

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon
Justice

PART 42

WALID MOHAMED, et al.

- v -

CITY OF NEW YORK, et al.

INDEX NO. 154808/13

MOTION DATE 7/12/17
3/28/18

MOTION SEQ. NO. 008, 011

The following papers were read on this motion for an award of attorneys' fees (SEQ 008) and motion to confirm a referee's report recommending the amount of fees (SEQ 011):

Table with 2 columns: Document Description and No(s). Rows include SEQ 008 and SEQ 011 sections for Notice of Motion, Answering Affirmation, and Replying Affirmation.

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 reasonable attorney's fees, costs, and disbursements (SEQ 008).

The referee (Louis Crespo, Special Referee) conducted a hearing on October 3, 2017, which, by stipulation, was on submitted papers, and filed his report on November 13, 2017. In his report, the referee recommended that the court credit Aymen Aboushi for 444.10 hours of legal work and Tahanie Aboushi for 186.50 hours, along with a fee at \$100.00 per hour for 43 hours of work performed by paralegals, all with a 15% downward adjustment to account for block billing, for a fee award of

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

\$236,933.00. The referee further recommended that the plaintiff also recover \$11,858.82 in costs and disbursements, for a total award of fees, costs, and disbursements in the sum of \$248,791.82, plus applicable interest.

The plaintiff now moves pursuant to CPLR 4403 to confirm the report. The defendants' do not expressly oppose the confirmation of the report, but contend that interest on the amount awarded by the jury be calculated from the date of verdict and that interest on the amount of fees and costs awarded run only from the date that the fees and costs were awarded. The motions are granted.

As a general rule, the court should not disturb the findings of a referee, and the report should be confirmed if the referee's findings are supported by the record, the referee has clearly defined the issues, and resolved matters of credibility. See Board of Mgrs. of Boro Park VII.-Phase I Condominium v Boro Park Townhouse Assoc., 284 AD2d 237 (1st Dept. 2001); Freedman v Freedman, 211 AD2d 580 (1st Dept. 1995). The court concludes that the referee's findings as to the number of hours properly expended by the plaintiff's counsel in prosecuting the action are supported by the record, that the referee clearly defined the issues referred to him, and that he resolved all matters involving the credibility of the claim of the number of hours reasonably expended, as adjusted downward to account for block billing. See Freidman v Yakov, 138 AD3d 554 (1st Dept. 2016). The report is thus confirmed.

The award of costs and fees is only recoverable in connection with the cause of action asserted pursuant to 42 USC § 1983, and only the defendants Hernandez, Santana, and Larocco were found by the jury to be liable for violation of the plaintiff's constitutional rights. Since the City may not be held vicariously liable therefor (see Monell v Department of Social Servs. of City of N.Y., 436 US 658 [1977]), the award of costs and fees is made only against those individual defendants.

Interest on a jury verdict in a tort and civil rights action runs from the date that the defendants are found liable by the court or the finder of fact. See CPLR 5002; Love v State of New York, 78 NY2d 540 (1991). That date here is December 9, 2016. Interest on an award of attorneys' fees and costs runs from the date on which the court determined that the plaintiff was the prevailing party. See Solow Mgt. Corp. v Tanger, 19 AD3d 225 (1st Dept. 2005). Here, that date is July 13, 2017, when the court made that finding.

Accordingly, it is

ORDERED that the plaintiff's motion for an award of attorneys' fees and costs (SEQ 008) is granted in its entirety, and he is awarded the sum of \$236,933.00 as and for an attorneys' fee and the sum of \$11,858.82 in costs and disbursements, for a total award of fees, costs, and disbursements in the sum of \$248,791.82, plus statutory interest from July 13, 2017; and it is further,

ORDERED that the plaintiff's motion to confirm the report of Special Referee Louis Crespo dated November 13, 2017 (SEQ 011) is granted, and the report is confirmed; and it is further,

ORDERED that the Clerk of the court shall, in accordance with CPLR 5016, 5017, and 5018, enter judgment in favor of the plaintiff, Walid Mohamed, by his mother and natural guardian Amiriah Omran, and (a) against the defendants City of New York, Steven Hernandez, George Santana, and Robert Larocco, jointly and severally, in the sum of \$783,000.00, plus statutory interest thereon from December 9, 2016, (b) against the defendants Steven Hernandez, George Santana, and Robert Larocco, jointly and severally, in the sum of \$248,791.82, as and for attorneys' fees, costs, and disbursements, plus statutory interest thereon from July 13, 2017, (c) against the defendant Steven Hernandez in the additional sum of \$10,000.00, plus statutory interest thereon from December 9, 2016, (d) against the defendant George Santana in the additional sum of \$5,000.00, plus statutory interest thereon from December 9, 2016, and (e) against the defendant Robert Larocco in the additional sum of \$5,000.00, plus statutory interest thereon from December 9, 2016.

This constitutes the Decision and Order of the court.

Dated: May 10, 2018

 JSC

HON. NANCY M. BANNON

- 1. Check one: **CASE DISPOSED** **NON-FINAL DISPOSITION**
- 2. Check as appropriate: MOTION IS: **GRANTED** **DENIED** **OTHER SEQ 008**
- 3. Check as appropriate: MOTION IS: **GRANTED** **DENIED** **OTHER SEQ 011**