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### **Appellees' Brief in Support of Attorneys' Fees and Costs, Becovic v. City of Chicago, 694 N.E.2d 1044 (Ill.App. 1 Dist. 1997) (No. 1-97-1151)**

F. Willis Caruso

*John Marshall Law School, 6caruso@jmls.edu*

John Marshall Law School Fair Housing Legal Clinic

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

HUSEIN BECOVIC and ESE BECOVIC, )  
 )  
 Respondents-Appellants )  
 )  
 v. )  
 )  
 CITY OF CHICAGO, CITY OF )  
 CHICAGO COMMISSION ON HUMAN )  
 RELATIONS, CLARENCE N. WOOD, )  
 ROBERT HALL, and THE JOHN )  
 MARSHALL LAW SCHOOL FAIR )  
 HOUSING LEGAL CLINIC, )  
 )  
 Complainant-Appellees. )  
 )

Appealed from The City of Chicago Commission on Human Relations, 94-H-39,  
 Clarence N. Wood, Commissioner  
 Affirmed by The Circuit Court of Cook County, Chancery Division Gen. No. 96  
 CH 1155, Honorable Lester D. Foreman, Presiding Judge

APPELLEES' BRIEF IN SUPPORT OF ATTORNEYS' FEES AND COSTS

F. WILLIS CARUSO  
 JOSEPH R. BUTLER  
 BRENNAN BINNS, 711  
 THE JOHN MARSHALL LAW SCHOOL  
 FAIR HOUSING LEGAL CLINIC  
 28 E. Jackson Blvd., Suite 500  
 Chicago, IL 60604  
 312-786-2267

Attorneys for Appellees Robert Hall and  
 The John Marshall Law School  
 Fair Housing Legal Clinic

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

HUSEIN BECOVIC and ESE BECOVIC,	)	Appeal from The City of Chicago
	)	Commission on Human Relations
Respondents-Appellants	)	
	)	94-H-39
v.	)	
	)	Clarence N. Wood, Commissioner
CITY OF CHICAGO, CITY OF	)	
CHICAGO COMMISSION ON HUMAN	)	
RELATIONS, CLARENCE N. WOOD,	)	The Circuit Court of Cook County,
ROBERT HALL, and THE JOHN	)	Chancery Division
MARSHALL LAW SCHOOL FAIR	)	
HOUSING LEGAL CLINIC,	)	Gen. No. 96 CH 1155
	)	
Complainant-Appellees.	)	Honorable Lester D. Foreman,
	)	Presiding Judge

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THE JOHN MARSHALL LAW SCHOOL  
FAIR HOUSING LEGAL CLINIC  
28 E. Jackson Blvd., Suite 500  
Chicago, IL 60604  
312-786-2267

Attorneys for Appellees Robert Hall and  
The John Marshall Law School  
Fair Housing Legal Clinic

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II.

NATURE OF THE CASE

The Complainant-Appellee Robert Hall and his attorneys, The John Marshall Law School Fair Housing Legal Clinic, seek to have the Appellate Court of Illinois, First Judicial District, affirm the decision of the Circuit Court of Cook County, Chancery Division, upholding an award of attorneys' fees by the City of Chicago Commission on Human Relations. The Commission found that Respondents-Appellants Husein and Ese Becovic intentionally discriminated against the Complainant on the basis of his disability by refusing him a reasonable accommodation. The Commission awarded \$14,200.00 in attorneys' fees and \$435.55 in costs to the Complainant. The Respondents appealed to the Chancery Court, who affirmed the Commission's award as a proper exercise of judicial discretion. The Respondents petition this Court for review of the lower court decision. The Appellees respectfully request that the award of attorneys' fees by the Commission be affirmed and that the Respondents be ordered to pay attorneys' fees and costs in the amount of \$14, 630.55.

### III.

#### STATEMENT OF FACTS

Complainant-Appellee Robert Hall ("Complainant") is legally blind and requires the aid of a seeing eye dog in his daily activities. In March 1994, Complainant Hall responded to an ad in the newspaper and contacted the Respondent-Appellants ("Respondents") regarding an apartment for rent. (R. at 136). Following a phone inquiry, the Respondents agreed to show the Complainant a rental unit at 6021 North Winthrop Avenue, Chicago, Illinois. (R. at 138).

