The Judge also ordered Respondent to cease and desist from further acts of reprisal in violation of the Human Rights Act, to prepare and distribute an appropriate written equal employment opportunity policy which includes a discussion of the prohibition against acts of reprisal, and to pay a civil penalty of \$8,500 to the State of Minnesota. The Judge ordered the Respondent to reimburse the Department of Human Rights for its litigation and hearing costs in the amount of \$7,661.10. Finally, the Judge indicated in her Order that Complainant's reasonable attorney's fees and costs would be awarded.

5. On November 13, 1996, Complainant filed a Petition for Attorney's Fees. Respondent filed an Affidavit and Response to the Petition on December 4, 1996.

6. Complainant has requested attorney's fees totaling \$24,109.50 and costs of \$427.07. Complainant has submitted an invoice showing 160.73 attorney hours expended for representation at a rate of \$150 per hour. Included in the costs are charges for transcripts, tapes and witness fees.

7. The costs to be billed by the Office of Administrative Hearings to the Department of Human Rights with respect to this case for the period from October 16, 1996, to December 31, 1996, totals \$2,427.44.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## CONCLUSIONS OF LAW

1. Minn. Stat. § 363.071, subd. 7, requires that the Judge order a respondent who has engaged in unfair discriminatory practices to reimburse the Minnesota Department of Human Rights for "all appropriate litigation and hearing costs expended." The Office of Administrative Hearings will bill the Department of Human Rights the additional amount of \$2,427.44 during the period from October 16, 1996, to December 31, 1996, for services relating to the consideration of the attorney's fees petition. Accordingly, the Respondent shall reimburse the Department of Human Rights for additional litigation and hearing costs in the amount of \$2,427.44. This amount shall be in addition to the amount of \$7,661.10 in reimbursement previously ordered in the October 16, 1996, Report.

2. Minn. Stat. § 363.071, subd. 2, does not expressly authorize an award of costs to the Complainant. However, because the Minnesota Human Rights Act does provide for an award of costs to the prevailing party in a District Court action (see Minn. Stat. § 363.14, subd. 3), it is appropriate to allow an award of costs in this proceeding.

3. It is appropriate to reimburse the Complainant for costs and disbursements incurred in this proceeding in the total amount of \$427.07. These charges are reasonable and are properly taxable to the Respondent.

4. Minn. Stat. § 363.071, subd. 2 provides that "the administrative law judge may . . . order the respondent to pay an aggrieved party who has suffered discrimination . . . reasonable attorney's fees."

5. Complainant is appropriately considered a "prevailing party," having prevailed on the merits of all issues and having been awarded \$10,500 in damages.

6. The hours claimed by Complainant for attorney's fees have been carefully scrutinized. It is the determination of the Judge that 15.325 hours expended by Complainant's attorney were excessive. Therefore, the total number of hours for which Complainant seeks reimbursement shall be reduced by 15.325 hours.

7. It is appropriate to award attorney's fees based on 145.405 hours of attorney time, and to calculate the fees for Mr. Church based on an hourly rate of \$150.00. These rates are reasonable given the experience and performance of Mr. Church in this matter.

8. The Complainant is entitled to attorney's fees in the total amount of \$21,810.75. This amount reflects a reasonable number of hours of attorney time expended at a reasonable rate to represent the Complainant in this matter.

9. These Conclusions are made for the reasons set forth in the attached Memorandum which is incorporated in and made a part of these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## ORDER

IT IS HEREBY ORDERED as follows:

1. Respondent shall jointly pay Ann Soltis and J. Thomas Church within thirty (30) days of the date of this Order the amount of \$21,810.75 for reasonable attorney's fees and the amount of \$427.07 for costs in this matter.
2. Respondent shall pay the Commissioner of Human Rights within thirty (30) days of the date of this Order the amount of \$2,427.44 for additional reimbursement for litigation and hearing costs. Thus, the total amount of reimbursement to be paid by Respondent pursuant to this Order and the October 16, 1996, Order shall be \$10,088.54.
3. This Order is effective immediately.

Dated this 31st day of December, 1996.

