

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 13-80725-CIV-MARRA/MATTHEWMAN

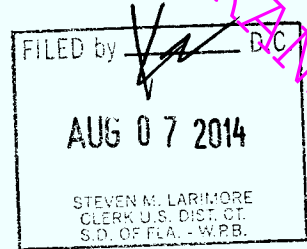
CURTIS JACKSON, III,

Plaintiff,

vs.

SLEEK AUDIO, LLC, et al.,

Defendants.



REPORT AND RECOMMENDATION ON DEFENDANT’S MOTION FOR ATTORNEY’S FEES PURSUANT TO 28 U.S.C. § 1447 [DE 62]

THIS CAUSE is before the Court upon Defendants, Sleek Audio, LLC, Mark Krywko, Michael Krywko, Jason Krywko, and Gregory Wysocki’s (hereinafter “Defendants”), Motion for Attorneys’ Fees Pursuant to 28 U.S.C. § 1447 [DE 62]. Defendants seek \$26,762.26 in attorneys’ fees. This matter was referred to the undersigned by United States District Judge Kenneth A. Marra [DE 64]. Plaintiff, Curtis Jackson, III, does not contest the amount of attorneys’ fees sought by Defendants [DE 68, p. 1].¹ For the reasons that follow, this Court **RECOMMENDS** that the District Court **GRANT** Defendants’ Motion for Attorneys’ Fees Pursuant to 28 U.S.C. § 1447 [DE 62].

BACKGROUND

In July of 2013, Plaintiff filed a Complaint against Defendants, seeking an Order Vacating Arbitration Award. As a basis for the relief sought, Plaintiff alleged violations of Section 10(a) of the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (“FAA”) and sections 682.11 and 682.13, Florida Statutes [DE 1]. Shortly thereafter, Defendants filed a Petition to Confirm

¹ Specifically, Plaintiff states that, although he does not contest the amount of attorneys’ fees sought by Defendants, he reserves his right “potentially to recover repayment of all fees and cost[s] sought by defendants’ motion.” [DE 68, p. 1].

Arbitration Award in state court in Palm Beach County, Florida; Plaintiff subsequently removed the state court action to federal court on the basis of federal question jurisdiction under 28 U.S.C. § 1331. Defendants then moved to dismiss Plaintiff's Complaint, arguing that the court lacked subject matter jurisdiction. The Court then entered an Order remanding the action back to state court and awarding Defendants reasonable attorney's fees and costs incurred as a result of the removal [DE 56].

DISCUSSION

I. Entitlement to Attorney's Fees

There is no dispute that Defendants are entitled to reasonable attorneys' fees. Pursuant to 28 U.S.C. § 1447(c), "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal."

In his Response to Defendants' Motion, Plaintiff does not contest Defendants' entitlement to attorneys' fees.

II. Calculation of the Attorney's Fees Award

A reasonable attorney's fee award is "properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." *Am. Civil Liberties Union v. Barnes*, 168 F. 3d 423, 427 (11th Cir. 1999) (quoting *Blum v. Stenson*, 465 U.S. 886, 888 (1994)). "This 'lodestar' may then be adjusted for the results obtained" by the attorney. *See id.* at 427 (citing *Loranger v. Stierheim*, 10 F. 3d 776, 781 (11th Cir. 1994)). "In determining what is a 'reasonable' hourly rate and what number of compensable hours is 'reasonable,' the court is to consider the 12 factors enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5th Cir. 1974)." *Bivins v. Wrap It Up, Inc.*, 548 F. 3d 1348, 1350 (11th Cir. 2008). These factors are:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3)

the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Id. at 1350 n. 2 (citation omitted).

The reasonable hourly rate is defined as the “prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation.” *Barnes*, 168 F. 3d at 436 (quoting *Norman v. Housing Auth. of Montgomery*, 836 F. 2d 1292, 1299 (11th Cir. 1999)). The fee applicant bears the burden of establishing the claimed market rate. *See Barnes*, 168 F.3d at 427. The Court may use its own experience in assessing the reasonableness of attorney’s fees. *Norman*, 836 F.2d at 1303.

With regard to the type of evidence that the fee claimant should produce in support of a claim, in *Barnes*, the Eleventh Circuit has stated:

The “fee applicant bears the burden of establishing entitlement and documenting the appropriate hours and hourly rates.” *Norman*, 836 F.2d at 1303. That burden includes “supplying the court with specific and detailed evidence from which the court can determine the reasonable hourly rate. Further, fee counsel should have maintained records to show the time spent on the different claims, and the general subject matter of the time expenditures ought to be set out with sufficient particularity so that the district court can assess the time claimed for each activity A well-prepared fee petition also would include a summary, grouping the time entries by the nature of the activity or stage of the case.” *Id.* (citations omitted).

Barnes, 168 F.3d at 427.

In submitting a request for attorney’s fees, fee applicants are required to exercise “billing judgment.” *Id.* at 428 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). If fee applicants do not exclude “excessive, redundant, or otherwise unnecessary” hours, which are hours “that would be unreasonable to bill to a client and therefore to one’s adversary *irrespective*

of the skill, reputation or experience of counsel," the court must exercise billing judgment for them. *See id.* (quoting *Norman*, 836 F. 2d at 1301 (*emphasis in original*)). The burden rests on the moving party to submit a request for fees that will enable the court to determine how much time was reasonably expended. *Loranger*, 10 F.3d at 782.

Here, Defendants request \$26,762.26 in attorneys' fees, and Plaintiff does not challenge the amount sought. The Court has independently reviewed the billing records, affidavit, and declaration submitted along with Defendants' Motion, and finds that the amount of fees requested is reasonable.

III. Conclusion

In light of the foregoing,

1. This Court **RECOMMENDS** that the District Court **GRANT** Defendants' Motion for Attorneys' Fees Pursuant to 28 U.S.C. § 1447 [DE 62].
2. This Court further **RECOMMENDS** that the District Court award Defendants attorneys' fees in the amount of \$26,762.26

NOTICE OF RIGHT TO OBJECT

A party shall file written objections, if any, to this Report and Recommendation with United States District Judge Kenneth A. Marra within fourteen (14) days of being served with a copy of this Report and Recommendation. *See* 28 U.S.C. § 636(b)(1)(C)

RESPECTFULLY SUBMITTED in Chambers at West Palm Beach, Palm Beach County, Florida, this 7th day of August, 2014.


WILLIAM MATTHEWMAN
United States Magistrate Judge