On March 28, 1994, the Complainant arrived at 6021 North Winthrop Avenue accompanied by his brother, his brother's girlfriend, and his seeing eye dog, Upton. (R. at 139). Shortly after he entered the premises, the Complainant was confronted near the elevator by Respondent Ese Becovic, who stated repeatedly, "no pets!" (R. at 142). The Complainant responded by informing Respondent Becovic that he was legally blind and that Upton was a seeing eye dog. In addition, the Complainant presented the Respondent with an identification card to that effect. (R. at 140). Nonetheless, the Respondent stated that she maintained a "no pet" policy in her building and that if she allowed one tenant to have a dog, all the tenants would want dogs. (R. at 140). The Complainant was forced to leave.

On March 31, 1994, Complainant Hall filed a complaint with the City of Chicago Commission on Human Relations ("Commission"). (R. at 46). He alleged that the Respondents discriminated against him on the basis of his disability in violation of section 420.180 of the Commission's Fair Housing Ordinance. On December 4, 1994, a hearing was held, the outcome of which was a finding that Respondent Ese Becovic was

not credible when she stated that she did not know the Complainant was blind. (R. at 143). On June 21, 1995, the Commission issued its Final Ruling, awarding the Complainant \$2,500.00 in compensatory damages and assessing a \$250.00 civil penalty against Respondents. (R. at 156). In addition, the Complainant was granted the right to petition for attorneys' fees.

The Complainant timely filed a Request for Reasonable Attorneys' Fees and Costs. After input from the hearing officer and considerable deliberation, the Commission awarded \$14,200.00 in attorneys' fees and \$430.55 in costs. (R. at 366). The Respondents petitioned the Circuit Court of Cook County, Chancery Division, for review of the award. (R. at 3). The Chancery Court upheld the award, stating that it was not for that court to "judge whether or not the fees [were] reasonable" and that the record support the Commission's award. (R. at 30). On March 19, 1997, the Respondents filed a Notice of Appeal to this Court.

#### IV.

#### ISSUES PRESENTED FOR REVIEW

1. Whether an award of attorneys' fees is proper in a case in which the City of Chicago Commission on Human Relations assesses a civil penalty and awards compensatory damages to a prevailing Complainant?
2. Whether the City of Chicago Commission on Human Relations abused its discretion in awarding attorneys' fees?



STANDARD OF REVIEW

The Illinois Human Rights Act specifically states that upon finding a civil rights violation, the Illinois Human Rights Commission may require that reasonable attorneys' fees be paid to a complainant. Ill. Rev. Stat., ch. 68, para. 8-108(G) (1987); Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 494; 672 N.E.2d 1136, 1147 (1996). Illinois courts have held that local commission ordinances espouse the same purpose as the Act, and that local commissions also have the ability to award attorneys' fees to successful complainants. Atkins v. City of Chicago Comm'n on Human Relations, 281 Ill. App. 3d 1066, 1077-1079; 667 N.E.2d 664, 670-671 (1st Dist. 1996). When reviewing a decision by a commission, the commission's findings and conclusions on questions of fact are held to be prima facie true and correct. Raintree, 173 Ill. 2d at 479; 672 N.E.2d at 1140. With respect to attorneys' fees, awards are reviewed under the highly deferential "abuse of discretion" standard. Shepard v. Hanley, 274 Ill. App. 3d 442, 444; 654 N.E.2d 1079, 1080 (3rd Dist. 1995).

In addition, Illinois courts reviewing the award of attorneys' fees in civil rights cases routinely look to federal civil rights case law on the matter. Atkins, 281 Ill. App. 3d at 1074, 667 N.E.2d at 668; see also Turner v. Human Rights Comm'n, 177 Ill. App. 3d 476, 486, 532 N.E.2d 392, 397 (1988); Pioneer Life Ins. Co. v. Woodward, 152 Ill. App. 3d 236, 242; 504 N.E.2d 230, 234 (1987). Under the above authorities, the City of Chicago Commission on Human Relations properly exercised its discretion in this case to determine a reasonable award of attorneys' fees based on the evidence presented, and that determination should not be disturbed on review.

VI.

