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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION
NO. 07-2073-F

JENNIFER CARRION,
Plaintiff

v.

SABA HASHEM and
D'ANGELO & HASHEM, LLC,
Defendants

MEMORANDUM AND ORDER ON PLAINTIFF'S PETITION FOR AN AWARD
OF ATTORNEY'S FEES AND COSTS PURSUANT TO CH. 151B, SECTION 9

BACKGROUND

This Chapter 151B civil action alleging sexual discrimination and retaliation was commenced on May 14, 2007 by the plaintiff, Jennifer M. Carrion, against her former employer, D'Angelo & Hashem, LLC ("D&H"), and one of its officers, Saba Hashem, Esquire. Specifically, Ms. Carrion alleged that D&H fired her after she told them that she was pregnant and further that D&H retaliated against her after she complained of the discrimination by challenging her application for unemployment benefits at the Massachusetts Department of Unemployment Assistance for her and her child.^{1,2}

¹ Ms. Carrion prevailed on her claim for unemployment benefits and D&H appealed that decision. Ms. Carrion also prevailed on appeal.

² At the trial of this present case, the President of D&H, Stephen D'Angelo, Esquire testified that he opposes and challenges everyone applying for unemployment benefits saying 'it's just my nature.' In response to Ms. Carrion's attorney's next question, "Why," Mr. D'Angelo testified as follows:

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At all times herein, the defendant, Saba Hashem and Stephen D'Angelo were employees of D'Angelo and Hashem, LLC and were acting in its interests.

This case was tried from Wednesday, November 16, 2011 to Tuesday, November 22, 2011 before this judge and a jury. The jury returned the following verdicts:

1. That Saba Hashem did discriminate against Ms. Carrion because of her pregnancy and awarded \$0 for her lost back pay and benefits and \$14,000 for her emotional distress due to Hashem's unlawful discrimination against her.
2. That Saba Hashem did not retaliate against Ms. Carrion because of her internal complaint of discrimination.
3. That D'Angelo & Hashem, LLC did discriminate against Ms. Carrion because of her pregnancy and awarded her \$72,000 for her lost back pay and benefits and \$14,000 her emotional distress due to D'Angelo & Hashem, LLC's unlawful discrimination of her.
4. That D'Angelo & Hashem, LLC did retaliate against

"Because if you don't, then what happens is a person --- your rating goes up and you pay more."

Plaintiff's counsel then asked Mr. D'Angelo "Do you just challenge every single person's claim for unemployment?" and Mr. D'Angelo testified, "At that time, yes." Transcript of Trial Testimony of Stephen D'Angelo on November 22, 2011 in Suffolk Superior Court, pages 1-29 and 1-30.

When asked at trial how he opposed the unemployment application benefits for "everybody" who applies, he testified that he submitted a form to the Department of Employment Assistance and signed it under the pains and penalties of perjury. Transcript of Trial Testimony of Stephen D'Angelo on November 22, 2011 in Suffolk Superior Court, pages 1-33 to 1-34.

Ms. Carrion because of her internal complaint of discrimination and awarded her \$9,000 for Ms. Carrion's emotional suffering.

The jury also answered a further special question [Q. 9(b)], inquiring whether the amount awarded in Q. 6 (emotional distress caused by unlawful discrimination by Saba Hashem) was joint or cumulative of the amount awarded in Q. 8 to Ms. Carrion (emotional distress caused by unlawful discrimination by D'Angelo & Hashem). The jury answered that the ~~two~~ awards were not joint but were cumulative of each other. [Q. 9(b)].

Hence, judgment was entered on the verdicts by the Clerk as follows:

1. Judgment for the plaintiff, Jennifer M. Carrion against the defendant, D'Angelo & Hashem, LLP in the amount of \$95,000 plus interest and costs.
2. Judgment for the plaintiff, Jennifer M. Carrion against the defendant, Saba Hashem, in the amount of \$14,000 plus interest and costs.

Thus, with the verdicts combined, the plaintiff received \$109,000, plus interest and costs.

The defendants on December 22, 2011 filed a Motion for JNOV or in the alternative for a new trial (docket #44), which motion was denied in full (docket entry of January 4, 2012).

The plaintiff on December 22, 2011 filed a motion for award of counsel fees and costs (docket #43), and the defendants on December 23, 2011 filed their opposition to the granting of said motion for counsel fees and costs (docket #45). The plaintiff on

February 1, 2012 filed her Supplemental Petition for Award of Attorneys' Fees and Costs (docket #47) and the defendants on February 1, 2012 filed their opposition to the Plaintiff's Supplemental Petition for Attorneys' Fees and Costs (docket #48). A hearing on said motions for attorneys' fees and costs was held on February 6, 2012.

