

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0664

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Re: *Hales v. Wing*
C.A. No. 03C-03-230 RRC

Submitted: December 9, 2004
Decided: March 9, 2005

On Plaintiff's Motion for Costs. **GRANTED, in part; DENIED in part.**

Dear Mr. Jones and Mr. Bennett:

This is a motion for costs by Valerie Hales (Plaintiff) following this Court's award in her favor of \$11,000 after a bench trial stemming from an automobile accident. Plaintiff is seeking total costs of \$2,771.89: 1) \$205 for "Filing and Sheriff Fees," 2) \$150 for "Demand for Trial De Novo," 3) \$2,200 for Plaintiff's expert Dr. Eric Johnson's deposition fee, and 4) \$216

for a transcript of Dr. Johnson's deposition. Melanie Ann Wing (Defendant) has not disputed the costs for the "Filing and Sheriff Fees" or for the preparation of Dr. Johnson's deposition. Defendant does dispute the costs for the "Demand for Trial De Novo" and Dr. Johnson's fee for his deposition. Defendant contends the total costs should be \$921.89 with \$500 for Dr. Johnson's fee and no charge for the "Demand for Trial De Novo."

Defendant argues that Plaintiff is not entitled to costs for a "Demand for Trial De Novo" because the Plaintiff was offered \$15,000 at mediation, but she only received \$11,000 at trial. Defendant contends that the case at bar was submitted to Rule 16.1 mediation, rather than arbitration, and that there was no Arbitrator's Order issued; therefore, there was no "Demand for Trial De Novo" made to this Court. Defendant also contends that because Plaintiff received a smaller award at trial than she would have received if she had accepted the proposed settlement at mediation, Plaintiff should not be entitled to any costs associated with the arbitration.

Defendant also argues that this Court should award costs in the amount of \$500 for the deposition fee of Dr. Johnson. Defendant contends that Dr. Johnson's fee should be set in accordance with this Court's holding

in *Fellenbaum v. Ciamaricone*.¹ Using this Court’s reasoning from *Fellenbaum*, Defendant argues for the fee to be set at \$500.

Plaintiff is not entitled to costs for a “Demand for Trial De Novo” because the case at bar went to Rule 16.1(b)(2) mediation and not Rule 16.1(b)(1) arbitration. Unlike a Rule 16.1(b)(1) arbitration, a Rule 16.1(b)(2) mediation does not result in a potential order of judgment.² A Rule 16.1(b)(2) mediation is

a process by which a trained neutral facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties, until a resolution is agreed to, the parties discharge the mediator, or the mediator finds the parties cannot agree.

There is no “order” or “judgment” associated with a mediation from which a party may appeal or make a demand for a trial de novo. When the mediation in the case at bar failed to result in a mutually satisfactory resolution, the claim was not subject to an order of the Court and no demand for a trial de novo could be made; therefore, Plaintiff is not entitled to cost for a “Demand for Trial De Novo.” Further, the records of the Prothonotary do not indicate

¹ *Fellenbaum v. Ciamaricone*, 2002 Del. Super. LEXIS 269 (holding that “a reasonable range for depositions is . . . between about \$ 650 and \$ 1150 for a two-hour deposition”).

² Superior Court Rule 16.(k)(11)(C)- The arbitration order shall be entered as an order of judgment by any judge of the Court, upon motion of a party, after the time for requesting a trial de novo has expired. A judgment so entered shall have the same force and effect as a judgment of the Court in a civil action but shall not be subject to appeal.

that any \$150 “Trial de Novo” fee was ever paid by Plaintiff.

Plaintiff is entitled to costs of \$500 for the deposition fee of Dr. Johnson. The deposition of Dr. Johnson apparently lasted fifty-one minutes. In *Fellenbaum v. Ciamaricone* this Court awarded the defendant \$325 for costs in connection with the deposition of the defendant’s expert. This Court held in *Fellenbaum* that

[d]espite a lack of a fixed formula to determine reasonable expert fees, this Court has often referred for guidance to studies of the Medico-Legal Affairs Committee of the Medical Society of Delaware. In the past, this Court has referred to a study published by that committee in 1995, and has adjusted that study's figures upwards appropriately using the medical price care index published by the United States Bureau of Labor Statistics.³

This Court in *Fellenbaum*, using the guidelines established by the Medical Society of Delaware for deposition fees and adjusting the guidelines based on the Bureau of Labor Statistics, held that “a reasonable range for depositions [in 2002 was between] \$650 and \$1150” for a two hour deposition.⁴

In 2004, the United States Bureau of Labor Statistics published a report showing the annual change in the Consumer Price Index (CPI) for

³ *Fellenbaum v. Ciamaricone*, 2002 Del. Super. 269 *19.

⁴ *Fellenbaum v. Ciamaricone*, 2002 Del. Super. 269 *19.

medical care from 1994 to 2003.⁵ Using the range of fees established by this Court in *Fellenbaum* and adjusting those fees based on an increase of 12.9% in the medical care index,⁶ this Court holds that a reasonable range for deposition fees for a two hour deposition is between \$700 and \$1,300 (although circumstances may suggest a fee outside this range).

As in *Fellenbaum*, the deposition of Dr. Johnson was taken after regular work hours and lasted less than an hour.⁷ No invoice for Dr. Johnson's fee was presented to the Court and the Court does not know if Dr. Johnson was charging a flat fee or an hourly fee. However, given that the deposition took less than an hour of time and was conducted after work hours, this Court holds that \$500 is a reasonable amount to award as costs to Plaintiff as recoverable expert fees.

For the foregoing reasons, Plaintiff motion for costs is **GRANTED** in the amount of \$921.89.

IT IS SO ORDERED.

⁵ United States Bureau of Labor Statistics, *at* <http://www.bls.gov/opub/ted/2004/may/wk3/art04.htm> (last visited March 97, 2005).

⁶ The CPI for medical care rose 5.0% in 2002, 3.7% in 2003 and 4.2% in 2004. United States Bureau of Labor Statistics, *at* <ftp://ftp.bls.gov/pub/news.release/History/cpi.01192005.news> (last visited March 7, 2005).

cc: Prothonotary

⁷ The deposition began at 4:50 p.m. and concluded at 5:41 p.m. Defendant's Response at Exhibit A.