



with Mr. Weisberg whereby we would pay the rate of \$30.00 an hour for his time.

(See Attachment 1, May 24, 1978 Hearing, Tr., p. 3) In light of this there can be no doubt that the consultancy arrangement contemplated that plaintiff would be paid on an hourly basis and that his fee was not in any way subject to a condition that he first show that he had "substantially prevailed" in this litigation.

Defendant's attempt to falsely create a condition to the payment of the consultancy fee which never existed demonstrates once again the bad faith nature of the government's response to this litigation.

Plaintiff does not have to demonstrate that he has "substantially prevailed" in order for this Court to be able to order defendant to pay plaintiff what it owes him. This Court can issue such an order as an exercise of its general equity powers.

It is a maximum of equity that "equity will not suffer a wrong to be without a remedy." This maxim has been described as "probably the most important of the principles which are addressed to the court or chancellor." 27 Am. Jur. 2d § 120, citing Independent Wireless Teleg. Co. v. Radio Corp., 279 U.S. 459 and various state cases.

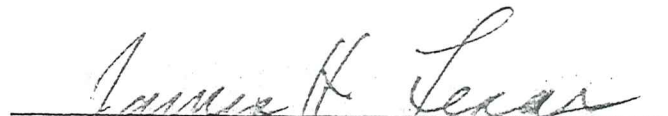
Without question, a wrong has been done here. Plaintiff, 65 years old and suffering from serious circulatory problems, acquiesced in a proposal which was put forth by the defendant and sanctioned by the Court. Against his own personal preferences, plaintiff expended a considerable amount of time on his consultancy obligation, time he would rather have devoted to other work more important to him.

Having done this work, plaintiff is entitled to be paid for it at the rate of \$75.00 per hour offered by defendant's counsel, Mrs. Lynne Zusman, an offer which plaintiff accepted. Alternatively, plaintiff is entitled to compensation at the customary hourly

rate which he receives for work done in those fields in which he is a subject area expert. As plaintiff's May 18, 1978 affidavit states, the minimum he receives for such services is \$75.00 per hour. (A copy of this affidavit is attached to Plaintiff's Motion for an Order Requiring Defendant to Pay Consultancy Fee).

Accordingly, this Court should order defendant to pay plaintiff the sum which is owed him for his work as its consultant.

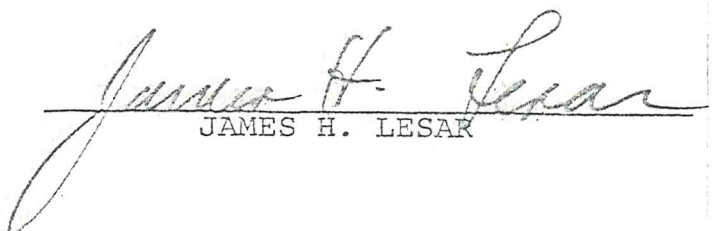
Respectfully submitted,

  
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JAMES H. LESAR  
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Washington, D.C. 20006  
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of June, 1979, mailed a copy of the foregoing Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for an Order Requiring Defendant to Pay Consultancy Fee to Ms. Betsy Ginsberg, Attorney, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

  
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JAMES H. LESAR

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

WEISBERG :  
 :  
 vs : CA NO. 75-1996  
 :  
 DEPARTMENT OF JUSTICE :

Wednesday, May 24, 1978

The above-entitled cause came on for Hearing at  
11:15 a.m., before THE HONORABLE JUNE L. GREEN.

APPEARANCES:

On Behalf of the Plaintiff:

JAMES LESAR, Esq.

On Behalf of the Defendant:

BETSY GINSBERG, Dept. of Justice  
LYNN ZUSMAN, Dept. of Justice  
WILLIAM G. SCHAFFER, Dept. of Justice

NICHOLAS SOKAL  
Official Court Reporter  
Rm. 4800-F, U. S. Courthouse  
Washington, D. C. 20001

Copy for:  
Plaintiff



P R O C E E D I N G S

MS. GINSBERG: Good morning, Your Honor. We are obviously here and Mr. William Schaffer, the Deputy Assistant Attorney General is here as you suggested would be helpful and he is prepared to discuss this issue of consultancy fee.

THE COURT: Good.

MR. SCHAFFER: Good morning, Your Honor.

Your Honor, as I understand the difficulty that has arisen over the consultancy arrangement it relates primarily to the question of hourly rate. It is true that there was discussion in my office with counsel, and Mr. Weisberg, representatives of the U.S. Attorney's Office, and other components of the Justice Department wherein efforts to overcome a log-jam in the argument of who had the burden of providing certain information that in view of Mr. Weisberg's clear expertise we felt that it would be expedient to have Mr. Weisberg prepare for us certain lists.

