

CA - Kulmetta

9-2-76

CL w/memo opposing Ps motion for  
attorney fees.

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RICHARD F. PLECHNER  
ALAN A. DAVIDSON

SEP 8 P 1: 33  
September 2, 1976

Clerk of The Superior Court  
State House Annex  
Trenton, NJ 08625

Re: Urban League of Greater New Brunswick  
vs. Mayor and Council of the Borough  
of Carteret, et al Docket No. C-4122-73

Dear Sir:

Enclosed please find Memorandum in Opposition  
to Motion for Payment of Fees, on behalf of the Borough of  
Helmetta, with regard to the above matter.

Yours truly,

RICHARD F. PLECHNER

By 

Alan A. Davidson

mat  
Enc.

cc: Honorable David D. Furman (w/enc)  
All attorneys of Record (w/enc)

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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY  
Docket No. C-4122-73

URBAN LEAGUE OF GREATER NEW :  
BRUNSWICK, et al., :

Plaintiffs :

vs. :

THE MAYOR AND COUNCIL OF THE :  
BOROUGH OF CARTERET, et al., :

Defendants

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MEMORANDUM IN OPPOSITION TO  
MOTION FOR PAYMENT OF FEES

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RICHARD F. PLECHNER,  
Borough Attorney  
Borough of Helmetta  
351 Main Street  
Metuchan, NJ 08840

Plaintiffs have moved for an order directing payment of "expert fees" for Ernest Erber and Alan Mallach, two gentlemen who testified at depositions prior to the trial in the case at bar. The Borough of Helmetta opposes the request by plaintiffs.

Ernest Erber is an employee of the National Committee Against Discrimination in Housing, Inc. (hereinafter NCDH) and was so employed at the time of discovery and trial. The applicable rule, being R. 4:10-2(d)(2), provides for a "reasonable fee" to be paid to an "expert", and for same to be determined by the Court if the parties disagree on the amount therefor.

Defendant does not concede that Mr. Erber is an expert. His credentials were attacked unsuccessfully at trial, but it is expected that they will be subject to appellate scrutiny. Even if his qualifications suffice, however, defendant challenges the request due to his employment status with NCDH, the major financier of the litigation by plaintiffs. An independent expert is given a fee to reimburse him for time lost from his prime earnings hours and for the information received due to his status as an "expert". As an employee of NCDH Mr. Erber lost no pay from work, for his job, in the short run, was to testify at trial and develop a model for a fair share allocation. The record reflects that his testimony at depositions was even less enlightening than that received at trial. If Mr. Erber is indeed

entitled to a "reasonable" fee, logic would dictate that a token sum be awarded.

Mr. Mallach, too, was commissioned to do work for NCDH to help it prepare its case. The situation can be easily distinguished from that of a medical doctor who is asked by an insurance company to give his professional opinion on a particular plaintiff/patient. Mr. Mallach actually began his study on the premise that the various zoning ordinances violated the rights of the plaintiffs; he was not, therefore, an impartial expert who happened to have an opinion which helped the plaintiff's cause.

Further, Mr. Mallach was extensively challenged at trial as to his expertise. Ample knowledge does not make one an expert, despite the personal beliefs of the witness. In ascertaining what constitutes a reasonable fee, a proper standard might well reflect the witness' degree of expertise in the field and the quantum and quality of testimony imparted at the depositions. The Borough of Helmetta respectfully asks that any fee, if one is deemed proper at all, be kept at an absolute minimum.

Finally, the deposition of Mr. Mallach reflects that the urban studies that he was preparing were only in the infant stages. As a matter of fact, they were often mere worksheets which had to be deciphered for even a modicum of understanding by

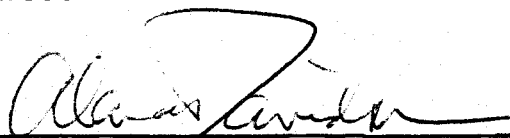
the attorneys in presence. The deposition of Mr. Mallach added little to the attorneys' knowledge due to his lack of preparation at that time.

CONCLUSION

Based upon the above it is respectfully requested that expert fees be deemed or, if awarded, be kept at a minimum.

Respectfully submitted,

RICHARD F. PLECHNER, Attorney  
for defendant, Borough of  
Helmetta

By   
Alan A. Davidson