ARGUMENT

A. THE AWARD OF ATTORNEYS' FEES TO THE COMPLAINANT WAS REASONABLE BECAUSE THE COMPLAINANT PREVAILED ON AN IMPORTANT LEGAL ISSUE AND RECOVERED A SIGNIFICANT JUDGMENT AGAINST THE RESPONDENTS.

1. The Complainant is a prevailing party because he succeeded on the merits of his case and as such he is entitled to reasonable attorneys' fees.

In order to qualify for an award of attorneys' fees, a plaintiff or complainant must be a prevailing party. A prevailing party is one who succeeds on an important legal issue which achieves a benefit the party sought in bringing the action, Hensley v. Eckerhart, 461 U.S. 424, 433 (1983), or one who recovers a judgment that materially alters the legal relationship between the parties, Texas State Teachers Ass'n. v. Garland Independent School Dist., 489 U.S. 782, 792-93 (1989). In short, "a plaintiff 'prevails' when actual relief on the merits of his claim . . . [modifies] the defendant's behavior in a way that directly benefits the plaintiff." Farrar v. Hobby, 506 U.S. 103, 111-12 (1992).

In this case, Complainant Hall recovered a judgment that afforded him the relief he sought by modifying the Respondents' conduct: he will no longer be discriminated against on the basis of his blindness or denied the reasonable accommodation of his seeing eye dog at any of the Respondents' nineteen properties throughout the Chicago area. This relief provided a direct benefit to the Complainant, a renter in the Chicago area, at the time of the judgment. Cf. id. at 111. Furthermore, Complainant Hall obtained \$2,500.00 in compensatory damages, and a \$250.00 civil penalty was assessed against the Respondents from whom attorneys' fees are sought. The award and penalty alter the legal relationship between the parties because the Respondents would not

otherwise have paid these amounts. See id. at 116-17 (O'Connor, J., concurring).<sup>1</sup> Because he succeeded on the merits of his claim and recovered a money judgment, the Complainant is a "prevailing party" under current civil rights law and is therefore entitled to an award of reasonable attorneys' fees.

As a matter of course, a prevailing plaintiff in a civil rights case, and in particular a fair housing case, recovers reasonable attorneys' fees. See Hensley, 461 U.S. at 429; Henry v. Webermeier, 738 F.2d 188, 192 (7th Cir. 1984); Robert G. Schwemm, Fair Housing Law and Litigation, § 25.3(5)(b) (1990). Indeed, the Commission consistently awards attorneys' fees in fair housing cases when a party has prevailed on a significant legal issue. White v. Ison, CCHR No. 91-FHO-126-5711 (July 22, 1993). Therefore, the Commission's decision to award attorneys' fees to the prevailing party in the instant case was appropriate, despite the Respondents' contention to the contrary.

2. An award of \$2,500.00 in compensatory damages and a \$250.00 civil penalty is not a nominal award.

Black's Law Dictionary defines nominal damages as a "trifling sum" awarded to a plaintiff for a mere "technical" invasion of that individual's rights. Black's Law Dictionary (6th ed. 1997). The Respondents' in this case argue that the \$2,750.00 judgment against them is a "trifling sum" because Hall initially sought \$5,000.00 in compensatory damages and a \$30,000.00 punitive damages award that was not granted. However, an award that is less than the recovery initially sought is not necessarily nominal. See, e.g., Morales v. City of San Rafael, 96 F.3d 359, 362 (9th Cir. 1996)

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<sup>1</sup> In Farrar, Justice O'Connor stated with regard to an action in which the plaintiff recovered only one dollar, "One dollar is not exactly a bonanza, but it . . . affects the defendants' behavior toward the plaintiff, if only by forcing him to pay one dollar -- something he would not otherwise have done." 506 U.S. at 116-17.

opinion amended on denial of reh'g 108 F.3d 981 (9th Cir. 1997). The Morales court held that a \$17,500.00 award was not nominal even though the plaintiff sought up to \$250,000.00 from the jury. In doing so, the court based its decision on the “stark contrast” between \$17,500.00 and the one dollar recovery by a plaintiff who requested 17 million dollars in the Farrar case. *Id.* at 363.