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BARBARA L. NEILSON  
Administrative Law Judge

## NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2, this Order is the final decision in this case and, under Minn. Stat. § 363.072, any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

## MEMORANDUM

### Additional Litigation and Hearing Costs of the Department of Human Rights

Minn. Stat. § 363.071, subd. 7, requires the award of litigation and hearing costs of the Department of Human Rights unless payment of the costs would impose a financial hardship on Respondent. In the original Report issued in this matter, the Judge ordered the Respondent to reimburse the Department in the amount of \$7,661.10, which was the total amount charged to the Department by the Office of Administrative Hearings as of October 16, 1996. Since that date, additional charges have been incurred in connection with consideration of the attorney's fees petition. Accordingly, the Respondent shall reimburse the Department in the additional amount of \$2,427.44.

### Costs

As mentioned in the Conclusions of Law above, there is no express authorization contained in the Minnesota Human Rights Act for an award of costs in a contested case proceeding. The statute does authorize such an award to prevailing parties in District Courts. In light of the similarities between the Executive Branch and Judicial Branch processes in human rights cases, Office of Administrative Hearings decisions have concluded that such an award is appropriate in instances in which a complainant is represented by a private attorney. See, e.g., Findings of Fact, Conclusions of Law and Order and Award of Attorney's Fees in Tracey Schelin v. PGI Companies, Inc., 3-1700-8948-2 (Sept. 21, 1995); and Findings of Fact, Conclusions of Law and Order and Award of Attorney's Fees in Karen Vovk v. Tom Thumb Food Markets, Inc., 11-1700-4595-2 (Nov. 4, 1991), aff'd in unpub. decision, No. C6-91-2377 (1992 WL 174729) (Minn. App. 1992).

The Complainant should not be penalized for requesting a hearing before an Administrative Law Judge rather than bringing suit in District Court. The nature of the action in District Court is identical to the proceeding before an Administrative Law Judge, and the Legislature must have intended that the same types of award could be made in both. Accordingly, the Judge has concluded that it is appropriate to allow an award of costs and disbursements in this proceeding. The Respondent has not raised any challenge to the particular costs and disbursements sought by Complainant, and they appear to be reasonable and justified under the circumstances of the case.

#### Attorney's Fees

Minn. Stat. § 363.071, subd. 1a (1994) authorizes the Administrative Law Judge to award "reasonable attorney's fees." Minnesota courts have generally followed case law developed under Title VII of the Civil Rights Act of 1964, as amended, in interpreting the attorney's fee provisions of the Minnesota Human Rights Act. For example, the Minnesota Supreme Court noted in Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 628 (Minn. 1988):

Because Minn. Stat. § 363.14, subd. 3 (1986), allowing a successful plaintiff in a discrimination case such as this to recover attorney fees is "virtually identical" to similar provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a-3(b), in reviewing attorney fees awards, we have followed federal law. See, e.g., Sigurdson v. Isanti County, 386 N.W.2d 715, 722 (Minn. 1986).

The Court went on to point out that Hensley v. Eckerhart, 461 U.S. 424 (1983), is "[t]he seminal case addressing the analysis to be employed in awarding attorney fees under federal statutes." Anderson, 417 N.W.2d at 628. It thus is appropriate to look to Hensley and other federal case law as guidance when assessing the proper amount of a fee award under the Minnesota Human Rights Act.

The Hensley decision requires, as a first step, that a "lodestar" figure be calculated by multiplying the hours reasonably expended in the matter by the reasonable hourly rate. The Supreme Court in Hensley and later decisions has

approved consideration of a twelve-factor checklist in arriving at a reasonable and proper award of attorney's fees. See, e.g., Pennsylvania v. Delaware Valley Citizen's Council for Clean Air, 483 U.S. 711, 714-17 (1987); Blum v. Stenson, 465 U.S. 886, 897 (1984); Hensley, 461 U.S. at 434. These factors are as follows:

1. the time and labor required;
2. the novelty and difficulty of the questions;
3. the skill requisite to perform the legal services properly;
4. the preclusion of other employment by the attorney due to the acceptance of the case;
5. the customary fee;
6. whether the fee is fixed or contingent;
7. time limitations imposed by the client or the circumstances;
8. the amount involved and the results obtained;
9. the experience, reputation, and ability of the attorneys;
10. the "undesirability" of the case;
11. the nature and length of the professional relationship with the client; and
12. awards in similar cases.

