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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GLADIEOLA BROOKER, On Behalf of Herself and All Other Persons Similarly Situated,

Plaintiffs,

v.

THE MOUNT VERNON HOUSING AUTHORITY; HENRY J. SAUNDERS, Individually and in His Capacity as Chairman of the Mount Vernon Housing Authority; VINCENT PIRO, Individually and in His Capacity as Manager of the Mount Vernon Housing Authority; and EMMA GARLAND, Individually and in Her Capacity as Tenant Relations Assistant of the Mount Vernon Housing Authority,

Defendants.

76 Civ. 2358

OPINION

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GRIESA, J.

I.

This is a class action under 42 U.S.C. § 1983. The action was commenced on May 26, 1976. The plaintiff class consists of tenants in a subsidized housing development operated by defendant Mount Vernon Housing

Authority. The individual defendants are persons connected with the Authority.

The complaint alleges a practice by the Authority of increasing rents without any statement of reasons, and without any notice of available remedies for contesting the increase.

On September 23, 1977 a stipulation of settlement was approved by the Court. This stipulation provides that each present and future tenant of the Authority will receive advance notice of any proposed rent increase, a statement of the reasons for the increase, and a description of the available procedures for challenging the increase.

The basic terms of the settlement were agreed upon many months prior to the entry of the stipulation. The issue which delayed the stipulation was the question of whether defendants should pay the fee for plaintiffs' attorneys. It was finally decided to enter into a stipulation which would leave the fee question for determination by the Court.

Plaintiffs now move under 42 U.S.C. § 1988 to require defendants to pay a fee to plaintiffs' attorneys. The motion also requests a small amount of court costs under 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d).

Plaintiffs seek to recover an attorneys' fee of $11,855 and court costs of $25. Defendants urge that no fee or costs be awarded.

The motion is granted to the extent that a fee in the amount of $4750 is awarded plus court costs of $25.

II.

Plaintiffs' attorneys are Westchester Legal Services, Inc. This is a non-profit organization funded by the Federal Legal Service's Corporation for the purpose of providing legal services to persons below poverty level in Westchester County. The individual attorneys at Westchester Legal Services who have worked on this matter have provided details of the amount of time spent -- Martin A. Schwartz, 31 hours; Lawrence S. Kahn, 43 hours; Gerald A. Norlander, 12.5 hours; and Marcia G. Henry, 40.5 hours. It is

requested that compensation for the time spent be awarded at the rate of $125 per hour for Schwartz, $100 per hour for Kahn and Norlander, and $60 per hour for Henry. Schwartz has practiced law for about 10 years, Kahn and Norlander for about 5 years, and Henry apparently less than 5 years. On the basis of the stated hours and rates claimed, the fee would be $11,855.

Mount Vernon Housing Authority is a non-profit public housing agency, which obtains subsidies from the State of New York. These subsidies are used for principal and interest payments on the housing development's mortgage. In addition, the Authority is supposed to receive about $10,000 per year from the City of Mount Vernon. Apparently Mount Vernon is in arrears. The Authority collects rent from the tenants, which is intended to pay for operating expenses not covered by subsidy. It appears that the Authority is running an operating deficit.

On the basis of these circumstances, I conclude that it is likely that the burden of the attorney's fee award will ultimately be borne by the

tenants of the housing development operated by the Authority. This is, of course, the class for whom the action has been brought. It is also true that a substantial number of these tenants are below the official poverty level.

III.

The applicable statute is The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, which provides that, in an action under certain civil rights statutes including 42 U.S.C. § 1983, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

The legislative history makes it clear that the purpose of Congress in passing this statute was to extend the attorney's fee provisions of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a-3(b) and 2000e-5(k) (so-called "Title VII"), to cover other civil rights statutes such as 42 U.S.C. § 1983. S. Rep. No. 94-1011, 94th Cong., 2d Sess., [1976] U.S. Code Cong. & Ad. News 5908, 5909-10. It is clear that the

judicial authorities interpreting the Title VII attorney's fee provision are applicable to Section 1988. Congress has also provided for attorney's fee awards in the Voting Rights Act of 1965, 42 U.S.C. § 1973(l)(e). It is clear that all three of these federal civil rights attorney's fee statutes have the same basic effect. Torres v. Sachs, 538 F.2d 10, 12-13 n.2, (2d Cir. 1976).

