IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICIA WALSH	:	CIVIL ACTION
	:	
v.	:	
	:	
CHRYSLER CORPORATION	:	NO. 96-CV-5802

MEMORANDUM AND ORDER

J. M. KELLY, J. **November , 1997**

Presently before the Court is Plaintiff Patricia Walsh's ("Walsh") Petition For An Award of Counsel Fees and all Court Costs and Defendant Chrysler Corporation's ("Chrysler") response. Walsh seeks an award of $4,709.50. Walsh is a prevailing party entitled to an award of fees and costs. Nevertheless, for the reasons stated below, I will award $1,584.50 as reasonable attorneys' fees and costs.

BACKGROUND

Walsh brought this action against Chrysler under The Automobile Lemon Law, 73 P.S. § 1951-1963 (West 1993); The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. § 2301-2312 (1994)("MMWA"); The Uniform Commercial Code, 13 Pa.C.S.A. § 1101-9501 (West 1997) ("UCC"); and the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 - 209-6 (West 1993). Walsh alleges that she bought a new 1995 Dodge Neon from Chrysler's authorized dealer, that the car did not work properly and that Chrysler made repeated ineffective repairs.

Walsh's complaint alleged that the amount in controversy

exceeded $50,000. Pursuant to Local Rule 53.2, the case was referred to an arbitration panel that awarded Walsh $3,000. The panel did not specify which statute authorized Walsh's recovery. Neither party sought a trial de novo and the arbitration award thus became a judgment of this court in accordance with 28 U.S.C. § 654(a) and Local Rule 53.2.

Walsh now seeks an award of $4,709.50 for attorneys' fees and costs. Chrysler argues that Walsh is not entitled to fees because the arbitration award was made under the UCC, and not the MMWA. Alternatively, Chrysler argues that $4,709.50 is an excessive fee considering the simple nature of this case and Walsh's limited success.

DISCUSSION

I. Entitlement to Attorneys' Fees and Costs

The arbitration award in Walsh's favor qualifies her as a prevailing party, at least in a general sense. Chrysler argues that Walsh prevailed under the UCC, not the MMWA, and thus she is not entitled to recover fees.[1] Chrysler relies on the arbitration panel's statement: "[w]e find in favor of [plaintiff]

[1] The MMWA provides: "If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action." 15 U.S.C. § 2310(d)(2) (1994). The UCC does not provide for recovery of attorneys' fees. See Uniform Commercial Code, 13 Pa.C.S.A. § 1101-9501 (West 1997).

and against [defendant] on breach of warranty only . . . . All other claims of [Plaintiff] are dismissed." According to Chrysler, this statement indicates that Walsh's recovery was under the UCC, not the MMWA; and it demonstrates the "express intent" of the arbitration panel that Walsh not be awarded fees. Chrysler's argument is not persuasive.

Claims for breach of warranty are available under both the MMWA and the UCC. The statement that Walsh prevailed on her "breach of warranty claim only" does not indicate that the arbitration panel distinguished between the statutes that could justify the recovery. The statement also does not indicate that the panel considered the issue of fees. In fact, in accordance with normal practice, it appears that the issue of fees was never raised at the arbitration hearing.

The Third Circuit rejected essentially the same argument made by Chrysler here in Brady v. American Honda Motor Co., Inc., No. 95-1612 (April 5, 1996) (Becker, J.). In Brady, a jury awarded damages for breach of warranty in a case plead under the MMWA and the UCC. On appeal of the fee award, the defendant argued that the failure to include the words "Magnuson-Moss Warranty Act" in the jury instructions meant that the verdict was based on the UCC. The Court of Appeals affirmed the fee award stating that the MMWA works in conjunction with state law warranty rights. Brady,slip op. at 2. The Court refused to accept the assertion that a litigant who refers to "breach of

warranty" in their case has decided to abandon their MMWA claim and any entitlement to fees. Id.

Walsh is a prevailing party entitled to an award of attorneys' fees and costs. Walsh did not abandon her MMWA claim, and the arbitration panel's vague statement does not foreclose her entitlement to a fee award. I now turn to the reasonableness of the fee request.

II. Reasonable Attorneys' Fees

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The result, known as the "lodestar," is presumed to represent a reasonable award of attorneys' fees. Id. The party seeking fees has the burden of proving that its request is reasonable. Rode v. Dellaciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). The opposing party must then challenge the reasonableness of the requested fee with specificity. Bell v. United Princeton Properties, 884 F.2d 713, 719-20 (3d Cir. 1989). Once the opposing party objects, a court "has a great deal of discretion to adjust the fee in light of the objections." Rode, 892 F.2d at 1183. (citing Bell, 884 F.2d at 721).

Walsh's attorneys, Power & Gerber, P.C., ("Power & Gerber") claim that they expended 30.3 hours in this matter and that their billing rate is $150.00 per hour, for a lodestar of $4,545.00.

Chrysler objects to Power & Gerber's hourly rate and the hours billed in this litigation.