The leading case discussing these factors is Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). Accord City of Minnetonka v. Carlson, 298 N.W.2d 763, 766-67 (Minn. 1980) (decided prior to Hensley; sets forth nine factors corresponding in large part to those discussed in Johnson). Although, in the past, courts calculated a lodestar figure and then considered these factors to adjust the figure so that it would be reasonable under the circumstances, "[r]ecent Supreme Court pronouncements on the subject . . . caution courts to take many of these factors into consideration when establishing the lodestar figure itself, and to award enhancements or reductions to the lodestar in only the exceptional case." 3 A. Larson & L. Larson, Employment Discrimination § 58.20 at 11-106.47 (Matthew Bender 1990).

Complainant seeks attorney's fees in the amount of \$24,109.50 based on an expenditure of 160.73 attorney hours at a rate of \$150 per hour. A review of the time records attached as exhibits to Complainant's Petition reveals that Mr. Church spent roughly 19.25 hours conducting research and drafting pleadings; 34.95 hours preparing for the hearing; 17.25 hours attending the hearing; 3.82 hours in connection with discovery in this case; 7.78 hours corresponding to or talking with the Complainant; 11

hours preparing for and attending depositions; 13.33 hours discussing the case with potential hearing witnesses; 0.26 hours participating in conferences with the Judge; and 53.09 hours drafting post-hearing findings, memoranda and the fee petition.

Respondent argues that Complainant's request for attorney's fees is excessive. Respondent maintains that the case involved simple issues of fact and law, with only eighteen exhibits and five witnesses. Respondent further points out that the case took less than three days to try and that the trial consumed only approximately 15 hours. Moreover, the Petition indicates that 27.45 hours were spent between October 13, 1993, and November 28, 1994, when Complainant's charge was pending before the Department of Human Rights. According to Respondent, this time should be eliminated or substantially discounted because the process for initiating, investigating and disposing of the charge is handled independently by the Department of Human Rights and is largely unaffected by a Complainant's private attorney. Respondent believes that Complainant's reasonable total hours expended should not exceed 100 hours.

The Judge has considered the principles discussed above in arriving at a reasonable award of attorney's fees in this case.

#### Time and Labor Required (Factor 1)

Mr. Church was admitted to practice law in October of 1986. Mr. Church adequately represented the Complainant and demonstrated at the hearing that he possesses the skill necessary to litigate a discrimination case. However, after reviewing the time records submitted by Mr. Church, the Judge finds that excess attorney hours were expended in this matter. Specifically, Mr. Church spent 6.25 hours interviewing witness Lynne Dale and 6.66 hours interviewing witness Lennie Erickson. The Administrative Law Judge finds these amounts to be excessive for a hearing that lasted less than 3 days and only approximately 15 hours. In addition, the fact that Mr. Church is also representing Lynne Dale in a separate suit against Metropolitan Training and Consulting raises the concern that some of the time spent with Ms. Dale was in preparation for her own case and not for the matter at hand. The Judge also finds the more than 6 hours Mr. Church spent with Lennie Erickson to be excessive when Mr. Erickson did not testify for any great length of time. Furthermore, because Mr. Erickson is a key witness in Ms. Dale's separate suit, a similar concern is raised that some of the hours spent with Mr. Erickson were actually in preparation for Ms. Dale's case. Therefore, the Judge determines that it is appropriate to decrease by half the total hours Mr. Church spent interviewing Ms. Dale and Mr. Erickson for a reduction of 6.45 hours.

Between October 13, 1993 and November 28, 1994, while this matter was pending before the Department of Human Rights, Mr. Church spent 27.45 hours on the case. Mr. Church billed approximately 7 hours for drafting the discrimination charge and approximately 9 hours for drafting a response to Respondent's Answer to the charge. In Houghton v. SIPCO, Inc., 828 F.Supp. 631, 649 (S.D. Iowa 1993), the court found that the prevailing plaintiffs in an age discrimination case were entitled to attorneys' fees for time spent before the EEOC and the Iowa Civil Rights Commission. Citing Reichman v. Bonsignore, Brignati & Mazzotta, P.C., 818 F.2d 278, 282 (2d Cir.

