

11-0910

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

LOURIE BROWN and
MONIQUE BROWN,

Plaintiffs,

vs.

QUICKEN LOANS, INC.,
APPRAISALS UNLIMITED,
INCORPORATED, DEWEY V. GUIDA and
JOHN DOE NOTE HOLDER,

Defendants.

CLERK OF COURT
OHIO COUNTY
2011 FEB 17 PM 1 43
Civil Action No. 08-C-36
BRENDA L. MILLER

MEMORANDUM OF OPINION AND ORDER
(ATTORNEY FEES/PUNITIVE DAMAGES)

Following the publication of the Memorandum of Opinion and Order containing the Findings of Fact and Conclusions of Law relating to the liability issues in this matter, this Court next addressed the matters relating to attorney fees and punitive damages.¹

ATTORNEY FEES

West Virginia Code §46A-5-104 provides:

In any claim brought under this chapter applying to illegal, fraudulent of unconscionable conduct or any prohibited debt collection practice, the court (may) award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the consumer. ...²

¹Both issues needed to be addressed separately based upon item VII(punitive damages) and item VIII(attorney fees and costs) as contained in the Conclusions of Law in the Memorandum of Opinion and Order published on February 25, 2010.

²The facts and circumstances of this case squarely comes within the boundaries of the West Virginia Consumer Protection Act which is recognized as a comprehensive attempt to extend protection to the consumer and persons who obtain credit in this State and who constitute the vast majority of it's adult citizens. See *Harless v. First National Bank*, 162 W. Va. 116, 125, 256 S.E.2d 270, 275-276 (1978)

This Court recognizes that the award of attorney fees is discretionary, however, there is no hesitancy in the opinion of this Court in awarding those fees based upon the Findings of Fact contained in the Memorandum of Opinion and Order which are hereby incorporated by reference *in haec verba*. Therefore the only issue to be determined is the amount of attorney fees and costs.

The overriding findings of this Court is that this case was one of the more confusing, confounding and complex cases both factually and legally that has ever been before this Court. It is within that prism that the issue of attorney fees is examined.

This Court has reviewed the claim for attorney fees within the context of *Aetna Casualty and Surety Co. v. Pitrolo*, 176 W. Va. 190, 342 S.E.2d 156 (1986). Syllabus point 4 of *Pitrolo* provides:

Where's attorney's fees are sought against a third party, the test of what should be considered a reasonable fee is determined not solely by the fee arrangement between the attorney and his client. The reasonableness of attorney's fees is generally based on broader factors such as (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Applying each of the *Pitrolo* factors in this case leads to accepting the billing records submitted by the Law Firm of Bordas and Bordas as being both reasonable and reliable in terms of the work performed and the time devoted to each of those tasks. The only difference is the hourly rate which this Court does not accept as being reasonable under the circumstances and instead would allow James G. Bordas, Jr. an hourly rate of Four Hundred Dollars; Jason E.

Causey an hourly rate of Two Hundred and Fifty Dollars; and the other attorneys and staff an hourly rate of One Hundred and Seventy-Five Dollars. With these modification the award for attorney fees and costs are as follows:

James G. Bordas, Jr.	\$178,100.00
Jason E. Causey	262,687.50
Other attorneys & staff	55,168.75
Lodestar Total	\$495,956.25

The Plaintiff requests a contingency enhancement to augment the actual attorney fees. While this Court recognizes that a contingency enhancement may be permissible in West Virginia under Fee-Shifting Statutes such as the Consumer Credit Protection Act, this Court does not believe that under the circumstances that to permit an enhancement would fall within the permissible guidelines outlined by the West Virginia Supreme Court in *Heldreth v. Rahimian*, 216 W. Va. 462, 473, 637 S.E.2d 359, 370 (2006), that directs a Trial Court in determining attorney fees to apply the standard of “the overarching concern for the Trial Court is that the fees awarded must be reasonable”. It is the view of this Court that the attorney fees which are outlined above are reasonable under the circumstances without a contingency enhancement.

PUNITIVE DAMAGES

The opinion published on February 25, 2010, made the determination that a punitive damage award was supported by those findings.³ It is now the responsibility of this Court to determine *the* amount of punitive damage using the standards specified in Syllabus Point 3 of

³Each of the Findings of Fact in the liability are incorporated by reference herein *in haec verba*.

Garnes v. Fleming Landfill, Inc., 186 W. Va. 656, 413 S. E. 2d 897 (1991). See *Allaire v. First National Bank of Parsons*, 197 W. Va. 122, 475 S.E. 2d 122 (1996).

Taking all of the *Garnes* factors into consideration, including applying a factor of three times the compensatory damages and attorney fees, is \$2,168,868.75.

This Court believes that this amount fairly applies the five standards in *Garnes* including the financial position of the defendant and as a matter of fundamental fairness, assuring that the punitive damage award bears a reasonable relationship to the compensatory damages which include the actual compensatory damages and the attorney fees.

Accordingly, judgement is hereby awarded as follows:

ATTORNEYS FEES AND COSTS:	\$495,956.25
EXPENSES:	100,243.64
TOTAL:	\$596,199.89

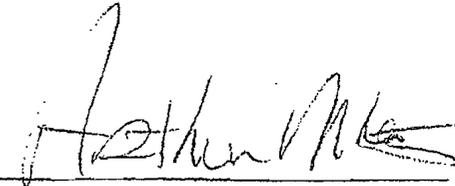
PUNITIVE DAMAGES	\$2,168,868.75
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The objections of each party are hereby preserved.

IT IS SO ORDERED.

The Clerk of the Circuit Court of Ohio County is to provide an attested copy of this Order to James G. Bordas, Jr., Esquire, Jason E. Causey, Esquire, Richard W. Gallagher, Esquire, Stephen W. King, Esquire, and James P. Feeney, Esquire.

ENTER this 17th day of February 2011.


ARTHUR M. RECHT, JUDGE

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MEMORANDUM OF OPINION AND ORDER

This Court has reviewed all of the post-trial motions filed by the defendants regarding the above-captioned matter and finds no errors of law or fact, accordingly, *post-trial motions are hereby denied.*

It is so **ORDERED.**

Entered this 2nd day of May, 2011.



ARTHUR M. RECHT, JUDGE

copies mailed to:

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