IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	66 C 1459
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

DEFENDANT CHICAGO HOUSING AUTHORITY'S RESPONSE TO PLAINTIFFS MOTION FOR AWARD OF ATTORNEYS' FEES

In Response to Plaintiffs' Motion for Award of Attorneys Fees ("Motion"), Defendant Chicago Housing Authority ("CHA") states as follows:

INTRODUCTION

In the main, Plaintiffs set forth the recent history of the their fee petition in an accurate fashion: Plaintiffs' attorney and defendant's attorney met on several occasions in the past several months and scrutinized several of the approximately 250 pages of time entries spanning more than 12 years. Plaintiffs, however, cast the Joint Statement as the end of this effort, asserting that the CHA has now "agreed to pay" the last figure which the parties were able to discuss: $955,003.77. In truth, and as clearly stated in the Joint Statement, Defendants assert only that "no more than" that amount should be awarded to Plaintiffs. Defendants allowed that figure to be included in the Joint Statement in order to expedite the resolution of the matter.

As will be explained herein, CHA has been placed at a severe disadvantage in evaluating the Plaintiffs' fee requests due to the exceptionally long period of time encompassed by the request (1984-1997). Therefore, the "negotiations" which took place over the past several months were not really compromises but a series of questions and answers about time entries between two attorneys, who are new, in relative terms, to this thirty-year-old case. Under such circumstances, the CHA should not be bound to the $955,003.77 figure, as even that figure likely includes non-compensable time *in addition to* the disputes covered by the Joint Statement. In fact, this Court may itself have direct knowledge of non-compensable time included in the Plaintifffs' fee petition and may reduce the award accordingly. See McDonald v. McCarthy, et al, 966 F.2d 112, 119 (3rd Cir. 1992) (where the court has personal knowledge as to the time expended on a case, it may, *sua sponte,* reduce the award).

II. Privatization Of Management, Which Was Was Voluntarily Undertaken By CHA, Was Not Necessary To Secure Enforcement Or Achievement Of The Judgment Order, And Therefore Plaintiffs' Monitoring Of It Is Not Compensable.

Generally, prevailing plaintiffs are entitled to be compensated for time reasonably expended in monitoring compliance with a Judgment Order. Alberti v. Klevenhagen 896 F.2d 927, 933 (5th Cir. 1990)(citing Miller v. Carson 628 F.2d 346, 348 (5th Cir. 1980)). Certain types of post judgment activity to enforce provisions of a decree or judgment may be compensable. Pennsylvania, et al. v. Delaware Valley Citizens' Council for Clean Air 478 U.S. 546, 556 (1986) (citing Webb v. Board of Ed. Of Dyer County, 471 U.S. 234, 243 (1985)). However, monitoring defendants' activities, in and of itself, is not compensable. Only monitoring which is "reasonable and necessary to secure enforcement of [a] Judgment" is compensable. Alliance to End Repression, et al. v. City of Chicago, et al., 1994 WL 86690, *3 (N.D. Ill (1994)). Neither the contribution of

Plaintiffs' repair funds, nor the eventual transfer to private management was necessary to achieve or advance the remedy, which focused on location of units and the right of the class to occupy them.

CHA has no dispute with Plaintiffs characterization of the privatization of certain management functions as "positive". Indeed, it was a positive step undertaken by CHA, as Plaintiffs note, relatively early on in the history of the case. The majority of scattered site units on the north side of the city have been privately managed for a great number of years. Privatization of management functions made good business sense for the CHA, particularly for units which were so geographically scattered. Thus, when Vincent Lane, a businessman with private sector real estate experience, was appointed the CHA's new leader, he immediately undertook to expand the privatization of management. (See, Affidavit of Robert D. Whitfield attached as Exhibit 1). Did Plaintiffs share this philosophy? Sure. Did they participate in discussions about it? Yes. Id. They did not, however, extract the "turnover" from an unwilling CHA as a bargained-for exchange and thereby seemingly expand their duty to monitor the remedy in this case. In fact, the Judgment Order granting the remedy in this case neither contemplated nor required privatization of management of any housing units.