1987), the court reasoned that where plaintiffs were required to give administrative proceedings a chance before commencing an action in federal court, the time spent before the administrative agencies should be compensable. Houghton at 649.

Unlike Houghton, there is no requirement under the Minnesota Human Rights Act that a complaining party pursue administrative remedies. Rather, a party aggrieved by a violation of the Human Rights Act has the option of either proceeding directly to district court or filing a written charge of discrimination with the Commissioner of Human Rights. Minn. Stat. § 363.06, subd. 1. However, once a complaining party chooses to pursue an administrative remedy, the party must follow the specific procedural requirements of Minn. Stat. §§ 363.06 - 363.071. These requirements include filing a written charge with the Commissioner and waiting at least 180 days before requesting a contested case hearing before an Administrative Law Judge. Minn. Stat. § 363.071, subd. 1a. The time spent presenting a grievance to the Department of Human Rights is for all practical purposes a prerequisite to obtaining a contested case hearing on the matter. Therefore, the Administrative Law Judge rejects Respondent's argument and finds that Complainant should be compensated for reasonable attorney's hours expended while this matter was pending before the Department of Human Rights.

After reviewing the time Complainant's counsel expended between October 13, 1993 and November 28, 1994, the Judge determines that some of the hours are excessive. Specifically, the Judge finds the number of hours Mr. Church spent drafting the initial discrimination charge and response to Respondent's Answer to be unreasonable. Complainant's charge of retaliation and answer to Respondent's one-page response were neither especially complicated nor lengthy. The preparation of these documents does not warrant the expenditure of 16 hours. Accordingly, the Judge determines that it is appropriate to decrease by half the hours Mr. Church spent drafting the charge and the response, for a reduction of 8 hours.

Finally, Mr. Church billed 1.75 hours for "legal research re: setting [matter] on for administrative hearing." This amount of time is excessive and appears to stem from unfamiliarity with administrative hearings. The time Mr. Church spent to become familiar with administrative procedure should not be shifted to the Respondent. In Houghton, 828 F.Supp. at 648, the court reduced the hours spent on legal research by a recent law school graduate who was one of three attorneys representing the prevailing plaintiffs. The court reasoned that the time the young attorney spent "educating himself" in the area of age discrimination should not be charged to the defendant. Id. Likewise, the Judge finds it appropriate to decrease by half the 1.75 hours Mr. Church spent researching how to set this matter on for administrative hearing, for a reduction of 0.875 hours.

#### Novelty and Difficulty of the Questions and Requisite Skill (Factors 2 and 3)

The issues presented in this case were straightforward and the outcome hinged primarily on the credibility of those testifying at the hearing. Adequate representation of

the Complainant in a case arising under the Human Rights Act requires litigation skills as well as familiarity with a large body of state and federal rules, guidelines, statutes, and case law. Mr. Church possessed and displayed the skills requisite to adequately represent the Complainant.

#### Preclusion of Other Employment due to Acceptance of the Case (Factor 4)

There is no evidence that Mr. Church was precluded from taking on any particular matter by virtue of his representation of the Complainant in this matter. Given that this hearing was only three days long, it is unlikely that Mr. Church was compelled to turn away clients. Thus, this factor is not relevant in the determination of the fee award.

#### Customary Fee and Fixed or Contingent Fee (Factors 5 and 6)

Mr. Church was admitted to practice law in Minnesota in October of 1986. Mr. Church's rate of \$150 per hour is reasonable and consistent with the rates charged by reasonably comparable Twin Cities attorneys practicing in the human rights and employment discrimination area. Because no information was presented by the parties concerning whether Mr. Church represented the Complainant on a contingent fee basis, this factor is irrelevant.

#### Time Limitations Imposed by the Client or the Circumstances (Factor 7)

This case proceeded to hearing in an expeditious fashion without any significant delays. Therefore, this factor is not relevant to the determination.

