UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BONDED LIFE FUND, LLC,

Plaintiff,

-v-

AXA EQUITABLE LIFE INSURANCE CO.,

Defendants.

13 Civ. 5451 (KBF)

MEMORANDUM DECISION & ORDER

KATHERINE B. FORREST, District Judge:

On August 5, 2013, plaintiff Bonded Life Fund, LLC ("Bonded Life" or "plaintiff") filed this action against defendant AXA Equitable Life Insurance Company ("AXA" or "defendant") pursuant to Court's diversity jurisdiction, seeking to recover attorneys' fees incurred in defending its ownership over a certain insurance policy. (Compl. ¶¶ 26-37, Aug. 5, 2013, ECF No. 1.)[1]

On October 23, 2013, defendant filed both a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) (ECF No. 13) and a motion for sanctions pursuant to Federal Rule of Civil Procedure 11. (ECF No. 16.) On February 28, 2014, the Court granted both motions and Ordered defendant to submit a calculation of the costs and fees associated with litigating its motions. (ECF No. 30.) On March 14,

[1] On October 2, 2013, plaintiff filed an amended Complaint. (ECF No. 6.) On October 8, 2013, this action was reassigned from The Honorable Paul G. Gardephe to the undersigned.

2014, defendant submitted its calculation (ECF No. 31); on March 21, 2014, plaintiff filed its response. (ECF No. 32.)[2]

For the reasons set forth below, the Court hereby ORDERS plaintiff to pay $20,000 as a sanction for filing this frivolous action, pursuant to Rule 11.

I. LEGAL STANDARD

"Rule 11 was designed to curb the effect of baseless litigation." Pentagen Techs. Int'l Ltd. v. U.S., 172 F. Supp. 2d 464, 473 (S.D.N.Y. 2011) (citing Business Guides, Inc. v. Chromatic Commc'ns Enters., Inc., 498 U.S. 533 (1991)); see Caisse Nationale de Credit Agricole-CNCA, N.Y. Branch v. Valcorp, Inc., 28 F.3d 259, 266 (2d Cir. 1994) (The Rule's "principal objective . . . is not compensation of the victimized party but rather the deterrence of baseless filings and the curbing of abuses."); Margo v. Weiss, 213 F.3d 55, 64 (2d Cir. 2000); Hoatson v. New York Archdiocese, No. 05 Civ. 10467, 2007 WL 431098, at *9 (S.D.N.Y. Feb. 8, 2007) ("The purpose of Rule 11 is to 'deter baseless filings in district court . . . and streamline the administration and procedure of the federal courts.'") (citing Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990)).

District courts enjoy broad discretion in determining "appropriate and reasonable sanctions" under the Rule. O'Malley v. New York City Transit Auth., 896 F.2d 704, 709 (2d Cir. 1990) (citation omitted); see Caisse Nationale de Credit Agricole-CNCA, 28 F.3d at 266 (explaining that a district court has broad discretion

[2] For purposes of this Order, familiarity with the basic factual background of this case is assumed. A detailed factual background may be found in the Court's February 28, 2014 decision. (ECF No. 30.)

to determine the appropriate monetary award). As one possible sanction, the Rule allows a district court to issue "an order directing payment to the movant of part or all of the reasonable attorney's fees and others expenses directly resulting from the violation." Fed. R. Civ. P. 11(c)(4).

When imposing fees and costs, a court should "exercise [its] discretion to award only that portion of a defendant's attorney's fee thought to be reasonable to serve the sanctioning purpose of the Rule." Eastway Const. Corp. v. City of N.Y., 821 F.2d 121, 123 (2d Cir. 1987) (citations omitted); see Schottenstein v. Schottenstein, No. 04 Civ. 5851, 2005 WL 912017, at *2 (S.D.N.Y. Apr. 18, 2005) ("[B]ecause the purpose of imposing Rule 11 sanctions is deterrence, a court should impose the least severe sanctions necessary to achieve the goal."). Indeed, "[a] sanction must be proportioned to the public interest in the affected proceedings[] and bear relation to the amounts involved." In re Sept. 11th Liability Ins. Coverage Cases, 243 F.R.D. 114, 131 (S.D.N.Y. 2007) (taking into account the public interest involved, the judicial and attorney resources wasted, and the amount at stake in the litigation). Additionally, a court may temper the amount imposed based on a transgressor's ability to pay. Oliveri v. Thompson, 803 F.2d 1265, 1281 (2d Cir. 1986) (citation omitted).

