

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 1885CV1526A**

GATEHOUSE MEDIA, LLC

vs.

CITY OF WORCESTER

**DECISION AND ORDER ON PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES & COSTS**

The plaintiff, Gatehouse Media, LLC (Gatehouse or plaintiff), has moved for an award of attorney's fees and costs. Specifically, Gatehouse seeks \$214,467.00 in attorney's fees and \$3,228.05 in costs.

General Laws c. 66, § 10A(d)(2), provides as follows:

The superior court may award reasonable attorney fees and costs in any case in which the requester obtains relief through a judicial order, consent decree, or the provision of requested documents after the filing of a complaint. There shall be a presumption in favor of an award of fees and costs unless the agency or municipality establishes that:

- (i) the supervisor found that the agency or municipality did not violate this chapter;
- (ii) the agency or municipality reasonably relied upon a published opinion of an appellate court of the commonwealth based on substantially similar facts;
- (iii) the agency or municipality reasonably relied upon a published opinion by the attorney general based on substantially similar facts;
- (iv) the request was designed or intended to harass or intimidate; or
- (v) the request was not in the public interest and made for a commercial purpose unrelated to disseminating information to the public about actual or alleged government activity.

In its June 2021 decision, this court entered an order in favor of Gatehouse, establishing a presumption in favor of an award of fees and costs. After a thorough review of the respective pleadings and relevant law and following a hearing, the defendant, City of Worcester (city or defendant), has not established the existence of any of the exceptions necessary to overcome that

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presumption. See G. L. c. 66, § 10A(d)(2). The court finds that the plaintiff is entitled to an award of reasonable fees and costs.

“While the amount of a reasonable attorney’s fee is largely discretionary, a judge ‘should 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.’” *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 429-430 (2005), quoting *Linthicum v. Archambault*, 379 Mass. 381, 388-389 (1979). “No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required.” *Twin Fires*, 445 Mass. at 430, quoting *Berman v. Linnane*, 434 Mass. 301, 303 (2001).

In any fee award against an opposing party, “there must be a relationship ‘between the depth of the services provided and what is at stake’” (citations omitted). *Hanover Ins. Co. v. Sutton*, 46 Mass. App. Ct. 153, 176 (1999). Also, in the usual case, “[w]hen legal expenses are collected from a party other than the one who received the legal services, a degree of conservatism in fee determination is in order. . . . As between lawyer and client, the case stands differently; courts then are less conservative because the amount of the fee is ordinarily something that has been discussed and agreed upon.” *Smith v. Consalvo*, 37 Mass. App Ct. 192, 196 (1994). See *Price v. Cole*, 31 Mass. App. Ct. 1, 7 (1991).

The basic measure of reasonable attorney’s fees is a “fair market rate for the time reasonably spent preparing and litigating a case.” *Fontaine v. Ebttec Corp.*, 415 Mass. 309, 326 (1993). This method is known as the “lodestar” method and, “as its name suggests, [has] become the guiding light of our fee-shifting jurisprudence.” *Perdue v. Kenny A.*, 559 U.S. 542,

551 (2010), quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 801 (2002). See *Fontaine*, 415 Mass. at 325-326.

“The plaintiff bears the burden of establishing and supporting the number of hours billed.” *Haddad v. Wal-Mart Stores, Inc.*, 455 Mass. 1024, 1026 (2010). Gatehouse is only entitled to recover reasonable attorneys fees, not to recover for every hour its lawyers chose to spend working on the matter. “In determining time reasonably spent on a matter, the court must be mindful of ‘the difficulty of the case’ and ‘the results obtained,’ . . . and ‘compensable hours may be reduced if the time spent was wholly disproportionate to the interests at stake’” (citations omitted). *Killeen v. Westban Hotel Venture, LP*, 69 Mass. App. Ct. 784, 792 (2007). A request for attorney fees must be reduced where “[t]he time and labor devoted to the case [are] excessive” in light of “the difficulty of the legal and factual issues, and the amount at stake.” *Rex Lumber Co. v. Acton Block Co.*, 29 Mass. App. Ct. 510, 521 (1990). Accord *Haddad*, 455 Mass. at 1027.

From the pleadings submitted in this case, and this court’s observations during trial and motion hearings, the plaintiff’s attorneys were experienced and capable. The issues at stake were significant. This case presented complex factual issues as to what records were exempt from the plaintiff’s request; however, considering the case law in the Commonwealth, the legal issues were reasonably straightforward.

