UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MASSACHUSETTS

BRONWYN FORD,	)	
Plaintiff,	)	
	)	
v.	)	**Civ. No. 98-11346-NG**
	)	
CITY OF BOSTON, SUFFOLK COUNTY,	)	
and RICHARD J. ROUSE, SHERIFF OF	)	
SUFFOLK COUNTY,	)	
Defendants.	)	

GERTNER, D.J.

MEMORANDUM AND ORDER RE: ATTORNEYS' FEES

November 20, 2003

I. INTRODUCTION

The plaintiff, Bronwyn Ford ("Ford"), moves for attorneys' fees after having settled her claim against the City of Boston and the County of Suffolk, for their illegal strip search of her. The litigation in this case was lead by counsel for the class in Mack v. Suffolk County, et al. (98-12511), Howard Friedman. The results obtained in Ford depended almost entirely on the results of the class action litigation and the leverage it generated. Plaintiff's counsel in Mack, Mr. Friedman, shaped the arguments, which the Court accepted in substantial measure on summary judgment. The outlines for the settlement were worked out by all of the parties in Mack with substantial and commendable effort. And once the outlines had been set, the settlement of the Ford case should have followed. It did not for the reasons described below.

While the plaintiff's counsel plainly deserves a fee award of some amount, it is also plain that the amount requested is entirely excessive.

A. Ford Litigation

On July 13, 1998, the plaintiff, Bronwyn Ford, filed a complaint against the Defendant City of Boston (hereinafter "City") for damages allegedly resulting from two strip-searches that she claims she was subjected to after her arrest on a default warrant. She brought claims under 42 U.S.C. § 1983, alleging violations of the Fourth, Fifth and Fourteenth Amendments of the United States Constitution and under the common law of Massachusetts. She further claimed that the defendants were deliberately indifferent to her medical needs while she was in custody, thereby violating the Fourth, Eighth and Fourteenth Amendments.

Shortly thereafter, plaintiff filed an amended complaint, adding Suffolk County (hereinafter "County") and the Sheriff as defendants.

The City moved to dismiss Count II of the complaint, as duplicative of plaintiff's section 1983 claim. This motion was granted on April 29, 1999.

B. Mack Litigation

On March 27, 2000, both the plaintiff and the County filed motions for summary judgment. Rather than acting on the motions,

however, this Court consolidated the Ford case with a putative class action raising identical issues, Mack v. Suffolk County, et al., U.S. Dist. Ct. 98-12511, on April 4, 2000. The Mack litigation had been filed on December 10, 1998.[1]

From the outset, it was clear that counsel for Ford was working with counsel for Mack. Furthermore, the consolidation order consolidated both cases essentially under the leadership of Attorney Friedman, class counsel and an acknowledged expert in civil rights litigation.

On November 15, 2000, the Mack plaintiffs moved for summary judgment.[2] At the same time, Friedman filed a brief supporting Ford's earlier filed motion for summary judgment.

On July 31, 2001, the Court granted summary judgment to the Mack class, in a broad-ranging decision, declaring the County's search policies during the class period to be facially unconstitutional under the Fourth Amendment. See Ford v. City of Boston, 154 F. Supp.2d 131 (D. Mass. 2001). Both the City and the County were found also liable under 42 U.S.C. § 1983 for the strip searches of women charged with felonies and misdemeanors not involving drugs or guns, and for women arrested on default warrants for such offenses. Defendant Sheriff Rouse was found to

[1] The Mack class had been certified on February 16, 2000. See Mack v. Suffolk County, 191 F.R.D. 16 (D. Mass. 2000). Ford had specifically opted out of the class.

[2] The plaintiffs in Mack were consolidated into Ford. Any reference to the Mack plaintiffs, class, or litigation refers to the class action plaintiffs in the Ford case.

have qualified immunity for his actions during part of the relevant period, and not to be immune for the remainder.

The outcome of the decision in Ford, the action by the individual Bronwyn Ford, was shaped directly by the decision for the Mack plaintiffs. See Ford v. City of Boston, 154 F. Supp.2d 123, 125 (D. Mass. 2001).[3] All damages questions in both cases were to be resolved at a future proceeding.

Immediately thereafter, settlement discussions began as between the Mack plaintiffs and the City. Not surprisingly, the City would not even address the settlement with Ford, until the class action was resolved. Ford presented substantially the same set of circumstances as many individuals in the then certified class action.

The City, in fact, proposed that action in Ford's case be suspended entirely, to allow a final determination regarding the Mack plaintiffs. Again, the suggestion made perfect sense, but counsel for Ford refused, serving a request for admissions, and then a second. The Court stepped in, allowing the City's motion for a protective order, relieving it of the obligation to answer discovery requests.

[3] In addition, the Court granted summary judgment in favor of the County defendants as to their alleged deliberate indifference to the plaintiff's medical needs and dismissed the claims against defendant Rouse.

