

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

PATRICIA SCHATZ,

Complainant,

v.

MAHMOUD MOZAFFARI,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10108521

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by Peter G. Buchenholz, Adjudication Counsel, as designated by the Honorable Kumiki Gibson, Commissioner of the New York State Division of Human Rights (“Division”), after a hearing held before Lilliana Estrella-Castillo, an Administrative Law Judge of the Division. In accordance with the Division’s Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human

Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original
Notice or Petition with the Division.

DATED: November 27, 2007
Bronx, New York



PETER G. BUCHENHOLZ
Adjudication Counsel

**STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

PATRICIA SCHATZ,

Complainant,

Case No. **10108521**

v.

MAHMOUD MOZAFFARI,

Respondent.

Complainant, who is hearing impaired, alleged that Respondent denied her request to maintain a hearing dog in her apartment. Because the record supports the allegations in the complaint, it is sustained. Complainant is entitled to an award for mental anguish in the amount of \$10,000. Complainant's counsel is entitled to reasonable attorney fees of \$36,250.

PROCEEDINGS IN THE CASE

On October 31, 2005, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with an unlawful discriminatory practice in violation of the Human Rights Law of the State of New York.

After investigation, the Division found that it had jurisdiction over the complaint, and that probable cause existed to believe that Respondent had engaged in an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Lilliana Estrella-Castillo, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on June 5; September 25 through 27; and November 27, 2006. Complainant was represented by the law

firm of Jeffrey S. Ween & Associates, by Jeffrey S. Ween, Esq. Respondent was represented by Finkelstein Newman, LLP, by Robert Finkelstein, Esq.

The parties filed timely post hearing briefs. Complainant's counsel provided an affidavit in support of his application for attorney's fees. Respondent filed objections to Complainant's fee application. All submissions were reviewed and considered.

On August 16, 2007, ALJ Estrella-Castillo issued a recommended Findings of Fact, Opinion and Decision and Order ("Recommended Order"). Objections to the Recommended Order were received from Complainant's counsel dated August 20, 2007, and from Respondent's counsel dated September 5, 2007.

By letter dated November 2, 2007, the Division requested Complainant's counsel to supplement his fee request. Respondent was provided an opportunity to respond to any submission. Complainant's counsel submitted a Supplemental Affidavit in Further Support of Application for Attorney's Fees dated November 8, 2007, and a supplemental letter dated November 13, 2007. Respondent's counsel submitted a Supplemental Objection to the Application for Fees dated November 15, 2007.

FINDINGS OF FACT

1. Complainant alleged that Respondent unlawfully denied her request to keep a hearing dog on the premises Respondent owns. (ALJ's Exhibits I, III)
2. Respondent denied unlawful discrimination. (ALJ's Exhibit III)
3. During the relevant period, Complainant suffered from progressive hearing loss. (ALJ's Exhibit I; Complainant's Exhibit 1)
4. Complainant suffered from "bilateral, severe to profound hearing loss." (Complainant's Exhibits 2, 3)

5. Susan S. Friess, Clinical/Diagnostic Audiologist, diagnosed Complainant's hearing loss in the "severe/very severe range." Friess testified that for Complainant's "own safety, a Hearing Dog would provide great benefit now and will be essential in the future." (Complainant's Exhibit 17)

6. Complainant resided with her husband, Michael Schatz, in a building in Manhattan owned and maintained by Respondent. (Complainant's Exhibit 11; Tr. 50)

7. Respondent had a policy against possessing dogs on those premises. (Tr. 612)

8. In the summer of 2005, Complainant applied to the International Hearing Dog, Inc. ("IHDI") for a hearing dog. (Complainant Exhibit's 6) During the relevant period, IDHI had been in operation for twenty-six years. It had placed more than 975 hearing dogs throughout the United States and Canada. IDHI dogs each received months of sound, obedience and public training, and recipient partners received training with a placed dog by one of IDHI's certified trainers. (Complainant's Exhibit 7)