ATTORNEYS' FEES AND COSTS

The plaintiff is now petitioning for an award for her attorneys' fees and costs incurred thus far in this case. As the prevailing party, the plaintiff is entitled to an award of reasonable attorney's fees under ch. 151B, § 9, which states: "If the Court finds for the petitioner it shall, ... and irrespective of the amount in controversy, award the petitioner reasonable attorney's fees and costs unless special circumstances would render such an award unjust." (emphasis added). The Court finds no special circumstances which would render such an award unjust in this case. The plaintiff is also entitled to an award of reasonable attorneys' fees for work required in order to recover her attorneys' fees, Stratos v. Dept. of Pub. Welfare, 387 Mass. 312, 325 (1982), and also for the award of any reasonable appellate attorneys' fees, if that becomes necessary. DeRoche v. Massachusetts Comm'n. Against Discrimination, 447 Mass. 1, 18 (2006); T&D Video v. City of Revere, 450 Mass. 107 (2007).

The Court recognizes that not all the claims which the plaintiff has asserted against the defendants, D&H and Saba Hashem, were successful. However, the Court "concludes that all of the claims and all of the defendants were interconnected with the common core of facts that ultimately furnished the basis for the successful claim. Thus, this Court will not use its discretion to reduce billed hours or expenses because the core facts and the successful core theory dominated the litigation from start to finish." Dixon v. International Brotherhood of Police Officers, 434 F. Supp. 2d 73, 83-84 (D. Mass., 2006).

The plaintiff is entitled to recover only reasonable attorneys' fees and costs incurred. "In determining the amount of a reasonable fee, we consider the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area and the amount of awards in similar cases. Linthicum v. Archambault, 379 Mass. 381, 388-389 (1979). We consider also the interests that the statute in question is designed to protect and the public interest in allowing claims under that statute to proceed with competent counsel. Haddad v. Wal-Mart Store, Inc., 455 Mass. 1024, 1025 (2010).

"The party seeking attorney's fees bears the burden of

establishing the reasonableness of the requested rate." Blum v. Stetson, 465 U.S. 886, 895, n. 11 (1984). In order to satisfy this burden, the requesting party through affidavits and other satisfactory evidence, must: (1) establish the experience and skill of her attorneys; and (2) inform the Court of the prevailing market rate in the community for similarly situated attorneys. Marrotta v. Suffolk County, 726 F. Supp. 2d 1, 4 (D. Mass. 2010), citing Mogilevsky v. Bally Total Fitness Corp., 311 F. Supp. 2d 212, 216 (D. Mass. 2004).

Here, Ms. Carrion first retained counsel when her employer, D'Angelo & Hashem, was contesting her right to unemployment compensation. After discussions with her attorney, Anne Glennon, Esquire, who was experienced with ch. 151B discrimination and retaliation claims, this ch. 151B case was commenced. In the Court's analysis of the above referenced factors, no single factor is dispositive and the Court is not required to analyze each factor. Berman v. Limmane, 434 Mass. 301, 303 (2001). "When determining a reasonable attorney's fee, the focus is not on the bill submitted ... [A judge is] not required to review and allow or disallow each individual item in the bill, but could consider the bill as a whole." Id. at 303. One approved method is known as a "lodestar" approach where the judge multiplies the number of hours reasonably spent on a case by a reasonable hourly rate, Fontaine v. Ehtec Corp., 415 Mass. 309, 324-325 (1993), and

then, if necessary, makes adjustments as set out in Linthicum v. Archambault, 379 Mass. at 388-389.

The plaintiff's counsel who tried this case was Attorney Anne Glennon of the Law Office of Wendy A. Kaplan, together with Attorney Michaela May assisting in second seat, who was responsible for researching the major law issues and who examined some of the witnesses. Attorney Wendy A. Kaplan is the senior attorney in her law office and was involved in the intake, preparation and consultation with Attorneys Glennon and May prior to and during the trial of this case.

PLAINTIFF'S SUBMISSIONS FOR LEGAL FEES AND COSTS

Fees - Up-to-Verdict

320.6 hours for Attorney Anne Glennon
64.8 hours for Attorney Michaela May
41.7 hours for Attorney Wendy A. Kaplan

Supplemental Billing through Court's Denial of Defendants' Motion JNOV or in the Alternative for New Trial

15.6 hours for Attorney Anne Glennon
3.6 hours for Attorney Michaela May
2.2 hours for Attorney Wendy A. Kaplan

The plaintiff filed the following documents in support of her petition for attorney's fees and expenses:

1. Plaintiff's Petition for Award of Attorneys' Fees and Costs together with Plaintiff's Statement of Reasons in Support of her fee petition for award of reasonable attorneys' fees and costs (8 pages).