As explained in this Court's prior Order, the Advisory Committee notes suggest consideration the following when making a determination on sanctions:

> (1) Whether the improper conduct was willful or negligent; (2) whether it was part of a pattern of activity, or an isolated event; (3) whether it infected the entire pleading, or only one particular count or defense; (4)

> whether the person has engaged in similar conduct in other litigation; (5) whether it was intended to injure; (6) what effect it had on the litigation process in either time or expense; (7) whether the responsible person is trained in law; (8) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; and (9) what amount is needed to deter similar activity by other litigants.

See Rule 11(c) Advisory Comm. Notes (1993).

II. DISCUSSION

In this case, defendant provides an affirmation claiming that it incurred a total of $30,576.60 in attorneys' fees in connection with its Rule 11 and Rule 12(b)(6) motions. (See Affirmation of Larry H. Krantz in Support of Defendant's Application for Attorneys' Fees and Expenses Pursuant to Rule 11 ("Krantz Aff.") ¶ 28, Mar. 14, 2014, ECF No. 31.) Specifically, defendant alleges that lead attorney Larry Krantz billed 11 hours at an hourly rate of $575, special counsel Wendy Powell billed 64.7 hours at an hourly rate of $420, and paralegal Alexis Northwood billed 3.8 hours at an hourly rate of $125. (Id. ¶ 28.) Plaintiff's counsel charged plaintiff its 2008 hourly rates and provided an additional discount of 10% as a courtesy to its client. (Id. ¶ 13.)

In support of its claim, defendant provides an explanation of Krantz and Powell's credentials. (See id. ¶¶ 6-8.) Krantz is a founding partner of Krantz & Berman LLP, a former federal prosecutor in the Eastern District of New York, and has over 30 years of trial and appellate-level experience. (Id. ¶ 6.) He is a Fellow of the American College of Trial Lawyers, is a member of a number of committees, and is co-author of a legal treatise. (Id. ¶ 7.) Powell has been practicing law for nearly

20 years. (Id. ¶ 8.) She was a law clerk in the Third Circuit Court of Appeals and U.S. District Court. (Id.) She is a former federal prosecutor, and also worked at a large New York City law firm prior to joining Krantz & Berman LLP. (Id.)

Based on the Court's review of the applicable case law, its own knowledge of the rates typically charged by lawyers of like experience in this district, plaintiff's counsel's robust legal experience, and the strong work product submitted in connection with this action, the Court finds the hourly rates sought by defendant to be acceptable. See Farbotko v. Clinton Cnty. of N.Y., 433 F.3d 204, 208-09 (2d Cir. 2005) (explaining that a court must engage in a "case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant's counsel," which may include taking "judicial notice of the rates awarded in prior cases[,] the court's own familiarity with the rates prevailing in the district," and evidence proffered by the parties). Similarly, the Court has reviewed the contemporaneous billing records submitted by plaintiff in support of its sanctions request and finds the hours for which payment is sought adequately justified under the circumstances. (See Krantz Aff., Ex. 1.) See New York State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1147-48 (2d Cir. 1983) (holding "that contemporaneous time records are a prerequisite for attorney's fees in this Circuit") (citation omitted).

Plaintiff contends that $30,576.60 is too large a sanction under the circumstances. First, plaintiff argues that the basis for sanctions, Rule 13 of the Federal Rules of Civil Procedure, is imprecise: "Rule 13 jurisprudence is highly

subjective and the line between a barred [C]omplaint and a permissible one is blurred." (Memorandum of Law in Response to Defendant's Request for Attorneys' Fees on Rule 11 Sanction Motion ("Pl.'s Mem.") at 2, Mar. 21, 2014, ECF No. 32.) Plaintiff explains that the Court's sanction should be tempered because its actions were taken in good faith and its misconduct was unintentional. (Id. at 2, 5-6.)