9. It is noted that pursuant to IDHI's practice, before a dog is permanently paired with a hearing impaired individual, an IDHI trainer brings the dog into the prospective partner's home for four days of training. (Complainant's Exhibit 6)

10. On June 21, 2005, Complainant wrote to Respondent advising that she was "applying for a hearing assistance dog. This is a service animal. Since we previously had a dog there should be no problem with this. It will take several months for the application, and my training. I can provide you with any necessary paperwork." (ALJ's Exhibit I; Tr. 82, 168)

11. Respondent did not request any additional information from Complainant. (Tr. 169)

12. On July 1, 2005, Respondent responded to Complainant's June 21, 2005, letter by stating the "landlord does not consent [*sic*] the tenant harboring a dog in apartment number two." (ALJ's Exhibit I; Tr. 74)

13. On August 18, 2005, Complainant's attorney wrote to Respondent on behalf of Complainant, seeking that Respondent reconsider his refusal and advised that Complainant was disabled, and that the denial of the hearing dog was unlawful. (ALJ's Exhibit I)

14. Attached to the August 18, 2005, letter was a report from Doctor Alan A. Scheer, dated February 22, 2005, which stated that Complainant suffered from hearing loss in both ears, and that "a hearing dog would be wonderful for Mrs. Schatz." (ALJ's Exhibit I)

15. In the interim, on August 12, 2005, Complainant was notified by IHDI that they felt that she "could really benefit from getting a hearing dog." (Complainant's Exhibit 6) Complainant was placed on their waiting list, and advised that at that time they were not placing hearing dogs in New York City due to cost of travel. (Complainant Exhibit 6) In a December 12, 2005, letter, IHDI confirmed that Complainant "qualifies to receive a hearing dog due to her serious to profound hearing loss." (Complainant's Exhibit 7)

16. As of the last date of the public hearing, a hearing dog had not become available for Complainant.

17. In January of 2006, Complainant began seeing a psychiatrist. She was nervous and very upset about Respondent's refusal to allow her to maintain a hearing dog. (Tr. 177-78, 181) Complainant became depressed, was unable to sleep, was unable to focus, experienced convulsions and anxiety attacks and had difficulty leaving her apartment. (Tr. 183) Complainant admitted that she was also upset about a litany of issues between herself and the landlord unrelated to the complaint at issue. (Tr. 178-79, 184) Furthermore, Complainant's

psychiatrist testified that Complainant was primarily upset about issues unrelated to this complaint. (Tr. 322) She did note, however, that Complainant was upset about Respondent's denial of her request for a hearing dog. (Tr. 326) She indicated that Complainant experienced a sense of fear and that her hearing impairment made her more vulnerable. She noted that a hearing dog would "greatly increase [Complainant's] sense of safety." (Tr. 332, 336) Specifically, Complainant's psychiatrist testified that as a result of Respondent's unlawful denial of Complainant's request to maintain a hearing dog, Complainant felt frustrated, helpless and anxious. (Tr. 338)

18. By letter dated March 30, 2006, Respondent advised the ALJ that he withdrew his objection to Complainant's use of a hearing dog "without conceding that Ms. Schatz is disabled." (Respondent's Exhibit A)

OPINION AND DECISION

Complainant alleged that Respondent discriminated against her when it refused to permit her to maintain a hearing dog in her apartment. Because the evidence supports the allegations in the complaint, the complaint is sustained.

The Human Rights Law makes it an unlawful discriminatory practice "... [f]or any person . . . to discriminate against . . . a person with a disability on the basis of his or her use of a guide dog, hearing dog or service animal." Human Rights Law § 296.14.

