

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WALTER STEPHEN JACKSON, et al.,

Plaintiffs,

vs.

No. CIV 87-839JP/LCS

LOS LUNAS CENTER FOR PERSONS
WITH DEVELOPMENT DISABILITIES, et al.,

Defendants,

and

ARC OF NEW MEXICO,

Intervenor,

and

MARY TERRAZAS, et al.,

Intervenors pro se.

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN 13 2000

Robert M. March
CLERK

ORDER

On March 6, 2000, Plaintiff filed "Plaintiffs' Motion for Attorneys' Fees and Expenses;" Defendants filed a response on April 18, 2000; and Plaintiffs filed a reply on May 1, 2000. The Court entered an order permitting the filing of exhibits totaling 114 pages. Having considered the motion, related briefs and exhibits, the Court concludes that the motion should be granted substantially in its entirety, but that a small part of Plaintiffs' claim for attorneys' fees and costs should be denied.

Defendants made no real objection to Plaintiffs' claim of \$17,425.21 for attorneys' fees based on what Plaintiffs categorize as "litigation-related set aside time." See Plaintiffs' Exhibit 10. Therefore, those attorneys' fees in the amount of \$17,425.21 will be awarded in their entirety.

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Defendants do mount a more substantial challenge to attorneys' fees and expenses totaling \$19,326.97 related to a special negotiation session in Albuquerque during November, 1998 that had been requested by Defendants. In regard to that category of attorneys' fees and expenses, the Court finds that the special negotiation session in Albuquerque during November, 1998 was requested by the Defendants in an effort to avoid formalized notices of non-compliance that Plaintiffs had threatened to make, that the November, 1998 meeting was not a regular quarterly meeting, and that Plaintiffs' preparation for and attendance at the November, 1998 special meeting in effort to avoid formal disputes with attendant time-consuming and expensive briefing and hearings was entirely reasonable and not within the cap on attorneys' fees agreed to by the parties. The Court concludes that essentially all of the attorneys' fees and expenses related to the November, 1998 special negotiation session were reasonable and should be awarded.

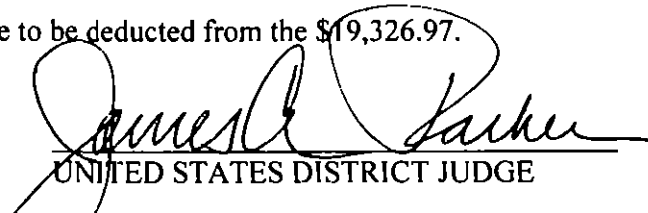
However, the Court agrees with one of the Defendants' arguments which in Defendants' response was stated more by implication than by precision. That argument is that it was unnecessary for two attorneys to travel from Massachusetts to participate in the November, 1998 special negotiations. The Court agrees that it was necessary and reasonable for only one of the Massachusetts attorneys to travel to Albuquerque and attend the special November, 1998 negotiating session. On the other hand, the Court finds that it was appropriate for both attorneys in Massachusetts to prepare, in Massachusetts, for the negotiation session. They could have conferred in Massachusetts about the matters to be covered in Albuquerque at the November, 1998 meeting and one could have traveled to Albuquerque and handled all issues. Consequently, the Court will allow the time of both Massachusetts attorneys spent in Massachusetts preparing for the Albuquerque meeting, but will disallow the travel time of one attorney as well as the duplicative time of one attorney from Massachusetts attending the special negotiating session in Albuquerque in November, 1998.

The Court finds that either Attorney Steven Schwartz or Attorney Cathy Costanzo could have ably and competently represented the Plaintiffs at the special negotiating session in November, 1998. Hence, the Court will allow attorneys' fees based on the higher rate of \$245.00 per hour for Steven Schwartz for travel time, time spent in Albuquerque in regard to the special negotiation session, and related expenses, but will disallow time of Cathy Costanzo based on a normal hourly rate of \$175.00 per hour for similar services. As indicated, this is not to suggest that Attorney Cathy Costanzo could not have properly represented the Plaintiffs by herself. It is simply a matter of allowing attorneys' fees based on the higher hourly rate of Steven Schwartz after determining that it was not necessary for both Steven Schwartz and Cathy Costanzo to come to Albuquerque for the special negotiating session.

Based on this ruling, counsel are asked to confer and to come to an agreement as to the precise amount of attorneys' fees and expenses related to the special negotiating session in November, 1998 that should be deducted from the total award.

IT IS THEREFORE ORDERED THAT Plaintiffs' Motion for Attorneys' Fees and Expenses filed March 6, 2000 is granted as follows:

1. Plaintiffs' "litigation-related set aside attorneys' fees" in the amount of \$17,425.21 are awarded in their entirety; and
2. Plaintiffs' attorneys' fees and expenses related to the special negotiating session in Albuquerque during November, 1998 in the amount of \$19,326.97 are awarded with the sole exception of attorneys' fees and expenses of one Massachusetts attorney incurred for travel to attend and attendance of the special negotiating session in November, 1998, which are to be deducted from the \$19,326.97.


UNITED STATES DISTRICT JUDGE