

# NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS

JUNE BOWERS

v.

PROFESSIONAL PHYSICAL THERAPY SERVICES, LLC

ED 0051-10; 16D-2010-00054

## ORDER ON REMANDED REQUEST FOR ATTORNEY'S FEES

By order dated July 7, 2014, in a case appealed from a decision by the New Hampshire Commission for Human Rights, Professional Physical Therapy Serv., LLC v. Bowers, No. 217-2013-CV-00523, the Merrimack Superior Court affirmed the Commission's decision awarding the Complainant, June Bowers, \$22,992.00 in lost wages. However, the Court remanded the Commission's finding awarding \$25,059.46 in attorney's fees to the Complainant's counsel, John Vanacore, on the basis that the Commission had failed to document its findings and analysis in reaching in its decision.

On September 24, 2014, Attorney Vanacore submitted an affidavit to the Commission attesting to his education, bar admissions, and legal experience as an attorney in New Hampshire since 1983, including practice before state and federal courts and administrative boards, including the Workers' Compensation Appeals Board, the New Hampshire Public Employee Labor Relations Board, the New Hampshire Personnel Appeals Board, and the New Hampshire Public Employee Labor relations board. In his affidavit Vanacore attests that the case at bar involved a considerable investment of time involving client and witness interviews, investigation and research, preparing, filing, and responding to various pleadings, and engaging in telephone calls with the Commission, attempts at conciliation, and attendance at the Commission merits hearing held in this matter.

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Attorney Vanacore further attests that his level of expertise and the cost of operating a law office justifies his fee of \$250.00 per hour. In support, he submits a New Hampshire Bar Association 2006 Statistical Supplement showing that in Merrimack County, fifteen percent of attorneys indicate a billing range between \$200.00 and \$250.00 per hour and seven percent charge more than \$250.00 per hour. The Respondent has not challenged Attorney Vanacore's affidavit.

Applying New Hampshire Rule of Professional Conduct 1.5(a) to the unchallenged assertions in Attorney Vanacore's affidavit, the Commission finds that the requested fee is not unreasonable based on the following:

1. The Commission's familiarity with the significant amount of time and effort required in a case that goes through the investigative and hearing process;
2. The issues involved in the complex and changing field of employment disability discrimination law;
3. The Respondent has not challenged the self-evident fact that taking on such a case precluded Attorney Vanacore from accepting other employment;
4. Attorney Vanacore's evidence that his hourly fee is not unreasonable in the geographical area in which he practices;
5. Attorney Vanacore's representation resulted in a finding in the Complainant's favor on the merits; and
6. Attorney Vanacore's extensive legal experience, particularly in the field of employment and administrative law.

The Commission had the discretion to offset the 1.4 hours that were not contemporaneously recorded against time that was not requested by Vanacore in his motion for

attorney's fees due to its familiarity with the practice of law and the Commission's procedures. The Commission's decision was based on a reasonable estimate that the amount of time that goes into the preparation of such a request, including research, writing, proofreading, and calculating lost wages, would exceed 1.4 hours. It is likely that a full accounting of the time spent in preparation for the request would have resulted in attorney's fees higher than the \$350.00 that was awarded.

The New Hampshire Supreme Court holds that the Commission has broad discretion to award attorney's fees to a prevailing claimant as an equitable remedy to effectuate the Commission's legislative purpose of eliminating discrimination. E.D. Swett, Inc. v. New Hampshire Commission for Human Rights, 124 N.H. 404, 412 (1983). The Commission based its decision on three objections raised by the Respondent and made a finding that attorney's fees larger than the award of damages is not per se unreasonable, that the Complainant's decision to go forward to hearing was not unreasonable, and addressed the above mentioned objection regarding the failure to contemporaneously record 1.4 hours of fees. In its objection to the Complainant's request at the Commission level, the Respondent did not challenge Attorney Vanacore's hourly rate or the fees that were contemporaneously recorded. The Commission had the discretion to limit its inquiry to the objections the Respondent posed.

Accordingly, on or before ten days after the appeal period for this Order has expired, the Respondent shall remit \$25,059.46 in attorney's fees to Complainant's counsel, John Vanacore.



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Commissioner David N. Cole, Esq.

Panel Chair

November 24, 2014

cc: John G. Vanacore, Esq., Andru H. Volinsky, Esq., Talesha L. Caynon, Esq.