Reasonable hourly rates are determined by the prevailing market rates in this community. Blum v. Stenson, 465 U.S. 886, 895 (1984); Washington v. Philadelphia Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996). A number of judges in this district have found that $150 per hour is a reasonable rate for "lemon law" work. See, e.g., Strachan v. Ford Motor Co., No. 96-5805, 1997 WL 379162 (E.D. Pa. July 1, 1997); Allen v. Chrysler Corp., No. 96-CV-702, 1997 WL 117015 (E.D. Pa. Mar. 13, 1997). But see Hollingsworth v. Hyundai Motor America, No. 93-CV-3407, 1996 WL 58065 (E.D. Pa. Feb. 12, 1996) (capping hourly rate of "lemon law" attorneys at $100 per hour). Based on the decisions in this district, and prevailing market rates, I find that Power & Gerber's $150 hourly rate is reasonable.

A party is entitled to compensation for work that is "useful and of a type ordinarily necessary to secure the final result obtained." Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 559-61 (1986). Power & Gerber submitted an affidavit and a "Schedule 0f Fees and Costs Incurred" that lists dates, activities and time expended totaling 30.3 hours. Chrysler argues that the number of hours billed in this case is unreasonable because "lemon law" litigation requires very little substantive legal work. According to Chrysler, Power & Gerber routinely handles "lemon law" matters using form pleadings,

discovery and legal memorandum. Chrysler also objects to specific entries in Power & Gerber's bill.

Practitioners who bill their adversaries must exercise "billing judgment." See Hensley, 461 U.S. at 434 ("Hours that are not properly billed to one's client are also not properly billed to one's adversary pursuant to statutory authority."). Power & Gerber list the following in its schedule of fees: 1.0 hours "Draft complaint;" .3 hours "Revise complaint after reviewing with client;" .2 hours "Prepared cover sheet for complaint and arranged for filing;" .2 hours "Served complaint on Chrysler;" .1 hours "Receive call from Court re: no proof of service;" .3 hours "Call to Chrysler re: no proof of service;" 1.1 hours "Prepare and file proof of service." No reasonable client would spend $480 (3.2 hours x $150) for something as simple as drafting a form complaint and proof of service. I will approve 1.3 hours for this work.

The volume of "lemon law" litigation in this district has "resulted in significant standardization that eases representation." Craig v. Hyundai Motor Am., Inc., No. 94-CV-5372, 1995 W.L. 380072 (E.D. Pa. June 26, 1995). Chrysler is correct that this "standardization" should result in lower fees. For the most part, however, the hours billed by Power & Gerber in this matter reflect "standardization." The rest of Power & Gerber's time, 28.4 hours, is reasonable and it is approved. At a rate of $150 per hour, the lodestar is $4,260.00.

III. Reduction of Lodestar Because of Limited Success

While the lodestar analysis leads to a presumptively reasonable fee award, the court must consider whether an adjustment is necessary to arrive at a truly reasonable fee in light of the specifics of a case. Hensley, 461 U.S. at 434; see also Farrar v. Hobby, 113 S. Ct. 566 (1992). Fee-shifting statutes encourage attorneys to undertake representations that the legislature deems important, but would not be profitable in the normal marketplace. Practitioners in these areas must, nonetheless, exercise judgment and prosecute only those cases that merit prosecution. When a plaintiff recovers only a small percentage of the amount that they claimed was in controversy, a reduction in the lodestar is warranted. See Hines v. Chrysler Corp., No. 96-5620 (E.D. Pa. Aug 1, 1997); Hilferty v. Chevrolet Motor Div., No. 95-5324, 1996 WL 287276 (E.D. Pa. May 30, 1996), aff'd, 116 F.3d 468 (3d Cir. 1997); Taylor v. Chrysler Corp., No. 94-CV-6778, 1995 WL 635195 (E.D. Pa. Oct. 24, 1995). Adjustments to the lodestar on the basis of limited success encourage attorneys to exercise judgment as to which cases to prosecute.

The complaint in this matter stated that the amount in controversy exceeded $50,000.[2] Walsh recovered $3,000, a small

[2] As in almost every "lemon law" case, serious doubt exists as to whether there is a sufficient amount in controversy to confer subject matter jurisdiction on this court. I am fully aware that a federal court must satisfy itself at all times that it has subject matter jurisdiction over a case. Nevertheless, since Chrysler did not raise jurisdiction as a defense, and the litigation is now at the collateral stage of deciding attorneys' fees, I will not address the jurisdictional issue.

percentage of the judgment she originally sought. This is obviously a case of limited success, and thus a ⅔ reduction in the lodestar is warranted. I find that $1,420.00 is a reasonable fee award in this case.

IV. Costs

Walsh also seeks compensation for costs of $164.50 for the filing fee and copying charges. Chrysler has not specifically objected to Walsh's claimed expenses. I will award $164.50 for costs.

CONCLUSION

Walsh is a prevailing party entitled to an award of reasonable attorneys' fees and costs. Considering the hours expended, the hourly rate of Walsh's attorneys, and their limited success in this matter, $1,584.50 is a reasonable award for fees and costs.

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ORDER

And NOW, this Day of November, 1997, upon consideration of Plaintiff's Petition For An Award of Counsel Fees and all Court Costs and Defendant's response, it is hereby ORDERED that Plaintiff Patricia Walsh is awarded counsel fees and costs in the amount of $ 1,584.50.

BY THE COURT:

JAMES McGIRR KELLY, J.