UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 17, 1997

RUSSELL M. HAMILTON, Complainant, v. THE RECORDER, Respondent.	)))) 8 U.S.C. §1324b Proceeding) OCAHO Case No. 97B00150)))

ORDER GRANTING RESPONDENT'S REQUEST FOR ATTORNEY'S FEES

MARVIN H. MORSE, Administrative Law Judge

Appearances: *John B. Kotmair, Jr.*, on behalf of Complainant.
Gail A. Goolkasian, Hill & Barlow, P.C., on behalf of Respondent.

I. *Procedural History*

Pursuant to the October 6, 1997 Final Decision and Order Granting Respondent's Motion To Dismiss, 7 OCAHO 968 (1997), *The Recorder* (Respondent), by its attorney, timely filed its Affidavit in Support of Attorney's Fees (Application) on October 29, 1997, clarified by its addendum letter of November 4, 1997. *The Recorder* seeks **$2,655** in reimbursement for attorney fees submitted by Gail A. Goolkasian of Hill & Barlow, P.C., **$44.85** for Goolkasian's copying, **$16.95** for Goolkasian's faxing, and **$291** for computer-assisted legal research, although Respondent also expended $2,539.50 for the services of three other Hill & Barlow tax attorneys. Hamilton (Complainant) neither contests nor otherwise responds to Respondent's Application.

Respondent requests a total of **$3,007.80** in attorney's fees and costs and provides a detailed explanation and summary in support of its request. Complainant, invited by the October 6, 1997 Final Decision and Order to respond to *The Recorder's* request for and calculation of attorney's fees by November 7, 1997, does not question the reasonableness of either the time set forth or the hourly rates claimed in Respondent's Application.

II. *Discussion*

Just as the disposition of this case on the merits was one of first impression in §1324b tax protestor jurisprudence in the First Circuit, this order addresses fee shifting in such cases for the first time in the First Circuit.

A. *Test for Awards of Attorney's Fees Under 8 U.S.C. §1324b*

Attorney's fees are awarded in an unfair immigration-related employment practice action based on a two-part test: (1) determination of prevailing party status; and (2) qualification of the action as frivolous or unreasonable. 8 U.S.C. §1324b(h) provides in part that

> an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

1. *The Recorder Is the Prevailing Party*

That *The Recorder* is the prevailing party is made clear by relevant OCAHO and federal case law. "Title VII served as a point of departure in drafting what became [8 U.S.C. §1324b]. . . . It is reasonable to conclude, therefore, that Title VII [of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq*.,] case law with respect to award of attorneys' fees is an important springboard for discussion of attorneys' fees under [§1324b]." *Williamson v. Autorama*, 1 OCAHO 174, at 1173 (1990), 1990 WL 515872, at *5 (O.C.A.H.O.).[1] *See also Lee v.*

[1]Citations to OCAHO precedents printed in bound Volumes 1–3, ADMINISTRATIVE DECISIONS UNDER EMPLOYER SANCTIONS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES LAWS OF THE UNITED STATES, reflect consecutive pagination within that bound volume; pinpoint citations to Volumes 1–3 are to specific pages, *seriatim*, of the entire volume. Pinpoint citations to other OCAHO precedents subsequent to Volumes 1–3, however, are to pages within the original issuances.

Airtouch Communications, 7 OCAHO 926, at 2 (1997), 1997 WL 602712, at *12 (O.C.A.H.O.); *Banuelos v. Transportation Leasing Co.*, 1 OCAHO 255, at 1651–52 (1990), 1990 WL 512091, at *10–11 (O.C.A.H.O.).

Jasso v. Danbury Hilton & Towers, 3 OCAHO 566 (1993), 1993 WL 544051 (O.C.A.H.O.),[2] referencing *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978), held that an award of attorney's fees depends on a finding of : (1) respondent's prevailing party status, and (2) complainant's unreasonableness in filing the underlying action. *Jasso* also relied upon the similarities between the attorney's fees provisions of IRCA and the Civil Rights Act:

> Title VII of the Civil Rights Act also illuminates the reasonableness test for fee shifting. Under Title VII the Supreme Court has held that a District Court may, in its discretion, award attorney's fees to a prevailing Defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, groundless and without foundation, even though not brought in subjective bad faith.

Jasso, 3 OCAHO 566, at 6, 1993 WL 544051, at *10–11.

The Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983),[3] and *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989),[4] defined the prevailing party as the one who succeeds or prevails "on a significant issue in the litigation" and achieves "some of the relief they sought. . . ." In *Texas State Teachers*, the Court found that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." 489 U.S. at 792–93. Parties "who prevailed on a significant issue in the litigation and . . . obtained some of the relief sought . . . are thus 'prevailing parties' within the meaning of [the statute]." *Id.* at 793.

