

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

AMANDA RIKE,)	
)	
Plaintiff,)	Case No. 1:00CV00164
)	
v.)	OPINION
)	
LEWIS HARRIS,)	By: James P. Jones
)	United States District Judge
Defendant.)	

*Hilary K. Johnson, Hilary K. Johnson, P.C., Abingdon, Virginia, for Plaintiff;
William P. Sheffield, Abingdon, Virginia, for Defendant.*

Following the jury trial of this case of sexual discrimination under the Fair Housing Act, the plaintiff filed a petition for her attorney’s fee, and the defendant filed a motion to set aside the punitive damages award. For the reasons stated below, I will grant an attorney’s fee to the plaintiff for the amount requested and affirm the jury’s award of punitive damages.

I

The plaintiff, Amanda Rike, filed suit against the defendant, Lewis Harris, alleging sexual discrimination in violation of the Fair Housing Act, 42 U.S.C.A. §§ 3601-3631 (West 1994 & Supp. 2001), due to his conduct as her landlord. The case

was tried before a jury that found in favor of the plaintiff and awarded compensatory damages of \$1,870 and punitive damages in the amount of \$5,000.

Thereafter, the plaintiff filed a petition for an attorney's fee pursuant to 42 U.S.C.A. § 3613(c)(2) (West 1994), requesting that the defendant pay \$7,755, which represents 51.7 hours of work multiplied by her attorney's rate of \$150 per hour. The defendant filed an objection in response to the plaintiff's petition, asserting that the total amount requested is not commensurate with the results obtained because it exceeds the jury verdict.

In addition, the defendant has filed a timely motion seeking to have the punitive damages set aside. He argues that there was no evidence at trial demonstrating that the defendant acted maliciously, wantonly or oppressively, and thus, there was no evidence to support a finding of punitive damages.¹

II

The applicable statute authorizes the award of a "reasonable attorney's fee." 42 U.S.C.A. § 3613(c)(2) (West 1994). The Fourth Circuit has adopted the "lodestar"

¹ I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

calculation to determine a reasonable attorney's fee. Under the lodestar method, an attorney's fee is calculated by "multiplying the number of reasonable hours expended times a reasonable rate." *Brodziak v. Runyon*, 145 F.3d 194, 196 (4th Cir. 1998). A number of factors are used to determine whether the applicable hours and rate are reasonable:

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Id. (citations omitted).

There is no dispute that the plaintiff is the prevailing party in this case, and as such, is entitled to recover a reasonable attorney's fee. *See* 42 U.S.C.A. § 3613(c)(2); *see also People Helpers Found., Inc. v. City of Richmond*, 12 F.3d 1321, 1327 (4th Cir. 1993) (explaining the meaning of "prevailing party"). The question is, however, how much of the total fee she should be awarded. The defendant argues that the amount requested by the plaintiff is not reasonable because it is not proportionate with the damages awarded by the jury. It is true that in determining the lodestar amount,

“the most critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). When a plaintiff prevails in the case, but the jury does not award her all the compensatory damages sought, the court is required to consider the amount of damages awarded compared to the amount of the fee requested. *See Farrar v. Hobby*, 506 U.S. 103, 114 (1992); *Jackson v. McKoy*, No. 85-2141, 1987 WL 36166, at *2 (4th Cir. Jan. 8, 1987) (unpublished). The general formula multiplying the number of hours worked by a reasonable hourly rate may, in some cases, be excessive. *See Farrar*, 506 U.S. at 114. The proportionality assessment is especially important when the plaintiff is awarded only nominal damages or injunctive relief. However, in this case, the jury decided that Rike was entitled to compensation for all of her actual damages, which included the amount of her unreturned security deposit and storage costs. In addition, the jury awarded her \$1,000 for emotional suffering and inconvenience, and \$5,000 in punitive damages. Although the punitive damage award did not reach the \$50,000 demand made in her complaint, Rike’s success in court was significant enough so as not to be considered incomplete or limited. Furthermore, the requested attorney’s fee does not substantially exceed the damages awarded.

Case law has also established that in certain cases, the court should, in determining the amount of attorney’s fees to award, consider whether public interests have been served by the resolution of the dispute. *See Walker v. Crigler*, No. 93-1274,

1998 WL 231262, at *2 (4th Cir. May 5, 1998) (unpublished). For example, in civil rights cases, the “plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms.” *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986). In such cases, the Supreme Court has recognized that reasonable attorney’s fees “are not conditioned upon and need not be proportionate to an award of money damages.” *Rivera*, 477 U.S. at 576; *see also Jackson*, 1987 WL 36166, at *2. Although this case does not fall directly within the category of a civil rights violation under Title 42, Chapter 21 of the United States Code, the established policy is equally applicable in cases of sexual discrimination under the Fair Housing Act. *See Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 826 n.15 (9th Cir. 2001) (noting that the comparable language of the Civil Rights Attorney’s Fees Awards Act, 42 U.S.C.A. § 1988, and § 3613(c)(2) of the Fair Housing Act strongly indicates that they are to be interpreted similarly). The defendant’s conduct in this case was not directed only at Rike; rather, the evidence established that he acted similarly towards other women in the apartment building. Therefore, the fee awarded to Rike might help deter Harris’ future discriminatory actions and thus benefit the public as well.

