

AFFIDAVIT

COUNTY OF COOK)
) SS
STATE OF ILLINOIS)

I, Barry M. Bennett, of full age, being duly sworn on my oath, hereby depose and say as follows:

Introduction

1. I am an attorney admitted to the regular and trial bar of this Court, as well as the bars of numerous other federal and state courts.

2. I am a partner in the firm Dowd, Bloch & Bennett, and in connection with this position I have primary responsibility for representation of Administrative District Council 1 of Illinois of the International Union of Bricklayers and Allied Craftworkers, AFL-CIO (“Union”), in the pending suit against Mr. Joseph Minaglia, designated as Case No. 11 C 6604.

3. This affidavit is based on my personal knowledge and, if necessary, I could testify to the facts contained in this affidavit.

Communications with Mr. Minaglia

4. After the hearing on November 10, I had a lengthy conversation with Mr. Minaglia and explained the type of arrangement the Union might be willing to consider in order to settle the case.

5. Mr. Minaglia’s response did not indicate he was in a position to reach the type of arrangement I thought would likely be necessary, so I also explained to him he could at least hold down the amount of the judgment by agreeing to entry of a final order rather than forcing me to prepare and present a motion.



6. I did not hear from Mr. Minaglia between that discussion and November 22, nor did I learn of any agreement being reached between him and the Union; but I was contacted that day by representatives of the Union and Funds who indicated they were on a job where Mr. Minaglia had either begun work or was preparing to begin work.

7. The Union and Funds were particularly concerned about Mr. Minaglia performing any work because doing so would have subjected the Funds to liability for benefits on behalf of the workers employed even if Mr. Minaglia continued his practice of not making the required contributions to the Funds for such work and not paying the contractually required wage rate.

8. I prepared a letter to Mr. Minaglia that day, informing him that his act of beginning or seeking to begin work was a violation of the prohibition in the arbitration award and telling that unless he contacted me by the following Monday, November 28, I would begin work immediately on a motion for entry of judgment. A copy of my letter to Mr. Minaglia is attached as Exhibit B.

9. I did not hear from Mr. Minaglia by November 28 nor have I heard from him since, but I encountered a personal emergency over Thanksgiving weekend and therefore was delayed until now in preparing this motion.

Arbitration Award

10. As set forth in the arbitration award, total damages were \$9,718.66; and the arbitrator's also assessed interest at the rate of 10% a year from November 30, 2010 to the date of payment, ordered reimbursement of the legal fees and costs incurred by the Union and Funds, ordered Mr. Minaglia to provide a \$60,000.00 bond or to make an additional payment of \$60,000.00 to serve as a cash bond, prohibited Mr. Minaglia from performing any work within

the Union's geographic and craft jurisdiction (regardless of the name or business form used) until he made the required payments and provided the bond, and ordered that when Mr. Minaglia resumed work he would have to allow the Union to place working stewards on all jobs and he would be required to report all jobs on a weekly basis to the Labor-Management Cooperation Committee.

Interest

11. For convenience, I have calculated the interest through November 30, 2011, one year from the date on which interest began to run, which brings the interest to \$971.87.

12. Adding the interest to the initial balance, Mr. Minaglia owes a total of \$10,690.53 as of November 30, 2011, with interest on that amount continuing to run through the date of payment.

Fees and Costs

13. Through the time of completing this affidavit and the motion and related papers which it accompanies, I have devoted a total of 16.6 hours to this case.

14. My time on the case to date has consisted of the following:

- 3.15 hours (9/4, 9/6, 9/17, 9/20, 9/21) reading the arbitration award, service material, and other documents; preparing notes for discussions with client representatives; communicating with client representatives by phone and letter about further steps; dictating a draft of the complaint and providing instructions for preparation of the summons, appearances, civil cover sheet, and exhibit; revising and supplementing the draft of the complaint; revising and checking the other documents as needed; making further revisions to the complaint; and making a final check of and corrections to all documents for filing and service.
- .90 hours (9/22, 10/3, 10/7, 10, 11) examining material returned from the court, reading an order, dictating and revising a letter to client representatives, overseeing communications with the process service

agency, reading an affidavit from the process server, noting an error and speaking with a representative of the agency regarding the necessary correction, reading the revised service affidavit, providing instructions for filing that affidavit, and reading court notices;