Likewise, in the this case the Complainant’s recovery of one half of his initial demand for compensatory damages (a 2 to 1 ratio) cannot be characterized as nominal when contrasted with the cases cited by the Respondents in support of their definition of nominal damages: Farrar v. Hobby, 506 U.S. 103 (1992) (17,000,000 to 1); Maul v. Constan et al., 23 F.3d 143 (7th Cir. 1994) (100,000 to 1); Willis v. City of Chicago, 999 F.2d 284 (7th Cir. 1993) cert. denied 510 U.S. 1071 (1994) (1,000,000 to 1).

The Complainant’s judgment is more appropriately characterized as a significant award. In fact, the Commission found that the “award of \$2,500.00 for emotional distress damages for the Complainant was intended to be a significant recovery for a clear violation of the City’s civil rights law.” (R. at 355) (emphasis added). Therefore, upon finding that Complainant Hall prevailed on the merits of his claim and that he recovered a significant judgment, the Commission properly awarded Complainant Hall reasonable attorneys’ fees.

B. EVEN IF THE COMPLAINANT’S JUDGMENT COULD BE CHARACTERIZED AS NOMINAL, THE COMPLAINANT IS ENTITLED TO REASONABLE ATTORNEYS’ FEES BECAUSE HIS AWARD IS NOT DE MINIMUS IN NATURE.

“Nominal relief does not necessarily a nominal victory make.” Farrar, 506 U.S. at 121 (O’Connor, J., concurring). The Supreme Court in Farrar held that a plaintiff who wins nominal damages is still a prevailing party. *Id.* at 112. As such, that plaintiff may

demand payment of the nominal damages in the same manner as a plaintiff who recovers a large compensatory damage award. Id. More important, such a plaintiff may also recover reasonable attorney fees. See, e.g., Shepard v. Hanley, 274 Ill. App. 3d 442; 654 N.E.2d 1079 (3rd Dist. 1995). In Shepard, the court upheld an award of \$14,297.00 in attorneys' fees to a plaintiff who recovered only one dollar in compensatory damages. Id. at 445; 654 N.E.2d at 1081. In doing so, the court relied on the record that indicated that the trial judge had carefully analyzed the plaintiff's petition for fees. Because the record showed a "well-reasoned application of judicial discretion," the award was upheld. Id. at 444; 654 N.E.2d at 1080.

The Commission's decision to award \$14,200.00 in attorneys' fees in this case (to a complainant that recovered several thousand dollars as opposed to one dollar) was likewise based on a well-reasoned application of judicial discretion. In fact, the Commission thoroughly considered the Respondents' objections to the hearing officer's recommended decision, reviewed the supporting affidavits, and reduced the number of hours requested by the Complainant by 31.9 hours. In light of this careful exercise of discretion, the Commission's award of attorneys' fees in this case does not represent an abuse of discretion and should therefore be upheld.

It has been argued that in cases in which the nominal damages represent a purely technical victory, a "reasonable" amount of attorneys' fees may be no fees at all. A court must consider three factors in determining whether a victory is strictly technical or "de minimus" in nature: "first, the difference between the judgment recovered and the recovery sought; second, the significance of the legal issue on which the plaintiff prevailed; and third, the public purpose served by the litigation." Cartwright v. Stamper,

7 F.3d 106 (7th Cir. 1993) (citing Farrar, 506 U.S. at 578-79 (O'Connor, J., concurring)).

The first factor concerns the extent of relief. Contrary to the Respondents' contention, this inquiry does not rest on the difference between the damages awarded and the amount initially requested. In fact, courts have rejected this notion. See City of Riverside v. Rivera, 477 U.S. 561, 574 (1986). Likewise, the Commission in this case rejected the Respondents' notion that attorneys' fees must necessarily be proportionate to the amount of damages that Complainant Hall recovered. (R. at 356). Therefore, the Respondents' emphasis on the fact Complainant Hall's punitive damages claim was denied is not determinative on appeal.

What is significant is that the Complainant recovered one half of the compensatory damages he sought in the amount of \$2,500.00 for emotional distress. In addition, the Commission assessed a \$250.00 civil penalty against the Respondents for their discriminatory conduct. This \$2,750.00 judgment is not insignificant. More important, if the Court were to follow the Respondents' reasoning, the result would be that civil rights plaintiffs would be denied a portion of their attorneys' fees in any case in which the fees exceeded the judgment. Such a result offends the principle underlying the award of attorneys' fees to prevailing plaintiffs in civil rights actions; namely, to enable those with meritorious civil rights claims, but limited financial means, to gain redress in courts and administrative agencies. Indeed, the important civil and constitutional rights a civil rights plaintiff seeks to vindicate "cannot be valued solely in monetary terms." Riverside, 477 U.S. at 574.