Complainant is disabled by a severe hearing impairment, and it was determined that she would benefit from the use of a hearing dog. She applied for such a dog, notified Respondent of her impairment, and requested permission to bring a hearing dog onto the premises. Complainant was approved to receive a hearing dog by IDHI. When Respondent denied her request, he violated the Human Rights Law. He is, therefore, liable. It is of no moment that in

March of 2006, he informed the Division that he might withdraw his objection to the hearing dog. Such withdrawal does not undo or remedy the discrimination to which he subjected Complainant, does not undo or remedy the mental suffering and anguish that resulted from that discriminatory conduct, and does not have the force of law. And, nothing would prevent him from changing his mind once again after the disposal of this complaint.

It is well-settled that an award of compensatory damages to a person aggrieved by an illegal discriminatory practice may include compensation for mental anguish and that an award may be based solely on the complainant's testimony. *See Cosmos Forms, Ltd. v. State Div. of Human Rights*, 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dept. 1989).

In the instant case, as a result of Respondent's discriminatory treatment, Complainant was made to feel nervous and upset. Complainant became depressed, was unable to sleep, was unable to focus, experienced convulsions and anxiety attacks, and had difficulty leaving her apartment. Complainant did admit that she was also upset about a litany of issues between herself and the landlord unrelated to the complaint at issue. Her mental anguish testimony, however, was corroborated by her psychiatrist, who testified that Respondent's discriminatory treatment of Complainant made her feel vulnerable, frustrated, helpless, and anxious. In consideration of the severity of Respondent's conduct and the degree of Complainant's suffering that was shown to be related to this conduct, an award of \$10,000 will effectuate the purposes of the Human Rights Law. *See Matteo v. New York State Div. of Human Rights*, 306 A.D.2d 484, 485 (2d Dept. 2003); *School Bd. of Educ. of the Chapel of the Redeemer Lutheran Church v. NYCHR*, 188 A.D.2d 653, 591 N.Y.S.2d 531 (2d Dept. 1992); *Alverson v. State Div. of Human Rights*, 181 A.D.2d 1019, 581 N.Y.S.2d 953 (4th Dept. 1992).

In addition, Complainant is entitled to recovery of attorney's fees expended in litigating this matter. *See* Human Rights Law § 297.10. Contrary to Respondent's assertion that "there [was] no more controversy at issue," upon its proffering the March 30, 2006, letter in which it is stated that Respondent "withdr[ew] his objections without conceding that Ms. Schatz [was] disabled or that she require[d] a service animal,"¹ the questions remained whether Complainant was disabled; whether she would benefit from the use of a hearing dog; whether Respondent, indeed, discriminated against her in violation of the Human Rights Law during the period in which it denied her permission to maintain a hearing dog on the premises; and whether Complainant was entitled to full relief through an enforceable order. And, none of those questions were answered or addressed by Respondent's concession that Complainant "*might* be entitled to a service animal."² Thus, it was absolutely necessary for Complainant to litigate this matter to its conclusion in order to secure the full protections of the law. Accordingly, Complainant is entitled to full recovery for reasonable attorney's fees.

Attorney's fees are to be calculated utilizing the "lodestar" method. *See McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 788 N.Y.S.2d 281 (2004); *McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.*, 176 Misc.2d 325, 327, 672 N.Y.S.2d 230 (N.Y. Sup. Ct. 1997), *appeal dismissed*, 256 A.D.2d 269 (1st Dept. 1998), *appeal dismissed*, 93 N.Y.2d 919 (1999), *lv. denied*, 94 N.Y.2d 753 (1999); *see also Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989); *Cruz v. Local Union No. 3 of the Intern. Broth. of Elec. Workers*, 34 F.3d 1148, 1159 (2d Cir. 1994); *Wilson v. Nomura Securities International, Inc.*, No. 01 Civ. 9290, 2002 WL 1560614 (S.D.N.Y. 2002). The lodestar method "estimates the amount of the fee award by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." *Blanchard*, 489 U.S. at 94.

¹ *See* Respondent's June 28, 2007, Objection to the Application for Fees, Exhibit E

² *See* Respondent's June 28, 2007, Objection to the Application for Fees, p. 4) (emphasis in original).