Plaintiffs' "contribution" of $9.5 million for the repairs to some of the units was certainly helpful, but no one expected that it would be the basis for more than $10,000 per year in attorneys' fees. As CHA would have voluntarily privatized management of its housing stock with or without this contribution, it should not now be penalized for willingly undertaking to improve its management systems by having to pay attorneys for monitoring its undertaking.[1]

CHA therefore generally disputes all time related to monitoring of private management activities.[2] In the event that the Court finds that Plaintiffs' hours for general monitoring of certain private management activities were reasonable and necessary, CHA nonetheless asserts that certain specific categories of time were not reasonable, and therefore should not be awarded to Plaintiffs. Those specific time entries, listed as Exhibit A to Plaintiffs' Motion, cover activity which is, though laudable, not reasonable because it is completely outside of the scope of the remedy ordered by the judgment in the case. Alberti, at 933 (many hours spent by plaintiffs' counsel with "agencies, individuals, and entities" were not necessary to monitor compliance with a judgment).

As noted above, the first category of time— whether private management should be implemented --- should not be compensable because CHA voluntarily undertook to improve its management systems by privatizing. Even Assuming *arguendo* that CHA did privatize management at Plaintiffs' "initiation", the law does not require, and public policy does not support, taxing CHA's efforts to improve its systems where such systems

[1] Two attorneys, Alexander Polikoff and Julie Brown, submitted time for "monitoring private management activities" which included, according to explanations they provided, items such as rent collection activity, staffing issues, budgeting, and screening of residents. This work is clearly not work of a legal nature. Though CHA does not dispute the hourly rates charged by Plaintiffs for *legal* work , it cannot identify the extent to which time spent on such matters was mingled with time spent on matters which the Court may find compensable CHA therefore requests that the Court take this information into account in evaluating its request for the deletion of private management time, and/or its request for a 10% reduction in the lodestar.

[2] Plaintiffs incorrectly assert that CHA "agrees" with time incurred monitoring the "private managers' adherence" to certain orders respecting the manner in which scattered site units are occupied. While CHA does not dispute Plaintiffs obligation to monitor implementation of court orders, CHA notes that Plaintiffs could have done so by requesting that CHA submit regular progress reports to the Court, as the Receiver

are not within the scope of the ordered remedy. Taking Plaintiffs' analysis to its logical end might result in CHA paying attorneys' fees for such things as installing a new computer system or reorganizing staff, if such things were suggested by Plaintiffs' counsel. The Court would be hard-pressed to find an activity undertaken by CHA to improve itself which would not have some indirect positive effect on the "success of the scattered site program." This category of time should therefore be deducted from Plaintiffs' request.

The second category of time involves research into tenant participation in management. At the outset, CHA notes that Plaintiffs fail to state how tenant participation contributes to the success of the scattered site program or the remedy generally. Instead, Plaintiff asserts in conclusory fashion that private management "would have been at more risk of failure" without tenant participation. In fact, several private management firms operate quite successfully without formalized resident participation. CHA recognizes the value of resident participation in management[3]. However, private management and resident participation in such are not in any way necessary to achieving the specific remedies in the case.

Finally, the third category of time contains entries for activities which are not legal in nature, and which therefore cannot and should not be viewed as work done to monitor the remedy. As explained to CHA by Plaintiffs (no detail was provided in the actual entries) these entries were for actions such as surveying the private managers regarding their budgets, staffing, rent collection practices, resident screening (not related

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has done. CHA therefore disputes Plaintiffs' time spent "participating in the process" (Motion, p.5).

[3] Four (4) non-scattered site developments are currently managed by Resident Management Corporations.

to class membership), and the like. Even if the Court finds that monitoring CHA's private managers was compensable activity, the Court should not include these activities in its award, as they were neither necessary to achieve the ordered remedial result, nor the sort of activity which required legal review to ensure compliance. (see footnote 1, infra.)

III. Defendant's request for a 10% reduction is appropriate.

CHA's request for a 10% reduction in the lodestar[4] is reasonable, and based in law and fact.

