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IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

KACE DOUGLAS, ET. AL.,

Plaintiffs,

v.

Case No.: 10-C-33

TELE-RESPONSE CENTER, INC.,
dba 121 Direct Response,

Defendant.

ORDER

On the 11th day of August, 2011, a hearing was held in the above captioned matter in order to hear Plaintiffs' Motion for Entry of Judgment for liquidated damages, attorney fees and litigation costs. After considering the Motion, Response, oral arguments, pertinent legal authority and the testimony presented at the hearing, the Court sets forth its findings below.

STANDARD OF REVIEW

"When the relief sought in a human rights action is primarily equitable, "reasonable attorneys' fees" should be determined by (1) multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate-the lodestar calculation-and (2) allowing, if appropriate, a contingency enhancement. The general factors outlined in Syllabus Point 4, *Aetna Cas. & Sur. Co. v. Pitrolo*, 176 W.Va. 190, 342 S.E.2d 156 (1986) should be considered to determine: (1) the reasonableness of both time expended and hourly rate charged; and, (2) the allowance and amount of a contingency enhancement." Syl. Pt. 3, *Bishop Coal Co. v. Salyers*, 181 W.Va. 71, 380 S.E.2d 238 (1989).

"Where 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

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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". Syl. Pt. 4, *Aetna Cas. & Sur. Co. v. Pitrolo*, *supra*.

West Virginia Code §21-5-12 states:

(a) Any person whose wages have not been paid in accord with this article, or the commissioner or his designated representative, upon the request of such person, may bring any legal action necessary to collect a claim under this article. With the consent of the employee, the commissioner shall have the power to settle and adjust any claim to the same extent as might the employee.

(b) The court in any action brought under this article may, in the event that any judgment is awarded to the plaintiff or plaintiffs, assess costs of the action, including reasonable attorney fees against the defendant. Such attorney fees in the case of actions brought under this section by the commissioner shall be remitted by the commissioner to the treasurer of the state. The commissioner shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto, or as a condition precedent to the availability to the commissioner of any process in aid of such action or proceedings. The commissioner shall have power to join various claimants in one claim or lien, and in case of suit to join them in one cause of action.

DISCUSSION

The parties are in agreement that the liquidated damages are \$213,310.38 and prejudgment interest in the amount of \$22,932.79. The dispute is over the amount of fees and costs being claimed by Plaintiffs' counsel. In order to determine an award for reasonable attorney fees in this case, the Court must analyze the factors set forth in *Aetna Cas. & Sur. Co. v. Pitrolo, supra*. After a review of these factors, the Court finds that attorney fees should be awarded in this case but not at the hourly rates suggested by counsel for the Plaintiffs. The Court finds that some of the proposed hourly rates (i.e., \$300 and \$350 per hour) are excessive in this case, which is primarily based upon the following findings:

- (a) That this case did not involve unique and difficult legal and factual questions;
- (b) That the acceptance of this case by counsel was not that undesirable;
- (c) That there were no time limitations imposed by the clients or by the circumstances of this matter;
- (d) That the acceptance to represent the Plaintiffs by counsel did not have a significant impact whereby said counsels were precluded of other employment;
- (e) That the some of the suggested hourly rates (i.e., \$300 and \$350 per hour) exceed the customary hourly rate in the Brooke County area.

In determining the attorney fee rate, the Court must consider the customary rates paid to attorneys in Brooke County. The Court has considered the following rates:

- (1) Experienced attorneys appointed in State Court proceedings are paid at a rate of \$45 per hour for "out of court" time and \$65 per hour for "in court" time;
- (2) Experienced attorneys appointed in Federal Court pursuant to the Criminal Justice Act are paid at a rate of \$125 per hour;
- (3) An experienced attorney appointed as a guardian ad litem by this Court is customarily paid at a rate of \$150 per hour;
- (4) An experienced Circuit Court Judge in West Virginia is paid at a rate of approximately \$62 per hour.

The Court understands that experienced civil trial attorneys can earn much more but there are no figures available. Based upon the above, the Court concludes that the hourly rate in this case for Attorneys John Porco and Brent Wolfingbarger is \$200.00; that the hourly rate for Chad Shepherd's services is \$175.00; and that the hourly rate for Kristin Boley's services is \$50.

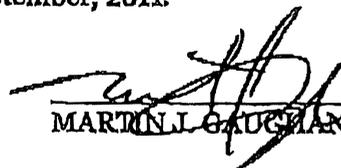
In addition, after further review of the litigation costs incurred by the Plaintiffs, the Court concludes that these costs were reasonable and necessary for the prosecution of this case.

WHEREFORE, it is **ORDERED, ADJUDGED, and DECREED** as follows:

- (1) Plaintiffs are awarded liquidated damages in the amount of \$213,310.38 plus prejudgment interest in the amount of \$22,932.79;
- (2) Plaintiffs are awarded costs incurred in the litigation of this case in the amount of \$6992.27;
- (3) Plaintiffs are awarded attorney fees in the amount of \$92,740.00, which is based upon the hourly rates determined by the Court to be reasonable founded upon the totality of circumstances in this case as discussed above.

The Clerk of the Circuit Court shall forward attested copies of this Order to counsel of record.

ENTERED this 7th day of September, 2011.


 MARTIN L. GAUGHAN, JUDGE

I hereby certify that the unboxed instrument is a true and correct copy of the original on file in my office.

Assistant Clerk
 Clerk of the Court
 Boone County, West Virginia

