

1/31/80

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 74-1448
)	
GENERAL SERVICE)	
ADMINISTRATION,)	
)	
Defendant:)	
_____)	

REPOSNE TO PLAINTIFF'S NOTICE
OF FILING ON JANUARY 15, 1980

Pending before this Court is plaintiff's application for attorneys' fees and costs. The defendant has strenuously argued plaintiff is not a prevailing party and as such is not entitled to attorneys' fees or costs. The defendant has also argued that even if the Court determines plaintiff prevailed, the Court should exercise its discretion to disallow attorneys' fees. Finally, the defendant has argued that even if an award of attorneys' fees is appropriate, the hourly rate has not been properly calculated and the number of hours claimed is inordinately high.

The defendant firmly maintains that it is unnecessary for the Court to reach the third part of its argument in that plaintiff is clearly not a prevailing party or, alternatively, the Court should deny attorneys' fees in its discretion.

Nevertheless, plaintiff's counsel has now filed another affidavit revising his number of hours. Lest the defendant's position with respect to the hourly rate and number of hours plaintiff claims be lost in the unnecessarily voluminous and redundant submissions of the plaintiff, the defendant would like to take this opportunity to reiterate its position initially advanced as to the calculation of the hourly rate and hours claimed. Memorandum filed August 10, 1979, at 13-15.

If the Court should find it necessary to award fees over the defendant's opposition, the defendant respectfully renews its request to engage in a limited amount of discovery in order to obtain information which it needs to challenge the hourly rate and the number of hours claimed. In initially opposing plaintiff's request for \$85 an hour for over 340 hours, the defendant specifically challenged the factual underpinnings of the claim pointing out only the most glaring of errors in the calculation. The plaintiff's response was to revise his affidavit. Clearly, the assessment of fees is aided by the adversary process and accordingly the defendant respectfully reserves the right to challenge the hourly rate and number of hours claimed.

Respectfully submitted,

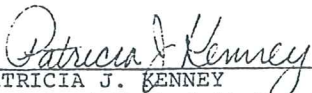
CHARLES F. C. RUFF
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ROYCE C. LAMBERTH
Assistant United States Attorney

PATRICIA J. KENNEY
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Response to Plaintiff's Notice of Filing on January 15, 1980 has been made upon plaintiff by mailing a copy thereof to plaintiff's counsel, James H. Lesar, Esquire, 910 16th Street, NW., #600, Washington, D. C. 20006, on this 31st day of January, 1980.



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