This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 4/29/02.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
ALICE WASHINGTON,	)	
	)	**CHARGE: 1999CP2863**
Complainant,	)	**EEOC:**
	)	**ALS NO: 11453**
	)	
and	)	
DENNY'S, INC.,	)	
Respondent.		

Recommended Order And Decision

A Recommended Liability Determination (RLD) was entered in this matter on December 11, 2001. Pursuant to the RLD, Complainant, Alice Washington, filed a written motion for attorney's fees. That motion, filed on January 7, 2002, replaced the original Motion for fees, filed May 25, 2001. Respondent, Denny's, Inc., (Denny's) filed an Objection to the original Motion for Fees on February 6, 2002 and Washington filed a Reply on February 28, 2002. This matter is ready for decision.

Findings of Fact

1. Complainant has requested compensation for the work of attorney Scott A. Schanks at the rate of $205 per hour for 27.60 hours.
2. Mr. Schanks also worked on the companion case to the case at bar, Nathaniel Washington v. Denny's, Inc., No. 1999 CP 2862, ALS No. 11452. The time spent working on both cases simultaneously was evenly divided and placed on the timesheets for each case.

3. The hourly rate requested by Attorney Schanks is reasonable and should be accepted.

4. The 5/5/99, 5/10/99, 1/25/99 and 12/15/99 entries on Attorney Schanks' timesheet are vague and unrelated to the maintenance of this action and therefore will be disregarded.

5. Consequently, Attorney Schanks' requested hours will be reduced to 25.25.

6. Complainant has requested compensation for the work of attorney Edward A. Voci at the rate of $350 per hour for 10.23 hours.

7. Mr. Voci submitted only the hours during which he worked solely on the instant case.

8. The hourly rate requested by Attorney Voci will be reduced to $275.

9. The number of hours requested by Attorney Voci is reasonable and should be accepted.

10. Complainant has requested compensation for the work of Attorney Nancy M. Gerrity at the rate of $200 per hour for 69.45 hours.

11. Attorney Gerrity worked on the instant case and its companion case, Nathaniel Washington v. Denny's, Inc., No. 1999 CP 2862, ALS No. 11452. Attorney Gerrity seeks remuneration for the time that she spent working on both cases simultaneously in the fee petition for the case at bar.

12. The time spent by Attorney Gerrity working on both cases was submitted only on the timesheet for the instant case.

13. The hourly rate and number of hours requested by Attorney Nancy Gerrity are reasonable and should be accepted.

14. Complainant has requested reimbursement for $126.00 for the purchase of the transcript of the public hearing in this matter.

Conclusions of Law

1. All previous conclusions of law in the Recommended Liability Determination are incorporated by reference.

2. A prevailing complainant may recover reasonable attorneys' fees to maintain her action.

Discussion

The proper approach to a motion for attorney's fees is set forth in Clark and Champaign National Bank, 4 Ill. HRC Rep. 193 (1982). Under the Clark approach, the first thing to do is to determine the appropriate hourly rate for the attorney's work. The next step is to determine the number of hours reasonably spent on the case. Finally, it is necessary to decide if any additional adjustments should be made to the award.

Scott A. Schanks

Respondent objects to the requested number of hours spent on the instant case by Complainant's attorney Scott A. Schanks. Respondent objects to the 5/5/99 entry, stating that it cites a telephone call to another law firm regarding a Michael Muldoon.

When considering attorney's fee awards, doubts are to be resolved in favor of the respondent. Lieber and Southern Illinois University Board of Trustees, 34 Ill.HRC Rep.

206 (1987). Upon review of the timesheet, it appears that Mr. Muldoon's connection to this case is unclear. This entry will be disregarded.

Next, Respondent objects to the 5/10/99 entry *(t/c to cl l/m t/c to E. Pincham l/m, t/c to Susan Loggans l/m)*, stating that it is too vague to determine the work performed. Upon review, this tribunal finds that there is no way to determine the reasonableness of these telephone calls without knowing the subject matter that was discussed. This entry will be disregarded.