2. Affidavit of Anne Glennon, dated December 9, 2011 (6 pages).
3. Affidavit of Wendy A. Kaplan, Esq., dated December 8, 2011 (5 pages).
4. Affidavit of Michaela May, Esq., dated December 9, 2011 (4 pages).
5. Affidavit of Kevin G. Powers, Esq., dated December 8, 2011 (3 pages).
6. Affidavit of Robert S. Mantell, Esq., dated December 12, 2011 (3 pages).
7. Affidavit of Marisa A. Campagna, Esq., dated December 7, 2011 (3 pages).
8. Affidavit of Paul H. Merry, Esq., undated but stamped "filed" by the Civil Clerk on December 22, 2011.
9. Affidavit of Joel P. Suttentberg, dated December 8, 2011 (2 pages).

Likewise, Attorneys Glennon, Kaplan and May have each submitted comprehensive records of their time spent on this case, including the date on which the work was performed, the amount of time spent on each day, and a description of the work performed. They have also filed a list of the plaintiff's costs incurred as a result of the preparation and trial of this case. The list submitted includes the date that the cost was incurred, the amount of the cost, and for what the cost was incurred. The incurred expenses are \$1,159.54.

The petitioner has also submitted: a Supplemental Petition for Award of Attorney Fees incurred in opposing defendants' Motion for Judgment Notwithstanding the Verdict or in the

Alternative, for New Trial. Attorney Glennon has filed a listing of the time that Attorneys Glennon, May and Kaplan put in, the date on which each attorney did work on the case, and a brief description of what was done on that day. The Supplemental Fee Request is \$5,070.00 for Attorney Glennon (15.6 hours at \$325 per hour), is \$810 for Attorney May (3.6 hours at \$225 per hour), and \$810 for Attorney Kaplan (2.2 hours at \$400 per hour).

Accordingly, the combined total fee award sought is as follows:

1. Attorney Anne Glennon (Suppl.)	\$104,195.00 \$ 5,070.00 \$109,265.00 ³
2. Attorney Wendy A. Kaplan (Suppl.)	\$ 16,680.00 \$ 880.00 \$ 17,560.00 ⁴
3. Attorney Michaela May (Suppl.)	\$ 14,580.00 \$ 810.00 \$ 15,390.00

The number of attorneys in Massachusetts who practice in the field of discrimination in employment, such as the sexual discrimination found here, is rather limited, but is highly accomplished. Attorney Wendy Kaplan is among that group of

³ The Court notes from the submissions that Attorney Glennon, on her own motion, has reduced her hours billed by 27.9 hours due to duplication, overlap, etc. with the other attorneys, which reduction amounts to \$9,067.50.

⁴ The Court notes from the submissions that Attorney Kaplan, on her own motion, has reduced her hours billed by 2.5 hours due to duplication, overlap, etc. with the other attorneys, which reduction amounts to \$1,000.00

lawyers, as is shown in Attorney Kevin G. Powers' and her affidavits. Attorney Wendy Kaplan and the lawyers who work with her in her law office are considered leaders in the area of employment and sexual discrimination law. Ms. Kaplan, both on the trial level and on the appellate level, has been a leader in the advancement of the law in employment and sexual discrimination in the Massachusetts courts on behalf of her clients. As stated in the affidavits of Attorney Kevin G. Powers and Attorney Kaplan, this Court concludes that an award of \$400 per hour for Attorney Kaplan's services is reasonable and justified.

Attorney Anne Glennon has worked in the Law Office of Wendy A. Kaplan for 20 years. In 1992, she became a paralegal in Attorney Kaplan's office. She has been an associate in Attorney Kaplan's law office since December, 2003, after she graduated from law school and was admitted to the Massachusetts Bar. Attorney Glennon has prepared cases for trial and "second seated" Attorney Kaplan on many cases. She has previously been awarded the rate of \$225 per hour by other members of this Court in her "second seat" capacity as set out in her affidavit and in Attorney Kaplan's affidavit.

This judge was the trial judge in this case and is of the opinion that Attorney Glennon tried an excellent case. From a trial tactics point of view, she used the evidence favorably for

Ms. Carrion in a very persuasive way to achieve the verdict that her client obtained. This Court is in accord with the affidavits of Robert S. Mantell and Attorney Glennon that an award in the amount of \$325 per hour for Attorney Glennon's services in this case is reasonable and justified. She tried this case in an excellent manner with her trial strategy fully planned out, which is shown in the verdicts. The fact that the jury was out deliberating for only two hours before they returned their verdicts is an indication of Ms. Glennon's preparation, organization and presentation of the evidence in addition to her persuasiveness.

Attorney Michaela May "second seated" Attorney Anne Glennon during the trial of this case. She examined two witnesses at trial, prepared the final copy of the plaintiff's Request for Jury Instructions and played a major role in the Court's colloquy with counsel on the jury charge. Ms. May was fully prepared for the trial and actively participated in it.