1. The court may reduce a lodestar if such reduction is not arbitrary.

CHA does not dispute Plaintiffs' assertion that arbitrary reductions in fee awards are inappropriate. CHA does not seek an arbitrary reduction. "Arbitrary" is defined to mean "without determining principle . . . .not done or acting according to reason or judgment . . ." Black's Law Dictionary 104 (6th ed. 1990). CHA's request for a ten percent (10%) reduction is firmly based in reason, judgment, and principle. Unlike the District Court Judge in In re: Continental Illinois Security Litig. 962 F.2d 566, 570 (7th Cir. 1992) cited by Plaintiff, CHA has not randomly selected a figure, or succumbed to a "gestalt reaction". Neither are CHA's requests based upon "inarticulable and unsubstantiated" grounds. Id. Moreover, counsel are required to exercise billing judgment and district courts are required to exclude from requests hours which are unnecessary. Hensley v. Eckert 461 U.S. 424, 434 (1983).

2. The 10% figure is not arbitrary, and is based upon Defendant's reasonable estimate of additional non-compensable time which it lacked the capacity to discover.

[4] The actual dollar amount associated with the 10% reduction request can only be made after the Court makes its determination regarding private management time. Therefore, Plaintiffs' figure of $106,111.53 may not be accurate.

Plaintiffs bear the burden of documenting the appropriate hours expended on the litigation and must substantiate those hours. Carter v. Chicago Police Officers Moore and Price, et al., 1196 WL 446756, *2 (N.D. Ill. 1996). The basis for CHA's request for a ten percent reduction is its carefully considered estimate of additional noncompensable hours which are likely to have been incorrectly included in Plaintiffs' petition, but which are unknowable to CHA because of the vagueness of entries and the exceptionally large amount of time covered by the petition.

Though CHA and the Plaintiffs did engage in extensive discussion about Plaintiffs' petition, the parties did not, and could not have discussed every time entry. Rather, CHA used its best efforts to identify entries which it believed to be not compensable by CHA. Plaintiffs then responded to CHA's inquiries. Through this painstaking question-and-answer method, CHA was able to identify more than $56,000 worth of time which was incorrectly included in Plaintiffs' petition against CHA, and which should have been charged to the U.S. Department of Housing and Urban Development ("HUD") for Plaintiffs' work on the companion case. (See, sample attached as Exhibit 2a) Approximately $8,000 of time was discovered and deleted which covered Plaintiff's community development efforts on Chicago's near west side.[5] (See, sample attached as Exhibit 2b). More than $11,000 of time was deleted for activities including work by one of Plaintiffs' attorneys on an article for the Chicago Tribune, attending the demolition of a CHA building, and other vague entries. (See, sample attached as Exhibit

[5] Plaintiffs' conceded that their work covening and participating in Task Forces on education, security, and economic development in this neighborhood, though laudable, should not have been charged against CHA because it was outside of the scope of the Judgment Order.

2c). This time, taken together with the approximately $97,000 in "private management" time which CHA believes to be non-compensable, totals approximately $170,000. Plaintiffs' inclusion of such time suggests a lack of the billing judgment required by Hensley.

The great majority of this deleted time accrued in the more recent history of the case. CHA was able to make inquiries because its records, and those of the Clerk of the Court, are more complete for recent years. Because much of the history of the case exists in correspondence, meeting notes, and memoranda – which were not maintained as part of the case file --- CHA now lacks the capacity to evaluate ten and twelve year-old time based upon such documents. CHA basically does not know what it does not know about these entries. Based upon the entries referenced above which CHA *was* able to identify, and which Plaintiffs agreed should be deleted, CHA reasonably believes there to be more time which was incorrectly included. CHA believes that ten percent (10%) of the lodestar (after its specifically requested deductions) is a fair and reasonable estimate of the incorrectly included time. Courts have made such deductions where defendants have identified some unnecessary time, and where the Court found a basis for its judgment that other unnecessary fees may have been included. See e.g., Tabech v. Gunter, et al., 869 F.Supp.1446 (D. Neb. 1994)(District Court reduced fee award by ten percent (10%) where judge had difficulty determining whether services rendered were necessary). Moreover, the Seventh Circuit has upheld the use of a "sampling procedure", similar to the method suggested herein by CHA, as a proper method for a Court to employ in reviewing a voluminous fee request. Evans v. City of Evanston, 941 F.2d 473, 476-77 (7th Cir.1991)(District Court's reduction of attorneys' hours by 30% was proper where judge employed method of review involving "scrutinizing" selected samples of attorneys' tasks, and extrapolated findings to remainder of work.). In In re: Continental Illinois Security Litig. 962 F.2d at 570, the Seventh Circuit then cited the sampling procedure employed in Evans, as preferable to unsubstantiated, across-the-board cuts. The ten-percent (10%) reduction requested by CHA should therefore be granted.