The Court rejects this argument. Put simply, this case was not a close call. Rather, the allegations contained in the Complaint – namely, that AXA improperly revealed Bonded Life's ownership interest in the life insurance policy at issue – clearly arises from the same set of facts and circumstances that gave rise to the prior related state and federal actions. This fact is evident on the face of the Complaint. The filing of such a frivolous lawsuit is the precise type of conduct Rule 11 seeks to prevent. See Rodick v. City of Schenectady, 1 F.3d 1341, 1350 (2d Cir. 1993) ("As we have repeatedly held, Rule 11 is targeted at situations where it is patently clear that a claim has absolutely no chance of success under the existing precedents, and where no reasonable argument can be advanced to extend, modify[,] or reverse the law as it stands.") (internal quotations omitted).

Plaintiff also argues that the sanction proposed by defendant is more than is necessary to sufficiently deter similar such conduct in the future. (Pl.'s Mem. at 4-7.) In support of its claim, plaintiff cites one case from the Western District of New York, one case from the Eastern District of Wisconsin, and one case from the Eastern District of New York that is almost 30 years old. (Pl.'s Mem. at 5-6.)

Plaintiff does not provide the Court with any recent case law supportive of its point from either the Second Circuit or this district.

Nonetheless, the Court finds some merit to plaintiff's argument that awarding defendant's full amount of fees incurred would be more than is necessary to sufficiently deter similar such conduct in the future. See Pavelic & LeFlore v. Marvel Entm't Grp., 493 U.S. 120, 126 (1996) (explaining that the purpose of Rule 11 is to sanction the offending party, not to reimburse the opposing party). While there are cases in this district that have awarded fees far in excess of $30,576.60, see, e.g., Gurary v. Winehouse, 270 F. Supp. 2d 425, 432 (S.D.N.Y. 2003) (awarding $215,050.83 where the litigation spanned over five and a half years, consisted of four applications to the district court, three plenary appeals to the Court of Appeals, and opposition to two petitions for certiorari to the United States Supreme Court and where the moving party achieved total success); In re Sept. 11 Liability Ins. Coverage Cases, 243 F.R.D. at 130-31 (imposing a $750,000 sanction, half of which went to reimbursing the Port Authority for extra attorneys' expenses incurred; the case "involv[ed] important and large insurance companies and law firms [and so the Court determined that] a smaller award would be insufficient to deter future misconduct, or similar conduct by those similarly situated"), the Court, in its discretion, determines that the imposition of a sanction in excess of $30,000 is unnecessary to achieve deterrence in this case. Rather, given the relatively small-scale, short-lived nature of this litigation, as well as plaintiff's counsel's otherwise acceptable conduct, the Court hereby imposes a sanction of $20,000, slightly less

than two-thirds the amount in fees defendant incurred in defending this action. See Levine v. County of Westchester, 164 F.R.D. 372, 375 (S.D.N.Y. 1996) (explaining that "the Court must be mindful of the fact that a concededly frivolous claim should not reasonably require an enormous expenditure of time and effort to refute"). The Court finds this amount to be fair and reasonable under the circumstances. See Eastway, 821 F.2d at 124 (explaining that the amount of Rule 11 sanctions need not be the equivalent of the lodestar amount); see, e.g., Hoatson, 2007 WL 431098, at *9-16) (declining to award defendants full reimbursement of the attorneys' fees associated with the motions to dismiss and instead awarding an $8,000 sanction for frivolous claims).

III. CONCLUSION

For the reasons set forth above, plaintiff's counsel is sanctioned $20,000 for filing this frivolous action.[3] The sanction shall be used to repay the litigation fees and costs incurred by defendant's counsel in defending this action.

The Clerk of Court shall enter judgment accordingly and terminate this case.

SO ORDERED.

Dated: New York, New York
March 31, 2014

KATHERINE B. FORREST
United States District Judge

[3] "Sanctions for the legal insufficiency or frivolousness of the [C]omplaint must run against the attorney alone." Chien v. Skystar Bio Pharm. Co., 256 F.R.D. 67, 72 (D. Conn. 2009) (citing, inter alia, Fed. R. Civ. P. 11(c)(5)).