There were several ways to do this suggested. We offered Mr. Weisberg office space and secretarial space. He pointed out that his health really precluded his traveling back and forth to Washington. We offered to send paralegals to his home and he said that wouldn't be necessary, that he could expeditiously with the materials he had in his house compile the information that we needed which essentially was a list and an explanation of why the items on the list were in the public domain.

We did say, we proposed we would enter in an arrangement

with Mr. Weisberg to pay him for the time he spent on that. No rate was discussed at that meeting and no other details of the contract. I understand there were subsequent discussions between Mr. Lesar and Mrs. Zusman on the subject. When I became aware that there was a dispute or misunderstanding concerning the hourly rate that we could pay we had a meeting with the Assistant Attorney General about the matter and agreed, that is to say, she authorized us to enter into arrangement with Mr. Weisberg whereby we would pay the rate of \$30.00 an hour for his time.

Now in suggesting that rate I don't mean to imply in any way that that is all that Mr. Weisberg's time is worth. He is clearly an expert in the subject matter but rather the rate is dictated by precedent and the rate, I suppose everybody who works for the government is underpaid, that the rate that we have paid similarly qualified experts in other cases, specifically in, and I can mention this because it is part of a court sanctioned settlement in Adams vs Califano, a mammoth civil rights litigation of which Your Honor may be aware, there were two experts who put in a substantial amount of time -- these are people with advanced degrees in their subject areas, people with many years of experience in the civil rights field, and they were doing monitoring and reporting functions and the rate that was agreed to pay these people was \$20.00 an hour. We felt though because of the dispute, because the time involved here was shorter and just in an effort to really move this litigation along and resolve current unresolved



problems that we would pay a higher rate and rather than get into any kind of negotiation with Mr. Weisberg we had agreed, that the Assistant Attorney General had agreed, that we could pay \$30.00 an hour, we would present that rather than start at \$20.00 and go up or anything like that. We offered to meet with Mr. Lesar but I guess his schedule didn't permit it and as far as I am aware this is where the matter now stands.

I am also advised that there may be --we haven't yet seen, I understand Mr. Weisberg has done some of the work-- we haven't seen anything and there is some concern by the attorneys handling the case as to whether the work that he is doing is really responsive to what we had in mind.

THE COURT: Well, it sounds as though it is all wide open at the moment, doesn't it?

MR. SCHAFFER: I would say that the question of what it is that was done and how many hours are involved is wide open. I don't think that the rate is something that is wide open, I frankly feel our hands are tied in this.

THE COURT: I guess they have told you the Court doesn't consider it an adequate amount and I might say the Court had indicated, or thought that \$50.00 was a minimum figure.

I gather from papers that have been filed and received yesterday, I don't know whether you received them or not, that plaintiff does not consider that as adequate. So there we are.

MR. SCHAFFER: The situation we are in, Your Honor, and it is somewhat of a depression mentality, I guess. When we retain private attorneys in our conflict of interest situations where we feel we can't represent them, we try very hard to retain the attorneys at a rate of \$60.00 an hour. Now the attorneys who have been handling these cases representing the former attorney general and former White House staff members, former cabinet officials, are among the most prestigious attorneys in Washington and New York and I am sure their normal commercial hourly rate is many, many times what we pay them. It just is a practical problem.

THE COURT: How many have actually accepted \$60.00 an hour?

MR. SCHAFFER: I can't tell you exactly; I can tell you a far majority have.

THE COURT: I believe I know a few of them who have not.

MR. SCHAFFER: I cannot give you numbers, I can get you that figure --

THE COURT: --I don't think it is material.

MR. SCHAFFER: Well, I don't either, Your Honor, I just mention it by way of an example.

THE COURT: The total figures I see at the end of these cases doesn't seem to be very close to that. I frankly feel that this whole thing started, I believe, in my chambers when the offer was made of what I thought was most unusual and splendid idea to



get this case resolved for everybodys' benefit and at that time the offer was made to Mr. Weisberg to do these and he was very hesitant to accept. He said he felt the Court talked him into it so that is why the Court feels rather responsible and here we have almost the end of May and the matter unresolved for this length of time. I think that the time of everybody concerned in the case is worth more than that and certainly although the Court is not paid on a hourly basis, every time it spends more than it is called for on one case some other case suffers. And I think that somewhere along the line either a fair and reasonable figure is agreed to be paid the man or the whole deal is off and the whole department will have to comply with doing what they were required to do in the first place, and forthwith. Now, you take the choice.

MR. SCHAFFER: I understand, Your Honor, and I certainly agree with what Your Honor said about saving time and it was really that that prompted our fishing for a way to break the log-jam in the meeting I described in my office.

I must say that we have offered to meet with Mr. Lesar.

THE COURT: I am sure you do know that when these cases are finished they are entitled to expenses, attorneys' fees, and those things which are submitted to the Court to act on?

MR. SCHAFFER: I understand that, Your Honor.

THE COURT: Do you imagine it isn't going to show up in that bill if Mr. Lesar has to do all this work himself?