IV. No Multiplier is warranted in this case.

Upward adjustments of a lodestar are only to be awarded in rare circumstances where exceptional results are obtained. Blum v Stenson, 465 U.S. 886 (1984); Pennsylvania, et al. v. Delaware Valley Citizens' Council for Clean Air , 478 U.S. 546 (1986) It bears repeating here, however, that these cases also stand for the proposition that the results obtained are *presumed* to be fully reflected in the lodestar. In order to award an enhancement of a lodestar, the Plaintiffs must therefore rebut this presumption. Plaintiffs have failed to do so in their Motion.

While CHA agrees that much success has been achieved in desegregating public housing in Chicago, CHA disputes whether the success was "exceptional", as it must be to receive an enhancement, or whether it was exactly what the Court envisioned when it entered the Judgment Order. (If the latter, the "exceptional success" was really the entry of the Judgment Order, for which Plaintiffs have already been compensated.) Enhancements are improper except in "exceptional" cases. In re: UNR Industries, Inc., 986 F.2d 207 (7th Cir. 1993) (Despite bankruptcy court judge's description of debtors' counsel's performance as "downright ingenious", Court of Appeals affirmed Bankruptcy Court's denial of an enhancement) (citing Delaware Valley, 478 U.S. at 566, (1986)). Further, "specific evidence on the record" and "detailed findings" must support any claim for a multiplier based on "exceptional" success. Delaware Valley, 478 U.S. at 565, (1986) (quoting Blum, 465 U.S. at 898-801). Unlike the plaintiffs in Shakman v. Democratic Org. of Cook County, 677 F.Supp. 933 (N.D. Ill. 1987), Plaintiffs have failed to provide or cite to evidence to support their conclusory statements about the nature of the results in this case. Without such evidence, Plaintiffs cannot receive an enhancement.

Plaintiffs additionally argue that, because (in their opinion) their request is an "economical one" , this somehow justifies an upward enhancement for quality. Plaintiffs cite no authority for this assertion. As noted above, the lodestar is presumed to reflect *quality* of service in the billing rate. Plaintiffs now appear to be attempting to rebut the presumption by asserting that the *quantity* of time submitted is reflective of the quality, and thereby prove that the lodestar fails to compensate them reasonably. As noted above, Plaintiffs submitted time entries for many matters which, though they may have been laudable, were not compensable by CHA. The Court therefore should not assume that hours which the Plaintiffs chose not to include in their petition are the basis for an upward adjustment. Similarly, Plaintiffs' assertion that the "modest" size of their requested multiplier somehow merits its award is baseless. Obviously, CHA disagrees with the characterization of more than $100,000 as "modest". This amount, as the Court well knows, buys one newly-constructed three-bedroom public housing unit. By that standard, CHA could reasonably characterize the request as bordering on extravagant. In any event, "modesty" of request is not the standard that the Plaintiffs must meet for receipt of a multiplier.

Finally, CHA disputes Plaintiffs assertion that "external benefits" to non-class members should serve as the basis for a multiplier. Plaintiffs can cite no authority for this assertion, and instead rely on Shakman. To be sure, Shakman had far-reaching implications for voters and tax-payers, but those implications should not be cast as "external benefits." The Shakman plaintiffs set out to eradicate patronage hiring and the inequities attributable to it. Wasn't this the precise result intended by the plaintiffs? Similarly, the Judgment Order in this case, as Plaintiffs acknowledge, specifically directed that half of the units developed be occupied by community residents. This explicitly intended and ordered result can not now be characterized as an "external" benefit.

CONCLUSION

Wherefore, for the forgoing reasons, Defendant Chicago Housing Authority respectfully requests that the Court deny Plaintiffs' Motion for an Award of Attorneys' Fees, which seeks $1,274,179.83, and enter an Order granting whatever award the Court deems just and proper.

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CHICAGO HOUSING AUTHORITY

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