A reasonable attorney's fee is "one calculated on the basis of rates and practices prevailing in the market, i.e., 'in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation,' and one that grants the successful civil rights plaintiff a 'fully compensatory fee,' comparable to what 'is traditional with attorneys compensated by a fee-paying client.'" *Missouri v. Jenkins*, 491 U.S. 274, 286 (1989) (citations omitted); see also *Blum v. Stenson*, 465 U.S. 886, 895-96, n.11 (1984); *Cruz*, 34 F.3d at 1159.

As the court in *McIntyre* made clear, "a court determining the reasonableness of an attorney's fee should consider the time spent, the difficulties involved, the nature of the services, amount involved, professional standing of counsel and results obtained." *McIntyre*, 176 Misc.2d at 327 (citations omitted). In addition, "[t]he party seeking fees bears the burden of showing that the claimed rate and number of hours worked are reasonable." *Wilson v. Nomura Securities Int'l, Inc.*, No. 01 Civ. 9290, at *3 (citations omitted).

In the instant case, counsel for Complainant claims compensation for work performed by himself, two associates, and one paralegal, amounting to 116.69 hours, distinguished to account for the variable fees applicable to each position, plus expenses. In detailing the time devoted by each individual on the instant matter, Ween discounted time spent in association with his representation of Complainant for unrelated landlord/tenant issues.

The rates Ween claims for himself and his employees are spelled out in a retainer agreement attached to his fee affidavit as Exhibit B. Additionally, the fee application takes into account a rate change effective in May of 2006. Ween claims a rate of \$325 per hour and then \$360 per hour after May of 2006 for himself, \$210 per hour for his associates, and \$100 per hour and then \$135 per

hour after May of 2006 for his paralegal. Ween has been admitted to practice law since 1971, and, thus, has thirty-five years of experience. He has focused the most recent thirty years of his practice on landlord/tenant issues and affirms he has great familiarity with issues related to the harboring of service animals. He has litigated such matters both in judicial and administrative forums.

Ween, initially failed to submit a description of the experience of his associates, but his supplemental affidavit shows that each of two associates were billed at a rate of \$210 per hour. Ann Lavin, Esq. graduated from the City University of New York School of Law and had experience litigating landlord/tenant issues over approximately five years. Hattie F. Ragone, Esq., had various litigation experience commencing in 1998. It is noted that neither associate had experience litigating civil rights matters; however, Lavin's work in the instant matter was limited to drafting of the complaint and related issues, while Ragone participated in several telephone conferences with Complainant and reviewed hearing testing reports, an issue with which she had experience as a former speech pathologist.

"In determining a reasonable hourly rate, courts should look to market rates 'prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.' *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (*quoting Blum v. Stenson*, 465 U.S. 886, 896 n. 11, 104 S.Ct. 1541 (1984)). "In determining the lodestar figure, the 'community' to which the district court should look is the district in which the court sits." *Cruz* at 1159; *Luciano v. Olstern Corp.*, 925 F. Supp. 956 (E.D.N.Y. 1996). In this case, the matter was heard in Bronx County, which falls within the Southern District of New York. Several courts have found that between \$250 and \$400 are the prevailing rates, as of almost a decade ago, for experienced civil rights practitioners practicing in the Southern District of New York. *See Marisol A. v. Giuliani*, 111 F. Supp. 2d 381, 386-87 (S.D.N.Y. 2000) (collecting cases).

Because Ween's experience is predominantly related to landlord/tenant issues, in consideration of his customary rate, in consideration of his affirmation that he has experience in matters regarding service animals and noting that he possesses over thirty years of experience as an attorney, \$300 per hour is deemed a reasonable rate for his time. Considering Lavin's and Ragone's five plus years of litigating, but their limited experience in civil rights matters, \$175 per hour is deemed a reasonable rate for their time.

