

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-684V

Filed: March 30, 2012

Unpublished

JON ROONEY,

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Petitioner,

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v.

Attorneys' fees and costs

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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ATTORNEY'S FEES AND COSTS DECISION¹

GOLKIEWICZ, Special Master.

The Petition in this case was filed on October 2, 2006. At that time and up until October 2007, petitioner was represented by Ronald C. Homer of the law firm of Conway, Homer & Chin-Caplan. On October 2, 2007, that firm's withdrawal from this case was granted. Order, filed Oct. 2, 2007. On October 17, 2007, petitioner's former attorney filed Petitioner's Former Counsel's Rule 15 Notice to the Court of Written Information Regarding Fees and Costs ("Rule 15 Notice"). This Rule 15 Notice noted former counsel's intention to file relevant information regarding attorneys' fees and costs. Rule 15 Notice. Thereafter, the case continued with petitioner representing himself *pro se*. On July 28, 2011, a Decision on entitlement was filed in this case. The Decision adopted the parties' Stipulation on an award, which was filed July 25, 2011. Stipulation, filed Jul. 25, 2011.

On July 21, 2011, petitioner's former counsel filed a Motion for Leave of Court to file a request for attorneys' fees and costs counsel incurred before withdrawing from this case. Motion and Notice of Filing Petitioner's Former Attorney's Application for Fees and Costs, filed July 21, 2011. On August 3, 2011, respondent filed a Motion for Extension of Time to File Response to Petitioner's Former Attorney's Application for Fees and Costs. Motion, filed August 3, 2011. Respondent's Motion was granted.

¹ The undersigned intends to post this decision on the website for the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). **As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing.** Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

On September 6, 2011, an Order was filed directing petitioner to file any request for attorneys' fees and litigation costs by no later than 180 days after entry of judgment on his underlying claim. Order, filed Sep. 6, 2011. On September 9, 2011, petitioner left a telephone message for the undersigned's office, which was returned the same day. The undersigned's office generically explained an application for attorneys' fees and costs. Petitioner expressed understanding of this, saying he would investigate any costs he might have. Petitioner also confirmed he had received a copy of his former firm's request for attorneys' fees and costs.

On September 8, 2011, respondent filed a Status Report Regarding Attorneys' Fees and Costs from petitioner's former attorney, noting respondent "has agreed not to object to [an] award for attorneys' fees and the amount of \$21,319.30 and an award for attorney costs in the amount of \$1,293.77." R Status Report, filed Sep. 8, 2011. Respondent noted that a statement complying with General Order #9 had not been filed.

The 180 days for filing a request for attorneys' fees and costs expired on February 27, 2012. Petitioner himself did not file a request for litigation costs.

In reviewing this record and the efforts made by petitioner's former counsel prior to withdrawing from the case, the undersigned finds the amount discussed by respondent and petitioner's former attorney in the September 8 Status Report to be reasonable. The undersigned notes that there has been no compliance with General Order #9, likely due to the unusual but not unique situation of a request for fees from a firm formerly representing petitioner. In light of petitioner's receipt of the 180-day Order filed on September 6, 2011, and petitioner's conversation with my office, petitioner was put on notice that his litigation costs may be recovered and of the time frame for making such a claim. As such, petitioner had the notice and opportunity to request litigation costs and did not make a request. The undersigned is satisfied that the purpose behind General Order #9 was met.

The court hereby awards the petitioners attorney fees in the amount of \$22,613.07. **Specifically, petitioner is awarded a lump sum of \$22,613.07 in the form of a check payable jointly to petitioner and petitioner's former attorney, Ronald C. Homer of Conway, Homer & Chin-Caplan, P.C.**

The Clerk of Court is directed to forward a copy of this Decision to petitioner's former attorney, Ronald C. Homer, Conway, Homer & Chin-Caplan, PC, 16 Shawmut St., Boston, MA 02116. The Clerk of the Court is directed to enter judgment accordingly.²

IT IS SO ORDERED.

Gary J. Golkiewicz
Special Master

²Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge. Furthermore, this amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of the Dept. of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).