The second inquiry is the significance of the legal issue on which the Complainant prevailed. The instant case involves a significant civil right. The Commission stated:

This was an important civil rights case in which the Complainant proved the essential element of his claim -- that he was refused the opportunity to rent an apartment in a building owned by the Respondents even though he identified himself as a blind person. . . . Mrs. Becovic had the opportunity to make a reasonable accommodation for the Complainant when she learned he was blind and saw his seeing eye dog on the day he came to visit the apartment, but she refused to make any exception to their "no pet" policy. Respondents also erroneously maintained throughout the Hearing that, because they offered Complainant the apartment after he filed his Complaint with the Commission, there could be no liability.

(R. at 355). In short, there is no doubt great significance in establishing that blind persons cannot be denied the opportunity to rent apartments on the basis of their blindness. Even the Respondents concede the Commission's statement of the significance of this case by declining to address this factor of the tripartite test altogether in their brief.

The third factor of Justice O'Connor's test in Farrar is whether a public purpose is served by the litigation. In this case, the Respondents assert, without support, that "just showing that a constitutional right was infringed" does not mean that a public purpose is present. (Appellant's Br. at 8). The Supreme Court, however, has held that civil rights and constitutional plaintiffs do promote a social purpose in litigation:

Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms. . . . Congress has determined that the public as a whole has an interest in the vindication of rights conferred . . . over and above the value of a civil rights remedy to a particular plaintiff. . . . Regardless of the form of relief he actually obtains, a successful civil rights plaintiff often secures important social benefits that are not reflected in nominal or relatively small damage awards.

Riverside, 477 U.S. at 574. Other courts have placed similar emphasis on the public purpose of civil rights litigation: In Shepard, an action involving abuse of Fourth Amendment rights by police officers, the court agreed with the trial judge who found a

public purpose in the award of attorneys' fees alone because if fees were not awarded in some "significant amount, [he] would be sending a signal . . . to go ahead and [violate the constitution], because there's nothing effective anybody is going to be able to do about it." 274 Ill. App. 3d at 445; 654 N.E.2d at 1081. Similarly, in Berlak v. Villa Scalabrini Home for the Aged, an action involving a violation of the Nursing Home Care Reform Act, the court emphasized that a "public benefit occurs if the [facility] is propelled to implement any corrective policies or procedures . . . ." 284 Ill. App. 3d 231, 238; 671 N.E.2d 768, 773 (1st Dist. 1996), Appeal Denied 171 Ill.2d 562, 677 N.E.2d 963 (Jan 29, 1997). Finally, in Johnson v. LaFayette Fire Fighters Assoc., Local 472, an action involving dues paid by non-union firefighters, the court noted the public purpose of "ensur[ing] proper procedure for each future non-member prior to payment of their . . . fee." 51 F.3d 726, 731 (7th Cir. 1995).

Likewise, in this case the Commission found "a significant public purpose served by [the] litigation because it was held illegal [to refuse to] waive a no-pet rule for a blind person with a seeing eye dog so he or she [could] rent an apartment." (R. at 355). Indeed, the public purpose seems obvious. The decision has the effect of guaranteeing that a blind person seeking to rent an apartment in the Chicago area will not be denied that opportunity at any one of the Respondents' nineteen buildings and 300 units city wide. Equally significant, the Commission's decision in this matter is reported, which serves the public purpose of informing other management companies and landlords of their duty to reasonably accommodate those disabled by vision impairments.

In sum, the Respondents' argument that the Complainant's damages, if nominal, should have been found de minimus in nature fails. Furthermore, no compelling reasons



why the Commission's conclusions should amount to an abuse of discretion have been presented. Therefore, the Commission's decision regarding this matter should not be disturbed.

C. THE COMMISSION'S AWARD OF ATTORNEYS' FEES IS BASED ON A WELL-REASONED APPLICATION OF JUDICIAL DISCRETION.

1. The Respondents seek an unprecedented de novo review of the factual findings of the Commission that were held by the Chancery Court to be a proper exercise of discretion.