Ween claimed 100.14 hours. A reasonable rate of \$300 per hour multiplied by 100.14 equals \$30,042. Ween claimed 4.2 hours for Lavin's work and 2.35 hours for Ragone's work. A reasonable rate of \$175 per hour multiplied by 6.5 hours equals \$1,146. Thus, attorneys' fees are \$31,188. Added to the \$31,188 in attorneys' fees is \$1,350 for the charges incurred by Ween's paralegal, bringing the total to \$32,538. Ween also spent an additional 6.1 hours preparing the affidavit in support of his fee application for \$1,830, plus \$54.56 in incidentals, bringing the total to \$34,423. Added to this is the \$1,827.50 in expenses for which, it is noted, no receipt was provided, and the initial lodestar calculation equals \$36,250.

It is noted that Ween requested an additional three hours in consideration of the time spent in his preparation of the supplemental fee request, which shall be denied: There is no justification for attempting to charge Respondent for time spent on preparing supplemental submissions that were required because of Ween's failure to submit a complete fee request at the outset. Ween also requests a twenty percent upward adjustment of the fee; however, he offered no justification warranting such an adjustment, and, thus, the request is denied.

Respondent's objections to the fee request have been considered, and there are no outstanding factors warranting an adjustment of the lodestar fee. Accordingly, Complainant's counsel is entitled to an attorney's fee in the amount of \$36,250.

ORDER

Pursuant to 9 NYCRR § 465.17(c)(3), Adjudication Counsel Peter G. Buchenholz has been designated by the Commissioner of the Division, Kumiki Gibson, to issue this Final Order. The Adjudication Counsel has not taken part in any of the prior proceedings with respect to this case.

Based on the foregoing, and pursuant to the provisions of the Human Rights Law and the Rules of Practice of the Division, it is

ORDERED, that Respondent, and his agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices against the hearing impaired; and it is further

ORDERED, that Respondent shall take the following action to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

1. Respondent shall allow Complainant to maintain a hearing dog in her apartment should she so require;
2. Within sixty days of the date of this final Order, Respondent shall promulgate a policy not to discriminate against individuals with disabilities in need of hearing animals, guide animals, service animals or any animal required as a reasonable accommodation for a disability pursuant to the provisions of the Human Rights Law.
3. Within sixty days of the receipt of this final Order, Respondent shall pay to the Complainant the sum of \$10,000 as compensation for the mental anguish she suffered as a result of Respondent's discriminatory conduct. Interest shall accrue on the award at a rate of nine percent per annum from the date of this Order until the date payment is made. Payment shall be made by Respondent in the form of a certified check made payable to the order of Complainant,

Patricia Shatz, and delivered by certified mail, return receipt requested to Jeffrey S. Ween & Associates, 150 Broadway, Suite 1616, New York, New York 10038.

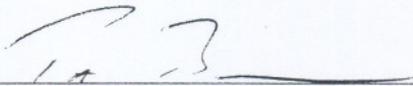
4. Within sixty days of the date of this final Order, Respondent shall pay to Complainant's counsel, Jeffrey S. Weem, Esq., \$36,250, as reasonable attorney's fees. Interest shall accrue at a rate of nine percent per annum from the date of this final Order until payment is made. Payments shall be made by Respondent in the form of a separate certified check made payable to the order of Complainant's counsel, Jeffrey S. Ween, Esq., and delivered by certified mail, return receipt requested to Jeffrey S. Ween & Associates, 150 Broadway, Suite 1616, New York, New York 10038.

5. Respondent shall simultaneously furnish written proof of its compliance with the directives contained in this Order to the Caroline J. Downey, General Counsel of the New York State Division of Human Rights, at her office address at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

6. Respondent shall cooperate with the representatives of the Division during any investigation into the compliance with the directives contained within this Order.

DATED: November 27, 2007
Bronx, New York

NYS DIVISION OF HUMAN RIGHTS



PETER G. BUCHENHOLZ
Adjudication Counsel