

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
BCD-CV-13-82



JOHN E. MCDONALD, JR.

Plaintiff

v.

**COMBINED
ORDER ON MOTION FOR RECONSIDERATION
and FINAL ORDER ON MOTION FOR
ALLOWANCE OF ATTORNEY'S FEES**

CETIS, INC.,

Defendant

Background

Pending before the Court is Defendant Cetis, Inc.'s Motion for Reconsideration of the Court's Order on Plaintiff's Motion for Allowance of Attorney's Fees. While Plaintiff has not had an opportunity to file a response to the motion, given the issue as presented, the Court agrees that a clarification of the January 27, 2015 is appropriate. In addition, the Court has received and reviewed the Supplemental Affidavit of counsel fees submitted by Plaintiff's counsel and will issue a final award of counsel fees as part of this combined order.

Motion for Reconsideration of the Court's Order on Plaintiff's Motion for Allowance of Attorney's Fees

The Court in its entry dated January 27, 2015 stated that the Defendant "waived any argument as to the reasonableness of the fees claimed." When referring to the issue of the "reasonableness of the fees claimed" the Court was referring to certain factors for determining "reasonableness" set out in *Mancini v. Scott*, 2000 ME 19, ¶10. Factors referred to in *Mancini* which were not argued by the Defendant in this case include the hourly rate charged, the skill required to perform the service, the customary fees charged in the community for similar work, the experience and ability of the attorneys, the nature and length of the professional relationship with the client, and awards made in similar cases. Defendant in *McDonald I* had focused much of its argument regarding the request for fees in that case on such factors, and the Court should have clarified that it was distinguishing the approach taken by Defendant in this case from the approach taken in *McDonald I*.

The Defendant is correct that it made other arguments in this case about the "reasonableness" including the length of trial, the amount of discovery conducted, and "the scale of the case and the result obtained." (See pg. 9-11 of Defendant's Opposition to Motion for Allowance of Attorney's Fees.) The Court will therefore alter and amend the Judgment by deleting the statement in the entry that Defendant had "waived any argument as to the reasonableness of the fees obtained."

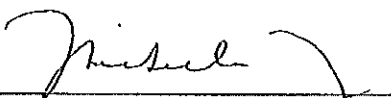
Supplemental Affidavit of Attorney Michael Donlan

The Court has reviewed the affidavit, and pursuant to the January 27, 2015 order will award counsel fees claimed up to January 7, 2014 in the amount of \$7,822.00. The Court will also award 40% of the counsel fees claimed from January 8, 2014 to November 24, 2014 (\$85,925.50) in the amount of \$34,370.20. The total fees awarded are \$42,192.20.

The entry on this Combined Order will be:

- 1.) The Motion for Reconsideration is granted. The Court's entry in its January 27, 2015 Order on Motion for Allowance of Attorney's Fees is altered and amended to delete the last sentence which reads as follows: "Defendant has waived any argument as to the reasonableness of fees claimed." The entry of that date is otherwise unchanged.
- 2.) Counsel fees are awarded to Plaintiff in the amount of \$42,192.20.

2/9/15
DATE



SUPERIOR COURT JUSTICE
BUSINESS AND CONSUMER COURT

Entered on the Docket: 2-9-15
Copies sent via Mail Electronically