In June of 2002, the parties in Ford attempted mediation, which failed.[4] But the mediation of the Mack case proceeded apace, and by June 17, 2002, those efforts produced an omnibus settlement for all class members. By October 1, 2002, Ford settled as well, leaving attorneys' fees for future litigation.

II. LEGAL ANALYSIS

A. Appropriateness of Fee Award

The Civil Rights Attorneys Fees Awards Act of l976 authorizes the district court to allow the prevailing party in

---

[4] Defendants claim that mediation failed solely due to the amount of attorneys' fees that counsel in Ford was requesting. Plaintiff does not deny the characterization. Rather, counsel for plaintiff claims that I should strike any reference to the content of settlement discussions under Rule 408 of the Federal Rules of Evidence which precludes evidence of a settlement offer "to prove liability for or invalidity of the claim or its amount." However, Rule 408 specifically states that it "does not require exclusion when the evidence is offered for another purpose . . . ." As one court has specifically held:

> While determining the reasonableness of a claim for attorney's fees is not specifically mentioned as a purpose for which evidence of a settlement offer may be considered, strong public policy considerations support its admissibility for that purpose. See generally Abeshouse v. Ultragraphics, Inc., 754 F.2d 467, 473 (2d Cir.1985) (finding no abuse of discretion where infringer's 'diligent' settlement efforts were factored into district court's refusal to award attorney's fees against infringer). Settlements are to be encouraged and a party to an action in which attorney's fees may be awarded should not be allowed to believe that it can reject a reasonable settlement offer and still recover the full amount of its attorney's fees if ultimately it recovers little more than the original offer. Moreover, litigation is not a weapon to punish an adversary and one who makes a totally unreasonable settlement demand should not be rewarded at the end of the litigation with a generous award of counsel fees.

Greenwich Film Prod., S.A. v. DRG Records, Inc., 1996 WL 502336, *2 (S.D.N.Y. 1996).

any Civil Rights Act suit "a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988. A plaintiff prevails if he has succeeded on "'any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing the suit.'" Texas State Teachers Ass'n. v. Garland Indep. Sch. Dist., 489 U.S. 782, 791-92 (1989) (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-279 (1st Cir. 1978)).

Although the case has settled, and this Court found the City and County liable to Ford, the settlement occurred as a result of Friedman's efforts in the Mack litigation, on which Ford piggybacked. For example, the plaintiff never made a claim for violation of the Equal Protection Clause in her complaint. The first time she did so was in a her motion for summary judgment -- one paragraph, no citations to case law. She did so only after the Mack plaintiffs claimed Fourteenth Amendment violations. And as to the claims that she alone litigated, the majority were denied.

While some fee award may be appropriate, it is surely not appropriate in the amounts that plaintiff's counsel seeks.

B. Framework for Analysis

Essentially, the amount for attorneys' fees is determined by a two-pronged test. First, the calculation of the "lodestar figure" which is the number of hours reasonably expended multiplied by the applicable hourly market rate for legal services. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The

second is an upward or downward adjustment "to account for exceptional circumstances." Rogers v. Motta, 655 F. Supp. 39, 43 (D. Mass. 1986). One factor in determining exceptional circumstances is plaintiff's success or lack of success in the litigation. Id.

1. The Lodestar Amount

a. Reasonable Rate

A reasonable rate is measured by comparing counsel's regular rates with those of the marketplace.[5]

Plaintiff requests hourly rates ranging from $175 in 1997 to $250 in 2002. Attorney Klein graduated from law school in 1995,

---

[5] As the Supreme Court noted,

> We recognize, of course, that determining an appropriate "market rate" for the services of a lawyer is inherently difficult. Market prices of commodities and most services are determined by supply and demand. In this traditional sense there is no such thing as a prevailing market rate for the service of lawyers in a particular community. The type of services rendered by lawyers, as well as their experience, skill and reputation, varies extensively -- even within a law firm. Accordingly, the hourly rates of lawyers in private practice also vary widely. The fees charged often are based on the product of hours devoted to the representation multiplied by the lawyer's customary rate. But the fee usually is discussed with the client, may be negotiated, and it is the client who pays whether he wins or loses. The § 1988 fee determination is made by the court in an entirely different setting: there is no negotiation or even discussion with the prevailing client, as the fee -- found to be reasonable by the court -- is paid by the losing party. Nevertheless, as shown in the text above, the critical inquiry in determining reasonableness is now generally recognized as the appropriate hourly rate. And the rates charged in private representations may afford relevant comparisons.

Blum v. Stenson, 465 U.S.886, 895 n.11 (1984).

only three years before the litigation commenced; Attorney Samit in 1991. Neither practiced in the police litigation area or, more broadly, civil rights law (as contrasted with Attorney Friedman who is an expert). (Indeed, for part of the period of time requested, they have sought fees at a rate even higher than that of Attorney Friedman.) They have not remotely justified the rates they have sought, either through the decisions of other courts awarding them fees, or through the expert opinions of other counsel with respect to their work.

