IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AYANNA WALKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07 C 6148
	)	
CALUMET CITY, ILLINOIS,	)	
	)	
Defendant.	)	

SUPPLEMENT TO MEMORANDUM ORDER

This Court's September 25, 2008 memorandum order ("Order"), having rejected the effort by counsel for Calumet City ("City") to escape liability for the attorney's fees earned by counsel for plaintiff Ayanna Walker ("Walker") in this 42 U.S.C. §1983[1] lawsuit, ordered City's counsel to file a prompt response dealing with quantification of the fee award. City's counsel more than met the requirement for promptness when on the very next day, September 26, they filed "Calumet City's Supplemental Memorandum on the Issue of Attorney's Fees (Pursuant to Order of 9/25/08)"--but regrettably their response was fatally flawed factually and legally. This opinion hastens to narrow the focus of the dispute to the only item left open: the hourly rates properly chargeable by Walker's counsel for use in calculating the lodestar figure.

City's counsel, having lost their frontal attack on any fee award by an unpersuasive effort to invoke Buckhannon Bd. & Care

[1] All further references to Title 42's provisions will simply take the form "Section--."

Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598 (2001), now seek to minimize the award by characterizing Walker's counsel as having obtained only partial success. But that skewed analysis rests on a fundamental mischaracterization of this lawsuit, which is after all Walker's lawsuit.[2]

In that respect City and its counsel prefer to gloss over (or rather to ignore entirely) the facts (1) that Walker owns real estate in Calumet City that has been and is a legal nonconforming use and (2) that her goal from the beginning has been to preserve the full value of her property against the threat posed by City's then-enacted Ordinance. This lawsuit provided her a total victory in that regard, not a partial one: This Court's May 22, 2008 Final Order of Dismissal compelled City not only to confirm that legal-nonconforming-use status but also to do so with a commitment that ran with the land, thus assuring the continuing marketability of Walker's property as comprising multiple occupancy residential units.

But, say City's counsel, Walker did not gain that victory by succeeding in her original prayer to have the Ordinance declared

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[2] Walker's counsel had previously represented the Realtor Association of West/South Suburban Chicagoland in mounting a constitutional attack on City's Point of Sale Inspection Ordinance (the "Ordinance"). That effort was ultimately rejected by our Court of Appeals in MainStreet Org. of Realtors v. Calumet City, 505 F.3d 742 (7th Cir. 2007), and counsel and their Association client have swallowed that loss: No part of the services rendered in that case are the subject of the current Section 1988 application.

unconstitutional. What irony--or better still, what chutzpah. That posture of affairs was created by City and its counsel themselves--they amended the original Ordinance before its constitutionality could be adjudicated, then sought unsuccessfully to moot Walker's challenge to the revised Ordinance, but without providing her with the real protection she needed to preserve the value of her property. City's position is strikingly reminiscent of the old story about the defendant who, having murdered both his parents, sought the court's mercy because he was an orphan. Moreover, Walker's victory is measured by the fact that she accomplished it through her counsel's direct efforts, not the particular theory by which her counsel succeeded.

It bears repeating, as Order at 2-3 stressed, that the amended Ordinance that was generated by City and its counsel would have afforded Walker less than the full relief that she obtained through her counsel's efforts and this Court's insistence, as embodied in the Final Order of Dismissal. This case calls directly into play the lessons taught by the seminal opinion in Hensley v. Eckerhart, 461 U.S. 424, 435 (1983)(citation and footnote omitted):

> Many civil rights cases will present only a single claim. In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended

> on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.
>
> Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters.[3]

In short, Walker has scored a total victory as to her property, and her lawyers are accordingly entitled to total compensation, even though she did not prevail on all theories advanced on her behalf.[4] And this is quite apart from the added factor that City's opposition is extraordinarily niggardly, for it was the final order that Walker obtained against City, rather than any merits-based loss on Walker's part, that averted a ruling on constitutionality of the earlier Ordinance.[5]

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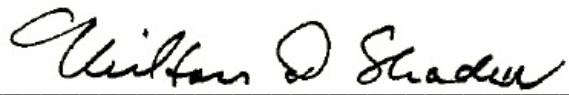
[3] [Footnote by this Court] City's citation to, and its attempted reliance on, our Court of Appeals' ten-day old opinion in Deicher v. City of Evansville, 2008 WL 4276588, at *8 (7th Cir. Sept. 19) is mysterious indeed. If anything, given Walker's total success in achieving her substantive goal, what was said in Deicher cuts in Walker's favor rather than City's.

[4] As Order at 3 said, Walker does not seek fees for her counsel's work done in seeking class certification.

[5] No holding is made or implied here as to what the result of a merits-based decision would have been. But that is of no

This Court has accordingly exercised its equitable judgment called for by Hensley, 461 U.S. at 436-37, and it approves the totality of the hours encompassed in Walker's submission. That leaves open only (1) the issue of hourly rates, as to which Walker's submission is lacking an appropriate confirmation supporting the characterization that the figures used are indeed "their standard hourly rates" (Walker's Reply at 14) and (2) the amount of fees ascribable to time spent in August through October 2008 in connection with the current matter.[6] When Walker's counsel provides that information together with a calculation of the interest component of the award,[7] this Court will be in a position to enter the appropriate order.



Milton I. Shadur
Senior United States District Judge

Date: September 29, 2008

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moment, because the language quoted above from Hensley confirms that no reduction in fees would have been occasioned even by a rejection of the constitutional attack.

[6] Walker's success in the present dispute as to fees entitles her to recover the fees-on-fees component as well.

[7] City's currently-filed response correctly points out that Walker's application reflects the lawyers' historical hourly rates in effect in both 2007 and 2008, the only two years involved. That may well obviate the need to employ the more complex (though more precise) interest calculation suggested in the Order. This Court therefore leaves to Walker's counsel the way in which the ultimate submission takes account of the interest component of the award.