

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. Nancy M. Bannon
Justice

PART 42

WALID MOHAMED, et al.

INDEX NO. 154808/2013

- v -

MOTION DATE 7/12/2017

CITY OF NEW YORK, et al.

MOTION SEQ. NO. 008

INTERIM ORDER

The following papers were read on this motion for an award of attorneys' fees:

Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) —

No(s). 1

Exhibits — Memorandum of Law-----

Answering Affirmation(s) — Affidavit(s) — Exhibits -----

No(s). 2

Replying Affirmation — Affidavit(s) — Exhibits -----

No(s). 3

In this action, inter alia, pursuant to 42 USC § 1983 to recover damages for the violation of the plaintiff's constitutional rights under color of state law, the plaintiff moves pursuant to 42 USC § 1988 for an award of a reasonable attorney's fee, costs, and disbursements. The defendants oppose the motion. The motion is granted to the extent that the plaintiff is awarded attorney's fees at the hourly billing rate of \$450 per hour for the time expended by attorney Aymen Aboushi and \$400 per hour for the time expended by attorney Tahanie Aboushi in prosecuting this action, up to and including the court appearance of July 12, 2017, plus costs and disbursements, and the matter is referred to a referee to hear and report on the number of hours that were reasonably expended by those attorneys.

The infant plaintiff—an autistic teenager—was forcibly removed from his family's home by several officers of the New York City Police Department. On December 9, 2016, after a highly contested 20-day jury trial, the jury found that three of the officers assaulted, battered, and violated the Fourth Amendment rights of the infant plaintiff by using excessive force. The jury awarded him the sums of \$3,000 in compensatory damages for past pain and suffering, \$30,000 in compensatory damages for past emotional distress, \$750,000 in compensatory damages for future emotional distress over 50 years, \$10,000 in punitive damages against the defendant Steven Hernandez, and \$5,000 in punitive damages against each of the defendants George Santana and Robert Larocco. Under the theory of respondeat superior, the City is vicariously liable for the assault and battery committed by those police officers. See Linson v City of New York, 98 AD3d 1002 (2nd Dept. 2012).

42 USC § 1988 authorizes a court to award a reasonable attorneys' fees and costs to the prevailing party in an action commenced pursuant to 42 USC § 1983. "Congress recognized that attorney's fees are an integral part of the remedy necessary to achieve compliance with civil rights laws such as 42 USC § 1983. In furtherance of that goal, Congress enacted the Civil Rights Attorney's Fees Awards Act in 1976." Matter of Thomasel v Perales, 78 NY2d 561, 567 (1991) (citations and

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

internal quotation marks omitted). "In keeping with this remedial objective [the Court of Appeals has] liberally construed section 1988. While the statute intones 'discretion,' the legislative history and judicial precedents emphasize that [a] party seeking to enforce the rights protected by the statutes covered by [section 1988], if successful, should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Id.; see Matter of Johnson v Blum, 58 NY2d 454 (1983).

To be considered a prevailing party, the party need only "be able to point to a resolution of the dispute which changes the legal relationship between" himself or herself and the defendants. Texas State Teachers Assoc. v Garland Ind. Sch. Dist., 489 US 782, 792 (1989). The plaintiff is clearly the prevailing party here. See Cardoza v City of New York, 139 AD3d 151 (1st Dept. 2016). The plaintiff need not succeed on all of his claims to be entitled to a complete recovery of an attorney's fee. See Leblanc-Sternberg v Fletcher, 143 F3d 748 (2nd Cir. 1998). While "[n]o fees should be awarded for time spent pursuing a failed claim if it was 'unrelated' to the plaintiff's successful claims," a fee award is warranted when a plaintiff achieves "substantial relief" and should be based upon counsel's time spent on all claims involving a common core of facts and related legal theories. Id., quoting Hensley v Eckerhart, 461 US 424, 434-35 (1983). Where, as here, the claims involve the same common core of facts and related legal theories, and the plaintiff obtained a substantial jury verdict in his favor on his claims that his rights were violated, he is entitled to an award for all of his attorneys' time that was reasonably expended in prosecuting the action. See Cardoza v City of New York, supra.

A reasonable fee is a fee that is "sufficient to induce a capable attorney to undertake the representation in a meritorious civil rights case." Perdue v Kenny A. ex rel. Winn, 559 US 542, 552 (2010). The hourly billing rates requested by the plaintiff's attorneys reasonably reflect their training, experience, and ability in the field of civil rights litigation, and are within the range of rates that are typically charged by civil rights attorneys in the New York City metropolitan area. See Arbor Hill Concerned Citizens Neighborhood Assoc. v County of Albany, 522 F3d 182 (2nd Cir. 2008).

Accordingly, it is

ORDERED that the plaintiff's motion for an award of attorney's fees, costs, and disbursements is granted to the extent that the plaintiff is awarded attorney's fees at the hourly billing rate of \$450 per hour for the time expended by attorney Aymen Aboushi and \$400 per hour for the time expended by attorney Tahanie Aboushi in prosecuting this action, up to and including the court appearance of July 12, 2017, plus costs and disbursements; and it is further,

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

1. the issue of the number of hours reasonably expended by the plaintiff's attorneys in prosecuting this action, up to and including the court appearance of July 12, 2017; and
2. the issue of the amount of costs and disbursements properly recoverable; and it is

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further,

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further,

ORDERED that the plaintiff shall serve a proposed accounting within 24 days from the date of this order and the defendants shall serve objections to the proposed accounting within 20 days from service of plaintiff's papers, and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further,

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further,

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further,

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

This constitutes the Decision and Order of the court.

Dated: 7-13-17


JSC
HON. NANCY M. BANNON

1. Check one: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. Check as appropriate: MOTION IS: ☒ GRANTED ☐ DENIED ☐ OTHER