- 2.45 hours (10/20, 10/21, 10/24, 10/25) checking the filed service material and an original and corrected court notice; reviewing the complaint and related documents; preparing a draft of a notice, motion for default judgment, supporting affidavit, and proposed order (adapting existing material as applicable); revising those documents, calculating interest through the anticipated appearance date of October 31, inserting details into the motion and affidavit, reviewing time and expense records, and adding details on that information to the draft affidavit and the motion and proposed judgment order; revising and making additions to each of those documents and checking the details and calculations; and checking the court calendar for a hearing date. (Note: I did not complete or file the motion for default judgment and related documents because Mr. Minaglia served me with his belated answer as I was preparing to do so.)
- .50 hours (10/25, 10/26) reading the answer and appearance from Mr. Minaglia, checking the answer against the complaint, dictating and revising a letter to client representatives, and reading an order;
- 2.6 hours (10/31, 11/2, 11/3) reviewing the complaint and answer, identifying a previous brief to use as a model, researching the most recent district court decisions on the relevant issue, checking the federal rules as needed, dictating drafts of a notice of motion and preparing a draft of a memorandum of law (utilizing existing models as applicable), revising and editing those documents, preparing additional material regarding the propriety of seeking judgment on the pleadings rather than moving for summary judgment, making the final revisions, corrections, and check to the documents being filed, examining notices from the court, and dictating and revising a letter to client representatives;
- .50 hours (11/4) speaking by telephone with Mr. Minaglia;
- 1.95 hours (11/10) making a quick review of the motion, attending the hearing on the motion for judgment on the pleadings, speaking at length with Mr. Minaglia after the hearing, dictating and revising a letter to client representatives, speaking by telephone with a client representative, and reading the court's order;

- 1.40 hours (11/22) listening to several substantive voicemail messages from and having 9 telephone conversations with various Union and Fund officials regarding a job Mr. Minaglia was either performing or preparing to perform, checking applicable portions of the arbitration award and the complaint, preparing a letter to a client representative, a proposed letter to the general contractor on the job, and a letter to a Fund representative; checking the Court's previous order, and dictating and revising a letter to Mr. Minaglia;
- 3.6 hours (12/3, 12/5) reviewing the case file, dictating drafts of the notice of motion for entry of final order, motion, supporting statement, this affidavit, and the proposed judgment order (utilizing existing models for some of this material as applicable); revising each of those documents, checking the arbitration award, checking our time and expense records and adding the detailed information to this affidavit, calculating and checking all amounts, making two additional rounds of revisions to the various documents and a final check of all material being filed, and overseeing the filing and service.

15. I did, in fact, perform all the work as described, and did so based on my professional judgment that it was necessary in order to represent the Union properly.

16. I anticipate that after completing this affidavit and filing the motion, I will spend at least two additional hours preparing a letter to a client representative about filing the motion this affidavit accompanies, preparing for and attending the hearing on the motion, examining any order or orders that are entered, and communicating with our client and Mr. Minaglia about the result; and we therefore seek recovery of the charge that will be made for an additional two hours of my time.

17. Our firm charges the Union and the Funds \$215.00 an hour for my time for work involving litigation, bringing the total fee reimbursement request to \$3,999.00.

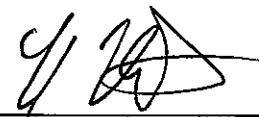
18. I have been a licensed attorney since 1980. I received my undergraduate degree from the University of Michigan and my law degree from Harvard Law School. Before joining

my current firm in July 1997, I worked at another Chicago firm for over eleven years and was a shareholder and director there for over seven years. I have worked exclusively in the fields of labor and employment during my time with these two firms, and I devoted over half my time to those fields in my previous employment. I believe the hourly rate of \$215.00 is well within the range that is normal and reasonable for a lawyer in this area with such experience, and is substantially below the rates charged by lawyers with similar levels of skill and experience who practice on the management side.

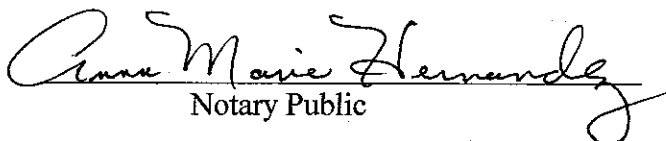
19. In addition to the fees, we seek reimbursement of \$559.15 for costs charged to the Union, comprising the \$350.00 filing fee, a \$65.00 charge by an outside agency for service of the summonses and complaints, five charges of \$25.00 each, which is our firm's set expense charge for paralegal time in making electronic filings, and \$19.15 for an overnight delivery charge. The Union has incurred other expenses of a lesser nature in this case, but I have concluded it would not be cost effective to determine the amount of those expenses and seek recovery for them.

I have read the foregoing affidavit and swear that it is true and correct to the best of my knowledge, information, and belief.




Barry M. Bennett

Sworn to and subscribed before me
this 5th day of December 2011.


Notary Public

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November 22, 2011

Mr. Joseph Minaglia
215 Prairie Lake Rd., Suite D
East Dundee, IL 60118

Re: Administrative District Council 1 v. Minaglia
11 C 6604

Dear Mr. Minaglia:

I learned today that besides *not* calling Jim Allen, you either began or attempted to begin work on a project. I view that as an act of bad faith on your part and based on it, I intend to act promptly to attempt to obtain entry of judgment against you, rather than giving you additional time to work or attempt to perform work in violation of the decision and contract. If you want to try to limit your financial liability, you can contact me about agreeing to entry of a judgment order. Unless I hear from you and we make suitable arrangements by noon on Monday, I will begin work on a contested motion, and I will ask that my fees for that work (like all the other work I have done and will continue to do on the matter) be included in the judgment. I will be out of the office Wednesday through Friday but if you call and leave a message on my voicemail with a return number, I will try to get back to you.

Very truly yours,

Barry M. Bennett

BMB:amh

cc: Mr. Jim Allen, President (via email)