From the affidavit of Attorney Jeffrey Pyle (“Attorney Pyle”), and the time sheets submitted, Attorney Pyle, along with Attorney Michael Lambert (“Attorney Lambert”) and paralegal Janine Sheehan (“Ms. Sheehan”), worked on this case for a total of 582.70 hours beginning mid-August of 2018 through early October of 2021. Over the three plus years this case was pending, the hourly rates for the attorneys ranged from an average of \$272.50/hour for

Attorney Lambert up to an average of \$447.50/hour for Attorney Pyle. The city does not contest the reasonableness of the hourly rates; however, the standard of reasonableness depends not on what the attorney usually charges, but on what his services are objectively worth. Based on the combined experience of counsel and the geographic area, the court finds that a blended hourly rate of \$365.00/hour is reasonable and appropriate, and the rate this court will apply in this case. See *Haddad*, 455 Mass. at 1026. See also *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *Commonwealth v. Ennis*, 441 Mass. 718, 722 (2004); *Society of Jesus of New England*, 411 Mass. 754, 759 n.11 (1992); *Stratos v. Department of Pub. Welfare*, 387 Mass. 312, 323-325 & n.12 (1982).

A detailed review of the timesheets shows excessive hours spent on particular aspects of the case, along with duplication of work, overstaffing, and some block billing. Both Attorneys Pyle and Lambert billed for preparation and attendance on motion hearings and trial; however, only Attorney Pyle made presentations. In addition, both attorneys billed many hours for drafting the memoranda for the preliminary injunction, summary judgment, trial, and the final request for findings and rulings. Attorney Lambert spent many hours researching the applicable law. However, the legal arguments raised were virtually the same at each stage of the proceedings, and the written submissions were duplicative, such that the time spent was excessive and redundant.¹

Of particular note, the court found the 22.2 hours spent on a motion to expedite resolution (Paper #18) unreasonable, in that the motion was based on issues unrelated to this case,² and

¹ In its reply to the city's opposition, Gatehouse recognized the duplicity when it argued that the time spent on the motion for summary judgment was well-spent because it contributed to Gatehouse's trial memoranda and request for findings and rulings.

² From this court's reading of the motion, despite the denial of the motion for summary judgment, Gatehouse sought an "expedited" order in its favor. Plaintiff's grounds for this request were the public's need to be aware of potential problem officers, and what the Worcester Police department had done to address incidents of police misconduct, because of the death of George Floyd.

because a final pre-trial conference had already determined, with the parties' agreement, a pre-trial and trial schedule.³ The court finds the time spent on that motion to be nothing more than "tilting at windmills," and it is the duty of the court to exclude that time. See *Gay Officers Action League v. Puerto Rico*, 247 F.3d 288, 296 (1st Cir. 2001). The court also finds the 20.3 hours spent on preparing this fee petition unreasonable, and those fees are denied in their entirety. After deducting those hours, the total remaining hours are 540.2 at the blended rate of \$365/hour for a total remaining fee of \$197,173.00.

The court recognizes that some of the fees came from responding to the city's filings, including continually responding to the city's bad faith reliance on exemptions (c) and (d), as well as deciphering the verbose, confusing, and incomplete *Vaughn* affidavits. The court also recognizes that Gatehouse was successful in this litigation. The city cannot complain that fees for work made necessary by its own litigation tactics are excessive in light of the results achieved. See *A.C. Vaccaro, Inc. v. Vaccaro*, 80 Mass. App. Ct. 635, 643 (2011). Even taking into account the defendant's behavior, the court still finds the 540.2 hours to be unreasonable as excessive, duplicative, and redundant. Based on all of the above, and considering the billing as a whole, the court finds that it is reasonable to reduce the number of billable hours by 50% to 270.1. At the blended rate of \$365/hour, the total fee awarded will be \$98,586.50.

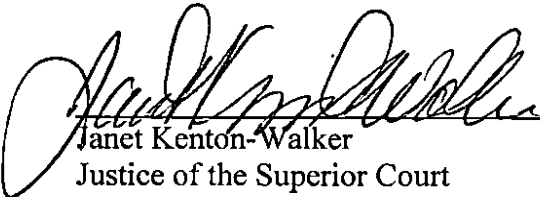
In reviewing the costs, the court determined that the photocopying costs had two rates, \$.15/page for black and white and \$.75/page for color. Given the nature of the case, there appears to be no reason for color photocopies, and if there were any, it was unreasonable. Therefore, the photocopying costs will be reduced to \$791.25. The legal research costs incurred on July 22, 2019, and October 15, 2020, will be denied, as there is no corresponding time record

³ The court further notes that, despite the COVID-19 pandemic, this matter proceeded to trial on the scheduled trial date.

that research was performed on those days. The legal research cost incurred on August 12, 2021, will be denied as it appears to relate to research for the fee petition. The legal research cost, therefore, will be reduced to \$1,036.23. The total costs approved are \$2,362.63.

ORDER

Based on the foregoing, the court **ORDERS** the city to pay Gatehouse its reasonable attorney's fees in the amount of \$98,586.50, together with costs of \$2,362.63, for a total of \$100,949.13.


Janet Kenton-Walker
Justice of the Superior Court

Dated: January 26, 2022