#### Amount Involved and Results Obtained (Factor 8)

Counsel for Complainant obtained a favorable result for his client. He also obtained a positive result for current and future employees of Metropolitan Training & Consulting and other companies owned and operated by Thomas Grossman because Respondent was ordered to cease and desist from its discriminatory practices and provide appropriate equal employment opportunity policies. Respondent was ordered to pay a civil penalty to the State of \$8,500 and reimbursement to the Department of Human Rights in the total amount of \$10,088.54. Because Complainant did not suffer any actual damages, her monetary award was relatively small (\$10,500). Although the amount of damages a plaintiff recovers is relevant to an award of attorney's fees, the size of the award does not dictate that the attorney's fees allowed must be proportional to the damage award. EEOC v. Accurate Mechanical Contractors, 863 F.Supp. 828, 839 (E.D. Wis. 1994). Rather, the amount of a plaintiff's recovery is merely a factor to be considered in the calculation of attorney's fees. Id. In Accurate Mechanical, the court concluded that the relatively small monetary award obtained by the plaintiff (\$5,580) was not a valid basis for a reduction of plaintiff's attorney's fees. The court approved attorney's fees in the amount of \$38,345.00. Id. at 840. The Minnesota Court of Appeals reached a similar result in Giuliani v. Stuart Corp., 512 N.W.2d 589 (Minn. App. 1994), and upheld an attorney's fee award of \$18,527.50 even though the

plaintiff's recovery was only \$12,000. The Judge finds that 145.405 of the hours expended by Complainant's counsel are reasonable given the overall results obtained.

Experience, Reputation and Ability of Attorney (Factor 9)

This factor has been addressed above in the discussion of the time and labor required and the requisite skill of counsel.

Undesirability of the Case (Factor 10)

This case was not highly desirable because the Complainant had no claim for actual damages. Complainant did not suffer any actual damages as a result of Respondent's reprisal because she began working in a new position at the same rate of pay immediately after terminating her employment with Respondent.

Nature and Length of the Professional Relationship with the Client (Factor 11)

Complainant retained Mr. Church for the first time with respect to the case at bar. Thus, this factor is not relevant.

Awards in Similar Cases (Factor 12)

The Complainant in this matter was awarded \$10,500 for mental anguish and punitive damages. The Respondent was also ordered to pay a civil penalty of \$8,500 and reimbursement to the Department of Human Rights in the total amount of \$10,088.54. Mr. Church seeks \$24,109.50 as attorney fees. Other courts have approved attorney's fee awards that approach or exceed the award obtained by the plaintiff. See, e.g., EEOC v. Accurate Mechanical Contractors, 863 F.Supp. 828 (E.D. Wis. 1994) (court approved attorney's fees of \$38,345 on client award of \$5,580.65); Anderson v. Hunter, Keith, Marshall & Co., Inc., 417 N.W.2d 619 (Minn. 1988) (award of \$60,000 in attorney's fees which was only a few hundred dollars less than plaintiff's recovery was found not to be unreasonable but case was remanded for more specific findings); Giuliani v. Stuart Corp., 512 N.W.2d 589, 596-97 (Minn. App. 1994) (court approved attorney's fees in the amount of \$18,527.50 where client was awarded \$12,000); Kolstad v. Fairway Foods, 457 N.W.2d 728 (Minn. App. 1990) (court approved attorney fees of \$15,636 on client award of \$22,324). As the Minnesota Court of Appeals noted in Giuliani, "[i]n light of the complexity of these cases, often involving modest damages, it is not surprising nor particularly material that the attorney fees in this case exceed the amount of damages awarded. Attorneys who prevail in discrimination cases before our courts serve an important public function which accomplishes a social objective identified by the Human Rights Act." 512 N.W. 2d at 596-97.

As discussed above, the Administrative Law Judge has determined that the hours expended by Mr. Church were reasonable except for the 15.325 hours identified in the discussion of the first factor (time and labor required). Mr. Church's \$150 per hour rate is reasonable and consistent with other comparable metro area attorneys. Mr. Church demonstrated the requisite skill necessary to adequately represent Complainant

in her human rights matter. Therefore, based upon a consideration of all the factors set forth above, the Administrative Law Judge finds that the amount of \$21,810.75 constitutes reasonable attorney's fees in this matter based on 145.405 hours of attorney time.

B.L.N.