In Hensley v. Eckerhart, the Supreme Court articulated the role of a trial court (or administrative agency) in determining attorneys' fees awards:

We reemphasize that the district court has discretion in determining the amount of a fee award. This is appropriate in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters. It remains important, however, for the district court to provide a concise but clear explanation of its reasons for the fee award. When an adjustment is requested on the basis of either exceptional or limited nature of the relief obtained by the plaintiff, the district court should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained.

461 U.S. 424, 437 (1983). Because trial courts are more familiar with the facts involved in determining attorneys' fees, the court's (or commission's) findings on questions of fact are held to be prima facie true and correct, Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 479; 672 N.E.2d 1136, 1140 (1996), and awards are reviewed under the highly deferential "abuse of discretion" standard, Shepard, 274 Ill. App. 3d at 444; 654 N.E.2d at 1080.

In this case, the record indicates that the Commission based its award of attorneys' fees on a careful factual analysis. The Commission made a detailed review of all records, time sheets, and affidavits submitted by the Complainant's legal counsel, and

reduced the number of hours requested by the Complainant by 31.9 hours. In doing so, the Commission found that the hourly rate requested by Complainant's legal counsel was reasonable, and that the time spent was reasonable and necessary for the prosecution of the case. (R. at 357-65).

In light of this careful analysis, the Chancery Court found that the Commission's award did not represent an abuse of discretion. The Chancery Court stated:

[T]he Commission went into what each of the individual people had done and what work they had done; the Commission didn't just act as a rubber stamp but, as a matter of fact, the Commissioner went back through the services of each of the individual persons and was very circumspect in knocking off \$1995.

(R. at 16). Furthermore, the Respondents offered no reasons on appeal as to why the Commission's actions amounted to an abuse of discretion. At oral argument before the Chancery Court, the Court asked the Respondents,

[I]s there anything in this record that would cause me to say they really did not exert 193 hours? Is there anything that could cause me to say there is padding here or those kids were just going crazy and doing research they didn't have to? What can I rely on?

The Respondents answered no, admitting that there was nothing in the record to indicate that the Commission's analysis was based on inaccurate facts. (R. at 16-17).

On appeal to this Court, the Respondents now ask this Court to reject both the Commission's factual analysis and the Chancery Court's conclusion that the Commission's analysis did not involve an abuse of discretion. In doing so, the Respondents stress that the Chancery Court Judge personally felt that the amount of the award was unreasonable. Nonetheless, finding no abuse of discretion by the Commission, the Chancery Court upheld the award because a reviewing court may not substitute its judgment for that of the trier of fact. See Merchandise Nat'l Bank of

Chicago v. Scanlon, 86 Ill. App. 3d 719, 728; 408 N.E.2d 248, 255 (1st Dist. 1980).

More likely, both the statement by the Chancery Court and the reduction in the number of the Clinic's hours by the Commission demonstrate a careful consideration by each forum in arriving at the conclusion that the attorneys' fees awarded in this matter, although exceeding the damages recovered by Complainant Hall, were proper. In essence, this is the absence of an abuse of discretion. Thus, even if this Court believes the award was too generous, it should decline the Respondents' invitation to "relitigate" the facts of the case on the same grounds the Chancery Court did: "[A] court of review is not justified in disturbing the award simply because it may have made a different award."

Id.

In short, the Respondents had an opportunity to make factual arguments at the hearing. The Commission did, in fact, address the same issues raised now by the Respondents, requiring that documentary evidence be submitted to support the Complainant's request for fees.<sup>2</sup> Therefore, the Respondents' arguments before this Court that the Complainant's legal counsel reported excessive time, that as a teaching institution the Clinic had no incentive to settle this case, and that certain of the Clinic's activities are educational and therefore do not qualify for legal fees are improper at this juncture. Such arguments are paramount to asking this Court to make an unprecedented de novo review of the facts of the case.

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<sup>2</sup> The Commission requested "in the case of a public law office which does not charge fees or which charges fees at less than market rates, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise" in accordance with the Chicago Commission on Human Relations Regulations, § 240.630(a)(2).

2. The Commission's decision to award \$14,200.00 in attorneys' fees despite the denial of the Complainant's punitive damages claim was not an abuse of discretion.

