

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART P

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EAST RIVER HOUSING CORP.,

Petitioner

Index No. 52689/2012

- against -

DECISION/ORDER

STEVEN GILBERT *et al.*,

Respondent.

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Present:

Hon. Jack Stoller
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Petitioner’s motion.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Supplemental Affidavits Annexed.....	1
Affirmation in Opposition.....	2
Reply Affirmation.....	3

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

By a decision dated April 25, 2013, the Court granted Petitioner’s motion seeking a judgment for attorneys’ fees to the extent of restoring the matter for a hearing. The Court held the hearing.

At the hearing, Petitioner’s counsel offered evidence of a long and extensive career of more than thirty years in the field of landlord/tenant law, entailing work as a partner and senior partner in firms with an enduring presence in New York County Housing Court during that time, litigating hundreds of cases, and lecturing at judicial conferences before Civil and State courts, the Department of Housing Preservation and Development of the City of New York (“HPD”), and the

Division of Housing and Community Restoration (“DHCR”). Petitioner’s counsel is a member of the New York County Lawyers’ Association (“NYCLA”), the New York State Bar Association, the Jewish Lawyers Guild. Respondent’s opposition does not raise any fact issue as to Petitioner’s counsel’s experience, ability and reputation.

Petitioner’s counsel avers that his billing rate is \$490.00 an hour as of 2013, \$470.00 an hour for the billing year 2012, and \$450.00 an hour for the billing year 2011. The Court may make a determination as to the reasonableness of this rate without reference to expert testimony. TAG 380 LLC v. Estate of Howard P. Ronson, 89 A.D.3d 411, 412 (1st Dept. 2011), *leave to appeal denied*, 18 N.Y.3d 804 (2012). The Court may be its own expert with regard to the reasonableness of hourly billing rates for attorneys. Delgado v. Delgado, 160 A.D.2d 385, 386 (1st Dept. 1990). Based upon records the Court has seen with regard to billing rates for landlord/tenant attorneys with similar experience in New York County, the Court finds that Petitioner’s counsel’s billing rates are reasonable. See Nestor v. Britt, 16 Misc.3d 142A (Civ. Ct. N.Y. Co.), *aff’d*, 19 Misc.3d 142A (App. Term 1st Dept. 2008), *leave to appeal denied*, 2008 NY Slip Op.91327U (1st Dept. 2008) (a rate of \$365.00 an hour for a junior partner at a landlord/tenant firm in New York County with twelve years’ experience is not unreasonable).

However, the complexity of the issues involved is part of the consideration Courts are to take into account when awarding attorneys’ fees. Kessler v. Kessler, 33 A.D.2d 42, 49 (2nd Dept. 2006), *appeal dismissed*, 8 N.Y.3d 968 (2007). This case involved a straightforward dispute over Respondent’s possession of a dog at the subject premises in violation of the proprietary lease, about which there was no genuine fact dispute and a matter requiring no inquiry into complex legal issues such that the Court awarded the Respondent summary judgment after he cured the

condition and got rid of the dog. Accordingly, the Court reduces the hourly rate sought to \$420.00 an hour for the duration of the proceeding.

Petitioner introduced into evidence time records from the commencement of the action in December 2011 through April 2013.¹ For that period, Petitioner's counsel billed approximately 73 hours.² Given the history and the length of the case, the Court finds these hours reasonable, except for 14.95 hours which time records³ show Petitioner's counsel was likely working on a proceeding Respondent had commenced against Petitioner in another forum concerning human rights complaints and a subsequent Article 78 proceeding. Petitioner's counsel conceded in his testimony that he was unsure what he was working on during those periods.⁴

When services are not described specifically enough to permit a determination whether they pertain to issues on which plaintiffs prevailed, were necessary and not excessive or duplicative, and are commensurate with the amounts claimed, the Court may disallow or reduce claims for attorneys' fees based upon such services. Measom v. Greenwich & Perry St. Hous. Corp., 193 Misc.2d 741, 743 (Civ. Ct. N.Y. Co. 2002), *leave to appeal dismissed*, 99 N.Y.2d 608 (2003). The Court thereby reduces Petitioner's counsel's billable hours by 14.95, leaving a total number of billable hours of 58.05. An hourly rate of \$420.00 multiplied by 58.05 hours yields a

¹ Although Petitioner's counsel entered into evidence at Petitioner's Exhibit 4 a billing register showing fees and costs for May 2013 totaling \$2,303.00, it is impossible to determine what these fees and costs are for. Accordingly, the Court is not awarding these costs.

²This amount does not reflect the 6 hours Petitioner's counsel is requesting for the attorneys fees hearing in court.

³See Exhibit 4.

⁴January, June and August 2012

total of \$24,570.00. In addition to the amount on the billing records, Petitioner seeks a judgment for the hearing, which the Court awards at a rate of \$420.00 an hour for six hours, for a total of \$2,520.00.

These amounts are separate from the fees billed for other attorneys at Petitioner's counsel's office who appeared and worked on this proceeding. Other attorneys in Petitioner's counsel's office, who each have a different billing rate and appear on Petitioner's counsel's time records, collectively billed 9.7 hours on this matter. However, since no testimony was offered with regard to their years of practice or level of experience, the Court finds a billing rate of \$225.00 an hour to be an appropriate hourly rate to award. See Delgado, supra, 160 A.D.2d at 386. The 9.7 billable hours for these other attorneys was comprised mostly of court appearances and preparation as well on legal research. The Court finds this amount reasonable and awards \$225.00 an hour for 9.7 hours for a total of \$2,182.50.

The sum of all the amounts that the Court awards above for attorneys fees is \$29,272.50.

As for the costs billed, Petitioner seeks additional fees for legal assistant services rendered as well as other disbursements described on the invoices as: postage, photocopies, filing fees, process service, travel and transportation, word processing, research, and other miscellaneous items. The legal assistants billed a total of 6.5 hours at a rate of \$150.00 per hour. The Court reduces the hourly rate to \$75.00 per hour and given the length of the proceedings, the multiple court dates, filings, and adjournments the Court finds 6.5 hours to be reasonable. At a rate of \$75.00 per hour, the total amount awarded for the work of legal assistants is \$487.50.

Petitioner seeks \$837.27 in other disbursements. The Court finds this amount excessive given the court file and motion practice and thereby reduces this amount to \$327.29. Petitioner

also seeks \$217.38 in travel and transportation costs. The Court disallows billing for travel or meal times. See Pinkston v. Weinberg, 97 A.D.2d 550, 551 (2nd Dept. 1983).

The sum of all the amounts that the Court awards above, then is \$30,087.29. The Court therefore awards Petitioner a money judgment against the Respondent in the amount of \$30,087.29.

The parties are directed to pick up their exhibits within 30 days or they will be sent to the parties or destroyed at the Court's discretion and in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: New York, New York
December 30, 2013



HON. JACK STOLLER
J.H.C.