

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

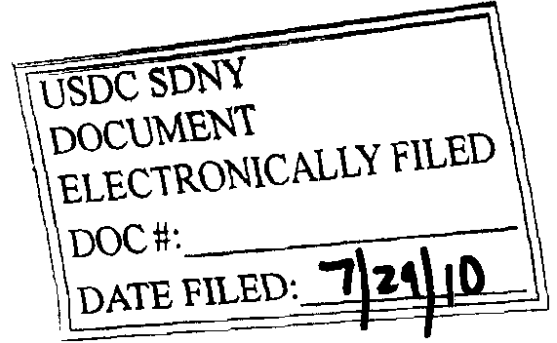
-----X
HENRY PEREZ, SHEDRET WHITEHEAD,
JULIO ROSA, CARMELO GONZALEZ,

Plaintiffs,

-against-

WESTCHESTER COUNTY DEPARTMENT OF
CORRECTIONS, as a County Agency,
COMMISSIONER POCCO POZZI, Individually
and as Commissioner, WARDEN ANTHONY
AMICUCCI, Individually and as the Senior
Administrator, CAPTAIN ORLANDO, Individually,
and as the Facility Grievance Coordinator,

Defendants.
-----X



05 Civ. 8120 (RMB) (DF)

ORDER

I. Background

On November 19, 2009, the United States Court of Appeals for the Second Circuit affirmed, among other things, this Court's July 22, 2008 award of \$99,658.48 in attorneys' fees to Fox Rothschild LLP ("Fox Rothschild"), counsel to Henry Perez, Shedret Whitehead, Julio Rosa, and Carmelo Gonzalez (collectively, "Plaintiffs"), and against the Westchester County Department of Corrections, Commissioner Pocco Pozzi, Warden Anthony Amicucci, and Captain Orlando (collectively, "Defendants"). (See Mandate [#65], dated Mar. 9, 2010 ("Mandate")). The Court of Appeals also "remand[ed] the case to [this Court] for the determination of a reasonable fee award for Fox Rothschild's work in connection with this appeal." Perez v. Westchester County Dep't of Corr., 587 F.3d 143, 156 (2d Cir. 2009).

On June 21, 2010, United States Magistrate Judge Debra Freeman, to whom this matter had been referred, issued a thorough Report and Recommendation ("Report") recommending that "Plaintiffs be awarded \$42,000 for their legal fees on the appeal, a sum that is [] less than the

\$50,000 requested by Plaintiffs.” (Report at 1.) Judge Freeman also recommended, among other things, that: (1) “Plaintiffs’ fees for the appeal be calculated on the basis of the hours identified by Plaintiffs, with the exception that [the hours billed by Plaintiffs’ lead counsel, Richard B. Cohen (“Cohen”)] be reduced to 122 hours”; (2) “counsel’s fees for their work should be capped at \$138.00” per hour and “\$80 per hour would be a reasonable rate for paralegal fees”; and (3) Plaintiff’s “proposed percentage fee reduction is appropriate” because, among other reasons, “Plaintiffs did not prevail on their cross-appeal.” (Report at 6–8.)

The Report advised that, “[p]ursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections” and “[f]ailure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review.” (Report at 8 (capitalization omitted).) To date, neither party has filed objections to the Report.

For the reasons set forth below, the Court adopts the Report in its entirety.

II. Standard of Review

“A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b); Grassia v. Scully, 892 F.2d 16, 19 (2d Cir. 1989). The Court may adopt those portions of a report and recommendation to which no objections have been made and which are not clearly erroneous or contrary to law. See Thomas v. Arn, 474 U.S. 140, 149 (1985).

III. Analysis

The facts and procedural history as set forth in the Report are incorporated herein by reference. Having conducted a review of the Report and applicable legal authorities, the Court

finds that the Report is not clearly erroneous. See Pizarro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991).

(1) Reasonableness of Hours

Judge Freeman concluded that “Plaintiffs’ fees for the appeal be calculated on the basis of the hours identified by Plaintiffs, with the exception that [the hours billed by Cohen] be reduced to 122 hours.” (Report at 1); see Kuper v. Empire Blue Cross & Blue Shield, No. 99 Civ. 1190, 2003 WL 23350111, at *11 (S.D.N.Y. Dec. 18, 2003) (“If the court concludes that portions of the expended time were not reasonably necessary to achieve the successful result obtained by the movant, it should reduce the time for which compensation is awarded.”); Moon v. Gab Kwon, No. 99 Civ. 11810, 2002 WL 31512816, at *3 (S.D.N.Y. Nov. 18, 2002). Judge Freeman also determined that the 274.90 “hours [billed by four Fox Rothschild associates] on the appeal should be accepted as reasonable given that the associates . . . performed a substantial amount of work [in] researching issues for the appeal, drafting sections of the appellate brief and assisting in the preparation for the appellate argument.” (Report at 5; see timekeeper summary attached to Ltr. from Richard B. Cohen, Esq. to Hon. Debra Freeman, dated Apr. 14, 2010 (“Timekeeper Summary.”)); see also S.W. ex rel. N.W. v. Bd. of Educ. of City of N.Y., 257 F. Supp. 2d 600, 605–606 (S.D.N.Y. 2003).

(2) Reasonableness of Rates

Judge Freeman determined that, “in light of the PLRA requirement that counsel be limited to 150% of the maximum hourly rates set by the relevant court under the Criminal Justice Act and the fact that the Second Circuit has set a maximum hourly CJA rate of \$92.00 per hour, counsel’s fees for their work on this matter should be capped at \$138.00.” (Report at 7 (internal citations omitted)); see Perez, 587 F.3d at 153, 155 n.9; see also Hutchinson v. McCabe, No. 95

Civ. 5449, 2001 U.S. Dist. LEXIS 11927, at *4-5 (S.D.N.Y. Aug. 15, 2001); Reynolds v. Goord, No. 98 Civ. 6722, 2001 U.S. Dist. LEXIS 1203, at *10 (S.D.N.Y. Feb. 13, 2001). Judge Freeman also determined that “\$80 per hour would be a reasonable rate for paralegal fees in this district.” (Report at 7); see Torres v. City of N.Y., No. 07 Civ. 3473, 2008 U.S. Dist. LEXIS 11027, at *10 (S.D.N.Y. Feb. 14, 2008).

(3) Reduction for Cross-Appeal

Judge Freeman also concluded that a “percentage fee reduction is appropriate” because “Plaintiffs did not prevail on their cross-appeal.” (Report at 8); see Port Auth. Police Asian Jade Soc’y of N.Y. & N.J. v. Port Auth. of N.Y. and N.J., No. 05 Civ. 3835, 2010 WL 1507784, at *3 (S.D.N.Y. Apr. 15, 2010).

IV. Conclusion and Order

For the reasons set forth therein and herein, the Court adopts the Report [#67] in its entirety. The Clerk of Court is respectfully requested to enter judgment in favor of Fox Rothschild in the amount of \$42,000.00, plus post-judgment interest pursuant to 28 U.S.C. § 1961.

Dated: New York, New York
July 29, 2010



RICHARD M. BERMAN, U.S.D.J.