In Hensley, the Supreme Court addressed the issue of what constitutes a reasonable award of attorneys' fees when a plaintiff does not recover all of the relief initially requested. 461 U.S. at 433. The Court identified two categories of partial relief. In the first category, the plaintiff presents "in one lawsuit distinctly different claims for relief that are based on different facts and legal theories." Id. at 434. Under these circumstances, fees for time spent by legal counsel pursuing distinct theories on which the plaintiff did not prevail should not be recovered. However, the second category involves cases in which the "plaintiff's claims for relief . . . involve a common core of facts or [are] based on related legal theories . . . ." In these cases, "[the] court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Id. at 435.

The Respondents argue that all legal fees relating to the punitive damages claim should be denied under the Ninth Circuit precedent, LeMaire v. Maass, 12 F.3d 1444 (9th Cir. 1993). In LeMaire, the plaintiff alleged six factually distinct violations of the Eighth Amendment (a category one case). Because the plaintiff successfully proved the facts of only a few claims, the court held that he could not recover attorneys' fees for work performed on all six claims. Id. at 1461.

The instant case, however, falls into the second category: there was a single set of facts for both the compensatory and punitive damages claim. Unlike the plaintiff in LeMaire, Complainant Hall prevailed on the facts of his discrimination claim. In the words of the Commission, "This was an important civil rights case in which the

Complainant proved the essential element of his claim -- that he was refused the opportunity to rent an apartment in a building owned by the Respondents even though he identified himself as a blind person." (R. at 355). Therefore, Complainant Hall was entitled to recover attorneys' fees for the hours "reasonably expended on litigation." See Hensley, 461 U.S. at 435. In accordance with this rule, the Commission considered the issue of punitive damages and made a specific finding that the claim for punitive damages was "legitimate," (R. at 364), and that the hours expended litigating the punitive damages claim was reasonable, (R. at 364).

In sum, the Commission's award of attorneys' fees was based on a well-reasoned application of judicial discretion. The Commission provided a clear and concise explanation of the facts that support the award. On appeal, the Chancery Court reviewed the award and found no abuse of discretion. Because the Commission properly exercised its discretion in finding that the time expended by the Complainant's legal counsel was reasonable, the award of attorneys' fees should be affirmed.

#### CONCLUSION

The award of attorneys' fees by the City of Chicago Commission on Human Relations in this matter was proper because the Complainant succeeded on the merits of his claim and was therefore a prevailing party entitled to recover attorneys' fees. Furthermore, Complainant's recovery of one half of his initial demand for compensatory damages represents a significant victory in a fair housing case that cannot be characterized as nominal. Even if the \$2,500.00 compensatory award and the \$250.00 civil penalty could be construed as nominal, the Complainant would still be entitled to recover attorneys' fees because his judgment was not de minimus or technical in nature:

this decision has the effect of guaranteeing that any blind person seeking to rent an apartment in the Chicago area will have the opportunity to rent at one of the Respondents' nineteen properties city wide. Finally, the Commission's award of attorneys' fees in this matter represents a well-reasoned application of judicial discretion. As such, it should not be disturbed on review.

The Complainant respectfully requests that the award of attorneys' fees by the Commission be affirmed, that the Respondents be ordered to pay attorneys' fees and costs in the amount of \$14,630.55, and that appellees Robert Hall and the John Marshall Fair Housing Legal Clinic be granted reasonable attorneys' fees and costs by this Court.

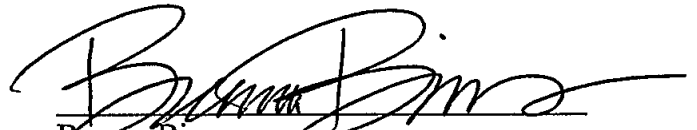
Dated this 18<sup>th</sup> day of August, 1997.

Respectfully submitted by:

Robert Hall and The John Marshall Law School Fair Housing Legal Clinic



F. Willis Caruso  
Joseph R. Butler  
Attorneys for Complainant  
The John Marshall Law School  
Fair Housing Legal Clinic  
28 E. Jackson Blvd., Suite 500  
Chicago, IL 60604  
312-786-2267



Brenna Binns  
711 Law School Graduate