[2]*Jasso v. Danbury Hilton & Towers*, 3 OCAHO 566, 1993 WL 544051 (finding respondent prevailing party, but denying award of attorney's fees because complainant was justified in bringing the action).

[3]*Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (discussing fee awards under Civil Rights Attorney's Fees Awards Act, 42 U.S.C. §1988).

[4]*Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989) (discussing fee awards under 42 U.S.C. §§1983, 1988).

Respondent "succeeded" on the second affirmative defense (failure to state a claim upon which relief can be granted) set forth in its Answer when I held that:

> Hamilton's action lacks "an arguable basis either in law or fact." *Neitzke v. Williams,* 490 U.S. 319, 325 (1989). Hamilton's Complaint, having no arguable basis in fact or law, is frivolous. . . . Where a claim is based upon a party's discharge of statutory duties, it derives from an indisputable meritless legal theory. . . . As an employer who complies with statutory obligations, *The Recorder* is immune from liability under the very statutes conferring duties upon it. . . . Accordingly, I dismiss Hamilton's Complaint without leave to amend because his tax challenge cannot by any conceivable amendment be transformed into a *bona fide* immigration-related unfair employment practice in violation of 8 U.S.C. §1324b and because this forum lacks subject matter jurisdiction over employment conditions and tax challenges.

Final Decision and Order Granting Respondent's Motion To Dismiss, pp. 10–11. The dismissal "afforded [*The Recorder*] . . . some of the relief sought." *The Recorder's* legal relationship with Hamilton was "materially altered" when I dismissed Hamilton's Complaint for failure to state a cause of action cognizable by §1324b(g)(3) and for lack of subject matter jurisdiction. I find, therefore, that *The Recorder* meets the prevailing party test of *Texas State Teachers*, *i.e.*, (1) it prevailed on a significant issue in the litigation by demonstrating that the Complainant failed to state a cause of action, and (2) it obtained the relief it sought in its Answer when Hamilton's Complaint was dismissed. I conclude that the Respondent is clearly the prevailing party.

In the context of summary dispositions of complaints, ALJs have not always been of one mind in resolving whether a respondent is a prevailing party. *Banuelos*, 1 OCAHO 255, at 1650 n.7, 1990 WL 512091, at *10, disagreed with *Williamson*, 1 OCAHO 174, 1990 WL 515872, with respect to the "view that a respondent is not a 'prevailing party' simply because [an] ALJ has rendered a decision which dismisses, on jurisdictional grounds, a Complaint as charged by a *pro se* complainant. . . . [The *Banuelos* ALJ also] reject[ed] an interpretation . . . which would apply attorney fees analyses to 'all cases,' including, as [another ALJ] apparently sees it, to threshold dismissals for lack of jurisdiction against a *pro se*."[5]

[5]"The defendant has been held to be the prevailing party in cases involving a dismissal for want of jurisdiction." 1 ROBERT L. ROSSI, ATTORNEY'S FEES 363 (2d ed. 1995).

However, the concerns raised in *Banuelos* regarding the award of attorney's fees to the prevailing party in actions dismissed on jurisdictional grounds need not be addressed in the context of the case at hand. This is so because Hamilton did ***not*** appear *pro se,* but was represented by John B. Kotmair (Kotmair) and the National Worker's Rights Committee (Committee). To the extent that OCAHO rules permit representation by a non-bar member, Hamilton is represented by Kotmair and the Committee. By no means is Hamilton *pro se*. Accordingly, I need not address the *Banuelos* reservation, which would deny prevailing party status to successful respondents whose adversary is truly *pro se*. Moreover, *Hamilton* was dismissed with prejudice *not only* for lack of subject matter jurisdiction, but also for failure to state:

(1) a citizenship status discrimination cause of action cognizable under §1324b(a)(1); and

(2) an over documentation cause of action cognizable under §1324b(a)(6) and §1324a(b).

2. *Hamilton's Complaint, Without Reasonable Foundation in Law and Fact, Is Frivolous*

Fee shifting turns on a determination that "the losing party's argument is without reasonable foundation in law and fact." 8 U.S.C. §1324b(h). "Under 8 U.S.C. §1324b(h), the prevailing party obtains the benefit of fee shifting only upon a finding that the arguments of the opposing party were without reasonable foundation in law and fact." *Jasso*, 3 OCAHO 566, at 1636, 1993 WL 544051, at *2 (citing *Jones v. Dewitt Nursing Home*, 1 OCAHO 1235, 1268 (1990)).