Attorney Michaela May is a 2003 graduate of Brandeis University, and a 2009 cum laude graduate of Boston University School of Law, and was admitted to the Massachusetts Bar on December 2, 2009. At Boston University School of Law, she served as Executive Editor of the Public Internet Law Journal and wrote a student note for that journal on genetic discrimination in employment.

Attorney May volunteered in the Legal Department of the Massachusetts Commission Against Discrimination (MCAD) for seven months working with Commission Counsel. In May, 2010, she opened her own law practice, primarily in the area of employment law. She has represented clients in the Probate and Family Court. She has also been associated with Attorney Joel P. Suttenger and Attorney Paul H. Merry in discrimination and employment law matters.

Attorney May became associated with Attorney Anne Glennon in this case in October, 2011. There are affidavits from both Attorneys Joel P. Suttenger and Paul M. Merry who attest to Attorney May's abilities and are of the opinion that Attorney Michaela May's legal services provided in this case warrant a legal fee of \$225 per hour. This judge is likewise of the opinion that Attorney May's legal services warrant and have a reasonable and fair market value of \$225 per hour.

The defendants attack the plaintiff's Motion for Attorneys' fees and costs in their two memoranda in the same way that they tried this case - in a demeaning and condescending manner to both the plaintiff and her attorneys.

For example, the defendants argue the following requests for fees should not be allowed:

1. \$12.50 for a FOIA request to MCAD for copies of their records concerning the complaint first filed at the MCAD, before it was withdrawn to enable the commencement of this

lawsuit.

2. \$337.89 for Westlaw research on August 13, 2007 and July 2, 2009 when the Social Law Library offers free online legal research.
3. Cab fare of \$141.40 from November 10, 2011 to December 6, 2011 when "The City of Boston has an extensive public transportation system; cabs are unnecessary as both the Court and counsel's office are accessible by same."
4. \$147.00 for service of trial subpoena duces tecum on defendant on the basis that the defendants had already provided all documents during discovery. This shows a lack of experience by Attorney Wolman in that many times trial subpoenas will cause the production of documents not previously produced with "I didn't think you wanted that."
5. A \$20.00 parking fee for Attorney May on November 20, 2011. Specifically, "it appears that \$20.00 is excessive for parking on a Sunday for an only 2.2 hour meeting."

Counsel for the defendants, Mr. Wolman, repeatedly states that this was a simple case, the stakes in the matter were small, economic damages were straightforward, and emotional distress damages were "garden-variety" with no expert witness.

This Court believes that the problem with Attorney Wolman in this matter is that he did not see the same case that the Court and obviously the jury saw. He was present and participated at the trial, but he certainly did not and still does not appreciate the strength of the plaintiff's case, during and post trial.

This court has closely examined all the submissions to the Court regarding these two motions for attorney fees and expenses.

Ch. 151B, § 9 indicates that the Court shall award reasonable fees and expenses ... irrespective of the amount in controversy
....."

After examination of all submissions by the parties and their attorneys and taking into consideration the other facts which may be taken into consideration, see: Linthicum v. Archambault, 379 Mass. at 388-389, this Court finds the amount of time spent by each of the three plaintiff's attorneys on this case is fair and reasonable and finds that the Requests for Attorney's Fees by each of the three plaintiff's attorneys and their costs of \$1,159.54 to be reasonable and fair and to be reasonably related to the necessary preparation and trial of this case.⁵

⁵ The defendants complain about the amount of time charged by Attorney Glennon for her representation of Ms. Carrion on her unemployment benefits claim, which was opposed by Attorney D'Angelo (see n #2 above, where Mr. D'Angelo testified that he opposed every unemployment application of former employees because "your rating goes up" and "you pay more.")

Since the D'Angelo opposition to Ms. Carrion's unemployment benefits was an important part of her retaliation claim, any lawyer representing her, in this Court's opinion, would be remiss in not attending the hearing with Ms. Carrion. The fact that it took the whole day to wait and then to have the hearing is simply one of the "side effects" of the practice of law, and does not lessen the obligation of the defendants to pay Ms. Glennon's time spent waiting.

ORDER

After hearing, the Court ALLOWS in full both the original plaintiff's motion for legal fees and costs (docket no. 43) and the supplemental motion for legal fees and costs (docket no. 47) for the reasons stated herein. It is hereby ORDERED that the defendant, D'Angelo & Hashem, LLC and the defendant, Saba Hashem, jointly and severally pay the legal bills of the plaintiff, Jennifer Carrion, in the amount of \$142,215.00 plus interest at 12% per year from the date of this order until the date of payment and to jointly and severally pay \$1,159.54 in costs with interest at 12% per year from the date of this order until the day of payment.

By the Court,

Thomas E. Connolly
Thomas E. Connolly

Thomas E. Connolly
Justice of the Superior Court

Date: *May 24, 2012*

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