Next, Respondent objects to the 1/25/99 and 12/15/99 entries, stating that they list research regarding federal jurisdiction and procedures. Denny's states that neither of those entries is related to the maintenance of the instant case. It is true that federal research is unrelated to the maintenance of the case at bar. Consequently, the 1/25/99 and 12/15/99 entries will be disregarded.

Finally, Denny's objects to all of the entries after April of 2000, stating that they "relate more to the fact that Mr. Schanks was not going to continue as attorney of record". Upon review of the post April 2000 entries, this tribunal cannot conclude that they are not related to the maintenance of this case. These reductions bring the number of Mr. Schanks' compensable hours to 25.25. Multiplying those hours by the $205 hourly rate results in a total of $5176.25.

Edward A. Voci

Respondent objects to the $350 hourly rate requested by Attorney Edward Voci, stating that none of the matters listed in Mr. Voci's affidavit indicate that he ever received a $350 hourly rate. Respondent contends that none of the issues in the case at

bar are novel, therefore Mr. Voci's hourly rate should be $250, the amount cited most frequently in his affidavit.

An attorney requesting fees on behalf of his or her client must provide specific evidence of the prevailing rate for the type of work for which he or she seeks an award. The actual rate that a complainant's counsel can command in the market place is highly relevant proof of prevailing community standards. Pyeatt and Dr. Steven Dorf, 2000 ILHUM LEXIS 74, (November 14, 2000).

It is true that Mr. Voci's affidavit indicates that he has been awarded a $250 hourly rate most consistently. However, Mr. Voci has also been awarded a $275 hourly rate for a second chair role. The fact that Mr. Voci's request for a $350 hourly rate is pending is not persuasive here. However, based upon the fact that he has been awarded the $275 hourly rate for a second chair role, and the fact that this tribunal is not unmindful of economic realities, we will award Mr. Voci a $275 hourly rate in the case at bar.

Regarding the number of hours submitted by Edward A. Voci, Respondent objects to entries for which he claims Mr. Voci was already compensated in the Nathaniel Washington and Denny's, Inc. case (ALS No.11452), the companion case to the case at bar. In the Supplemental Affidavit of Atty. Edward A. Voci in Support of Petition for Attorney's Fees, attached to Complainant's Motion for Attorney's Fees, Mr. Voci submits an amended time schedule, removing all time for which he was compensated in the companion case. A total of 10.23 hours remains. Upon review of the amended time schedule, this tribunal finds that the hours requested were necessary for the maintenance

of this action. Multiplying those hours by the $275 hourly rate results in a total of $2813.25.

Nancy M. Gerrity

Respondent objects to the fees requested by Attorney Nancy M. Gerrity, stating that the fees are duplicative of those awarded in Nathaniel Washington and Denny's, Inc. (ALS No.11452), the companion case to the case at bar. Pursuant to Ms. Gerrity's affidavit, 32.45 hours are equally attributable to both cases. However, Gerrity was not awarded fees for these hours in the Nathaniel Washington case *(See, Nathaniel Washington and Dennys, Inc., ALS #11452, Recommended Order and Decision, pg. 9).*

Upon review of the time record submitted, this tribunal finds that the hours requested were necessary for the maintenance of this action. Multiplying the 69.45 hours requested by the $200 requested rate results in a total of $13,890.

Recommendation

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

a. That the Respondent be ordered to pay to Complainant the sum of $5176.25 for the services rendered by Attorney Scott A. Schanks;

b. That the Respondent be ordered to pay to Complainant the sum of $2813.25 for the services rendered by Attorney Edward A Voci;

c. That the Respondent be ordered to pay to Complainant the sum of $13,890 for the services rendered by Attorney Nancy M. Gerrity;

d. That Respondent be ordered to pay to Complainant the sum of $126 as reimbursement for costs (the purchase of the transcript in this case) reasonably incurred in the prosecution of this matter;

e. That Complainant receive all other relief recommended in the Recommended Liability Determination entered in this matter on December 11, 2001.

HUMAN RIGHTS COMMISSION

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BY:
WILLIAM H. HALL
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: March 22, 2002