The Supreme Court has held that a civil rights plaintiff, if successful, "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 (1968). See also Northcross v. Memphis Board of Education, 412 U.S. 427, 428 (1973).

Contrary to the position of defendants here, Section 1988 applies to settlements, not merely to cases carried to judgment. Buckton v. National Collegiate Athletic Ass'n, 436 F. Supp. 1258, 1265 (D. Mass. 1977). Defendants are also incorrect in arguing that no fee should be awarded to Westchester Legal Services because it is a service organization receiving federal

funding. Beazer v. New York City Transit Authority, 558 F.2d 97, 100-1 (2d Cir. 1977); Torres v. Sachs, 538 F.2d 10, 13 (2d Cir. 1976). The Torres case is cited with approval in the Senate report relating to the 1976 statute. S. Rep. No. 94-1011, 94th Cong., 2d Sess., [1976] U.S. Code Cong. & Ad. News 5908, 5918. Also, the fact that the Authority is a subsidized non-profit organization does not preclude it from being assessed an attorney's fee under the statute. See Northcross v. Memphis Board of Education, 412 U.S. 427 (1973); H.R. Rep. No. 94-1558, 94th Cong., 2d Sess. 7. I also reject defendants' contention that the present litigation was unnecessary to achieve the change in rent increase procedures reflected in the stipulation of settlement. There is no indication that defendants would have changed their procedures in the absence of the lawsuit.

IV.

This leaves for determination the amount of the award.

One question in this regard is whether there should be a discount because of the fact that plaintiffs'

attorneys are a non-profit public interest organization. In Torres v. Sachs, 538 F.2d 10 (2d Cir. 1976), Judge Smith, in an opinion joined by Judges Mansfield and Van Graafeiland, rejected the argument that a fee award should be reduced where it is sought by a publicly financed legal service organization, and where the fee will be paid by a tax-supported governmental body. The court held that the plaintiff's attorneys in such a situation should receive "full compensation for the value of services in successful litigation." 538 F.2d at 13.

Another Second Circuit decision expresses a different view. In EEOC v. Enterprise Ass'n Steamfitters Local No. 638 of U.A., 542 F.2d 579 (2d Cir. 1976), Judge Oakes, in an opinion joined by Judges Mansfield and Gurfein, stated that, in spite of federal funding for public interest law firms, there is a clear Congressional intent, and there are also strong policy considerations, in favor of fee awards to such firms, in order to ensure that they continue in existence and expand their activities. 542 F.2d at 593. However,

the court held that the district judge had not abused his discretion in awarding a fee to the public interest law firm which was less than one-half of what might have been paid to a private law firm. The case involved unlawful discrimination in union membership and related employment, and the fees would be paid by the union, whose members would bear the burden. 542 F.2d at 592-93.

I conclude that it is within the discretion of a district court to reduce an attorney's fee award in a civil rights case, where the award is to be made to a federally funded public interest law firm, and where the burden of the award is likely to be borne, at least to a substantial extent, by the class for which the action is brought. I believe that the present case is an appropriate one to reduce the fee because of these factors.

In addition, although the litigation was necessary to achieve the result, and a certain amount of legal time was required, the issues were not of great difficulty, and a large expenditure of legal time and effort was not justified.

Under the circumstances, I am reducing claimed hours by one quarter -- that is, from 127 hours to 95 hours. I am also permitting an hourly charge of $50 per hour, instead of the higher rates requested. The fee award will be $4,750. The amount of $25 court costs will be added. The total award will be $4,775.

Settle order.

Dated: New York, New York
April 6, 1978

Thomas P. Griesa

THOMAS P. GRIESA
U.S.D.J.

... Vernon Housing