Accordingly, I have reduced the hourly rate for Mr. Klein and Mr. Samit for core hours to a range of $125 to $200, and $60 per hour for non-core hours.

2. Number of Hours

A lawyer is supposed to exercise billing judgment in applying for fees. The Court is to exclude from the fee calculation hours that were not reasonably expended, including hours that were "excessive, redundant or otherwise unnecessary." Hensley, 461 U.S. at 434. A lawyer is to provide detailed and contemporaneous time records.

Critical to this petition is whether the hours upon hours expended by counsel for Ford were remotely reasonable given the fact that Friedman was the lead attorney, doing the lion's share of work for the class. At the very minimum, time expended after August 30, 2001, should be struck. On that date, the City appropriately offered to stay the Ford case until the Mack case

had been resolved. Counsel had assured Ford's counsel that the Ford case would be negotiated after Mack.

With respect to time before August 30, 2001, it is reasonable to distinguish between "core" and "non-core" work. Ciulla v. Rigny, 89 F.Supp.2d 97, 104-105 (D. Mass. 2000). Core work involves legal research, etc.; non-core work is less demanding tasks, like letter-writing and telephone calls. This is particularly significant in the instant case, where so much of the "core" time was spent replicating the work of Mack counsel.

3. Degree of Success

There is no question that plaintiff Ford succeeded on some counts. She succeeded on a Fourth Amendment strip search claim and on a claim she did not raise -- a violation of equal protection. Yet it is also abundantly clear that this success was mainly due to the efforts of counsel in Mack. The scope of the Mack case was such that many, if not all, of the issues in Ford were folded within its litigation. While it was important for counsel for Ford to protect their client's interests, and they should be compensated for that, it is not at all clear that work required anywhere near the time that was expended.

Under the circumstances, the petition is plainly unreasonable in relation to the results obtained.

III. CONCLUSION

Accordingly, I **AWARD Eighteen Thousand, Eight Hundred Sixteen And 50/100 ($18,816.50) Dollars**, in toto, for Attorneys' Fees to Plaintiff. This is the lodestar amount computed from 1997 to 2001.

See attached appendix.

Dated: November 20, 2003

s/NANCY GERTNER
U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MASSACHUSETTS

BRONWYN FORD,	)	
Plaintiff,	)	
	)	
v.	)	**Civ. No. 98-11346-NG**
	)	
CITY OF BOSTON, SUFFOLK COUNTY,	)	
and RICHARD J. ROUSE, SHERIFF OF	)	
SUFFOLK COUNTY,	)	
Defendants.	)	

APPENDIX TO MEMORANDUM AND ORDER RE: ATTORNEYS FEES
November 20, 2003

I. CALCULATION OF ATTORNEY'S FEES

The following is a spreadsheet of attorney's fees computed for services rendered by Ms. Samit and Mr. Klein between March 5, 1997, and August 30, 2001.

In terms of "Core" hours, the following rates were used in the computation for both Ms. Samit and Mr. Klein:

1997 = $125/hour

1998 = $125/hour

1999 = $150/hour

2000 = $175/hour

2001 = $200/hour

The rate of $60/hour was used in computing "Non-Core" activity fees for both Ms. Samit and Mr. Klein during the entire period.

Original and Adjusted Hours and Billed Amounts

for Ms. Samit and Mr. Klein
from March 5, 1997 to August 30, 2001

	Hours	**Dollars**
Total Amount *Originally* Billed by Ms. Samit	96.8 Hours	$18,250.00
Total Amount *Originally* Billed by Mr. Klein	44.6 Hours	$10,142.50
Total Amount *Originally* Billed by both Ms. Samit & Mr. Klein	141.4 Hours	$28,392.50
Total Adjusted CORE Hours Billed by Ms. Samit	70 Hours	$9,617.50
Total Adjusted CORE Hours Billed by Mr. Klein	41.5 Hours	$7,405.00
Total Adjusted CORE Hours Billed by Ms. Samit & Mr. Klein	111.5 Hours	$17,022.50
Total Adjusted NON-CORE Hours Billed by Ms. Samit ($60/hr.)	26.8 Hours	$1,608.00
Total Adjusted NON-CORE Hours Billed by Mr. Klein ($60/hr.)	3.1 Hours	$186.00
Total Adjusted NON-CORE Hours Billed by Ms. Samit & Mr. Klein	29.9 Hours	$1,794.00
Total Adjusted CORE and NON-CORE Hours Billed by Ms. Samit	96.8 Hours	$11,225.50
Total Adjusted CORE and NON-CORE Hours Billed by Mr. Klein	44.6 Hours	$7,591.00
Total Adjusted CORE and NON-CORE Hours Billed by Ms. Samit & Mr. Klein	**141.4 Hours**	**$18,816.50** **(AMOUNT AWARDED)**

