

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

**LESLIE SMITH,**

**Plaintiff,**

**v.**

**Case No.: 3:08cv3/MCR/EMT**

**PSYCHIATRIC SOLUTIONS,  
INC., et al.,**

**Defendants.**

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**ORDER**

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated January 31, 2013 (doc. 354). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a de novo determination of any timely filed objections.

Having considered the Report and Recommendation, and any objections thereto timely filed, I have determined that the Report and Recommendation should be adopted.

Accordingly, it is now **ORDERED** as follows:

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order.<sup>1</sup>

2. Plaintiff is directed to pay Defendants a total of **\$53,925.98** in attorneys' fees under Fla. Stat. § 448.104.

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<sup>1</sup> In her objection to the magistrate judge's Report and Recommendation, Plaintiff challenges the award of \$53,925.98 as excessive because it exceeds her annual income of \$50,000. According to Plaintiff, such an award is "ruinous" and should be reduced to 42% of her annual income, as she suggests was done in *Bush v. Ratheon Co.*, No. 8:07-CV-02087-T-24-AEP, 2010 WL 2044887 (M.D. Fla. May 21, 2010). In that case, the court awarded fees of \$42,358.68, which Plaintiff contends was roughly 42% of the purported \$100,000 annual salary of the sanctioned party. Plaintiff's reliance on *Ratheon* is misplaced. Although the plaintiff in *Ratheon* had an annual salary of \$100,000 while employed by the defendant, he had been terminated from that position and was making less than \$40,000 at the time the court imposed the sanction. *Id.* at \*7. Thus, contrary to Plaintiff's assertion, the award in *Ratheon* actually exceeded the plaintiff's income and, in that respect, is materially indistinguishable from the award in this case. The undersigned also notes, as did the court in *Ratheon*, that the only evidence of Plaintiff's alleged inability to pay is Plaintiff's unsupported assertion that she makes \$50,000 per year. Plaintiff offered no additional evidence of her financial means or lack thereof. In *Ratheon*, the absence of such evidence was a primary factor in the court's refusal to reduce the award based on the sanctioned party's alleged inability to pay. *Id.* at \*7-8.

3. Johnson is directed to pay Defendants a total of **\$5,338.20** in attorneys' fees in connection with Plaintiff's unsuccessful Fed. R. Civ. P. 11 motion.

4. The clerk shall enter Judgment accordingly.

**DONE AND ORDERED** this 20th day of May, 2013.

*s/ M. Casey Rodgers*

**M. CASEY RODGERS**  
**CHIEF UNITED STATES DISTRICT JUDGE**