

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

10-P-1240

MALVINA MONTEIRO

vs.

CITY OF CAMBRIDGE.

ORDER

Upon Appellee's Malvina Monteiro's Petition for Award of Appellate Fees and Costs Pursuant to G. L. c. 151B, § 9.

Upon consideration of all material submitted in support of appellee Malvina Monteiro's petition for an award of appellate attorneys' fees and costs pursuant to G. L. c. 151B, § 9, we allow the petition in full and order payment of the requested (1) attorneys' fees in the amount of \$284,420, and (2) costs in the amount of \$13,929.33, for a total of \$298,349.33.

REASONING.

1. Preliminarily, we observe that the appellant City of Cambridge responded to the petition with an acknowledgment of the reasonableness of the requested amount. It did not oppose the entitlement or the amounts requested.

2. Nonetheless we have independently and carefully inspected all petition material for two reasons. (a) Our case law requires supervision of shifted fee amounts. "[W]hen a party other than the one who hired the lawyer is required to pay

the fee, conservative criteria are in order." Price v. Cole, 31 Mass. App. Ct. 1, 7 (1991); Grimes v. Perkins School for the Blind, 22 Mass. App. Ct. 439, 440 (1986). (b) In this instance, payment of the award will come from public funds. We deem it important to guard against any relaxation of standards of allowance for expenditures from funds furnished by, or underwritten by, the citizenry.

3. As usual with requests under G. L. c. 151B, § 9, we apply the process of lodestar computation amplified by detailed common law factors, as summarized in Fontaine v. Ebtac Corp., 415 Mass. 309, 324-325 (1993) (an employment discrimination case). Accord, Smith v. Bell Atlantic, 63 Mass. App. Ct. 702, 725 (2005). Those same criteria appear in SJC Rule 3:07, The Rules of Professional Conduct Rule 1.5 (a).

(a) Hourly rates. The rates submitted by counsel for Ms. Monteiro fall well within the range of the current marketplace for comparable attorneys. In that regard, we continue to agree with the findings of the trial judge in her award of fees for work in the Superior Court.

(b) Volume of hours. (i) We agree with the petitioning counsel that an extremely aggressive appellate campaign by the City demanded proportionate responsive work. (ii) The extensive supporting materials for the petition show that Monteiro's appellate counsel responded with disproportionately less

expenditure of time than exercised by counsel for the City. In particular, the materials show that counsel for the City employed nine attorneys upon the appeal and accumulated 1,368.8 hours of work, so as to generate a cumulative bill of fees and costs of \$693,623.55. (See Petition at p. 1, fn. 1; Zucker Affidavit, p. 12, paragraph 47).

By contrast, counsel for Monteiro employed four attorneys, accrued 650.8 hours of work, and generated the itemized fees of \$284,420, and costs of \$13,929.33, for a total of \$298,349.33.

(c) Beyond the comparison of hourly volumes, several features of petitioning counsel's itemization of time and services support our impression of the efficiency of their work.

(i) Lead counsel at trial performed 84% of the hourly work invested in the appeal. That allocation employed the knowledge of the attorney most experienced with the litigation. In particular, it eliminated the dangers of excess and duplication most commonly generated by the assignment of multiple attorneys to an appeal, especially attorneys who are unfamiliar with the earlier phases of a case.

(ii) Lead counsel's narrative description of her services by date, duration of time, and work were abundantly detailed. Her description of services was commendably specific.

(iii) The specification of time and services showed little or no signs of excess or duplication.

(4) Success factor. Finally, we attribute special weight to one of the factors guiding a court's exercise of discretion for a lodestar award: the degree of success achieved by the application. See Fontaine v. Ebtec Corp., supra at 324-326. Here, counsel for Ms. Monteiro achieved broadgauged success across the spectrum of appellate arguments proposed by the City. The original and reply briefs of the appellee were cogent and persuasive. The petition for the award of fees, and its substantiating materials, were similarly persuasive.

Conclusion. For these reasons, we approve the petition by appellee Malvina Monteiro in full and order the award of appellate attorneys' fees in the amount of \$284,420 and the award of appellate costs in the amount of \$13,929.33, for a total of \$298,349.33.

By the Court (Mills¹, Sikora
& Rubin, JJ.),

Arena M. Wong
Assistant Clerk

Entered: October 10, 2012.

¹ Justice David A. Mills, deliberated upon and concurred in, the present order before his retirement from the court on October 8, 2012.