The defendant also argues that had the plaintiff’s case been taken on a contingency fee basis, her attorney would have received much less compensation than

is now requested. This argument was heard and rejected in the *Rivera* case. *See Rivera*, 477 U.S. at 573-74. Any hypothetical contingency fee amount that Rike's attorney might have been paid is irrelevant to the calculation of a reasonable fee. As stated previously, the lodestar award is to be determined upon consideration of the established factors.

The plaintiff's attorney submitted an affidavit itemizing the work performed on this case, setting forth an account of 51.7 hours at a rate of \$150 per hour. The attorney spent these hours preparing for and litigating this case, during which time she was unable to work on other cases. She is an experienced attorney and was successful at trial. While the issues in this case were not difficult or novel, the time expended on the case, including taking and attending depositions, preparing and responding to motions and written discovery, and preparing for trial, was reasonable. I find that the attorney's rate is reasonable for federal practice in this district and the fee award is similar to those in other cases. *See, e.g., Walker*, 1998 WL 231262 at *2; (in a Fair Housing Act case where compensatory damages of \$5,000 were awarded, remanding a fee award of \$6,281 because the district court denied post-offer attorney's fees). Although the plaintiff was not awarded the total amount of punitive damages sought, she was compensated in full for her actual damages, and I find that the attorney's fee

requested is not excessive in relation to the degree of her success at trial.² Based on this weighing of the relevant factors, I find that \$7,755 is a reasonable attorney's fee and I find no reason to reduce the requested amount.

III

Punitive damages are also recoverable under the Fair Housing Act. *See* 42 U.S.C.A. § 3613(c)(1) (West 1994). The statute, however, does not identify any standard to guide the jury in making a decision whether to award such damages. In absence of a statutory guideline, the Fourth Circuit has held that punitive damages are recoverable under the Fair Housing Act “when the defendant’s conduct is motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.” *Pumphrey v. Stephen Homes, Inc.*, Nos. 95-1998, 95-3032, 96-1157, 1997 WL 135688, at *2 (4th Cir. Mar. 25, 1997) (unpublished) (citations omitted). The dual purpose of punitive damages is to punish the defendant for his wrongful conduct and to protect the public by deterring the defendant and others from committing similar acts. *See Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 20-21 (1991).

² Even though it is not a factor to be considered when determining the lodestar amount, I note the fact that the jury indicated on its verdict form that it wished to award Rike, in addition to the punitive damages, the amount of her “attorney fee in full.” (Verdict Form at 2.)

The jury awarded Rike \$5,000 in punitive damages and the defendant now argues that the jury's decision was in error because there was insufficient evidence that Harris acted maliciously, wantonly, or oppressively. I disagree. The evidence presented by the plaintiff sufficiently demonstrated that the defendant's conduct was motivated by evil intent and a callous indifference for Rike's federally protected rights. Rike's credible testimony established that Harris approached her at a time when she was upset due to an argument with her roommate. He put his arm around her and placed his hand on the side of her breast. He also touched her thigh in an inappropriate manner. He explained that he was aware that she recently lost her job, then implied that he would forgo her rental payments if she would engage in a sexual relationship with him. He told her that he had convinced another tenant to exchange sex for rent. Rike was so disturbed by Harris's conduct and afraid for her safety that she left her apartment following the incident and returned only to pack her belongings and vacate the premises.

The plaintiff also produced testimony from Elizabeth Stinson, the plaintiff's neighbor at the time of the incident. She testified that Harris had made sexually suggestive remarks to her as well. She also stated that Harris had a habit of using his key to enter apartments unannounced or when the occupants were not present, and she

had, on occasion, returned home to discover that someone had rummaged through her personal belongings.

Punitive damages can be warranted when there is more than one occurrence of the alleged conduct and where the award would vindicate the public interest. *See Szwast v. Carlton Apartments*, 102 F. Supp. 2d 777, 783 (E.D. Mich. 2000) (awarding \$30,000 punitive damages in Fair Housing Act case). In fact, “evidence that a defendant has repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument that strong medicine is required to cure the defendant’s disrespect for the law.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 576-77 (1996). The evidence suggested that Harris had sexually discriminated against female tenants by making inappropriate sexual comments or gestures on at least three occasions—with the plaintiff, with Ms. Stinson, and with a third unnamed tenant. Although denying that any of these alleged incidents occurred, Harris admitted under oath that he understood that such conduct would be considered improper. The evidence also suggested that Harris would visit the apartments of female tenants without prior notice to the resident. His repeated conduct, as established by the credible testimony of the plaintiff’s witnesses, was indeed reprehensible and warranted punishment. The jury was justified in believing that there was a danger that Harris would continue to sexually discriminate against tenants in the future, thereby creating

reason to deter similar conduct. For these reasons, I find that the jury heard sufficient evidence to conclude that an award of punitive damages was necessary and proper.

IV

For the foregoing reasons, I will grant the plaintiff's motion for an attorney's fee in the amount of \$7,755 and will deny the defendant's motion to set aside the punitive damages award. A separate judgment consistent with this opinion will be entered.

DATED: July 26, 2002

United States District Judge