In addition to 8 U.S.C. §1324b(h), Title VII precedent establishes a case to be frivolous if without reasonable foundation in law or fact. "[A] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Although the text of §1324b(h) differs from that of Title VII, the result is the same.

Christiansburg Garment Co. v. EEOC, *supra*, addressed fee-shifting. In *Christiansburg*, the Supreme Court applied the prevailing party standard to civil rights defendants, holding that a court "may in its discretion award attorney's fees to a prevailing defendant in a

Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in bad faith." 434 U.S. at 421. Subsequently, in *Hensley v. Eckerhart*, *supra,* the Court explained that "[a] prevailing defendant [in a 42 U.S.C. §1988 civil rights action] may recover an attorney's fee only where the suit was vexatious, frivolous, or brought to harass or embarrass the defendant. See H.R. Rep. No. 94–1558, p. 7 (1976)." 461 U.S. at 429 n.2.

Hamilton's Complaint was summarily dismissed for lack of subject matter jurisdiction *and* for failure to state a claim upon which relief could be granted. "[T]he *Christiansburg* standard is . . . likely to have been met where **the plaintiff's case is dismissed for failure to state a claim on which relief could be granted. . . ."**[6] Hamilton maintains that his employer discriminated against him by refusing to accept self-styled, gratuitously tendered documents, which purported to exempt Hamilton from the universal demands of the Internal Revenue Code and the Social Security Act, the legality of which are undisputed and long-settled.[7] *The Recorder*, however, is statutorily mandated to withhold income taxes[8] and social security contributions[9] and is immunized from legal liability for withholding by 26 U.S.C. §3102(b),[10] 26 U.S.C. §3403,[11] and the Anti-Injunction Act, 26 U.S.C. §7421(a),[12] which has been interpreted to prohibit

[6]1 Court Awarded Attorney Fees (MB) ¶10.04, at 10–77—10–78 (May 1997) (footnote omitted) (emphasis added). *See, e.g., Patton v. County of Kings*, 857 F.2d 1379 (9th Cir. 1988) (upholding attorney's fees awarded to prevailing defendant where action dismissed for plaintiff's failure to state a cause of action and where plaintiff's action found frivolous); *Harbulak v. County of Suffolk*, 654 F.2d 194, 197 (2d Cir. 1981) (reversing and remanding for award of attorney's fees to defendant after finding "no basis whatsoever for a suit against" the defendant and plaintiff's claim "unreasonable and groundless, if not frivolous"); *Riviera Carbana v. Cruz*, 588 F. Supp. 80 (D.P.R. 1980) (holding that plaintiff failed to allege or state a cause of action and stating that even if plaintiff had stated a cause of action, "'federal courts are without power to entertain claims if they are so attenuated and unsubstantial as to be absolutely devoid of merit' or if they are obviously, as in the instant case, frivolous") (citation omitted), *aff'd,* 767 F.2d 905 (1st Cir. 1985) (unpublished decision).

[7]All employees residing in the United States are subject to withholding taxes and social security (FICA) contributions, which employers must collect "at the source"—i.e., in the workplace, through payroll deductions. 26 U.S.C. §§3101, 3102, 3402(a)(1), 3403. *See Helvering v. Davis*, 301 U.S. 619, 644 (1937); *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937).

[8]26 U.S.C. §3402(a).

[9]26 U.S.C. §3102(a).

[10]26 U.S.C. §3102(b) ("Every employer . . . shall be indemnified against the claims and demands of any person. . . . ").

[11]26 U.S.C. §3403 ("The employer . . . shall not be liable to any person. . . . ")

[12]26 U.S.C. §7421(a) ("[N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person. . . . ").

suits against employers who withhold taxes. *See United States v. American Friends Serv. Comm.*, 419 U.S. 7, 10 (1974). "[T]o take a position which indicates a desire to impede the administration of tax laws is a legally frivolous action." *McKee v. United States*, 781 F.2d 1043, 1047 (4th Cir.), *cert. denied*, 477 U.S. 905 (1986).

Where an employer is statutorily immunized from liability, an action brought against the employer for the performance of that duty is frivolous *per se*. "A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory. . . . " *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997). "A claim is based upon an indisputably meritless legal theory if the defendants are immune from suit." *Graves v. Hampton*, 1 F.3d 315, 317 (5th Cir. 1993) (citing *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)); *Austin v. Jitney-Jungle Stores of America, Inc.*, 6 OCAHO 923, at 22 (1997), 1997 WL 235918, at *17 (O.C.A.H.O.) (citing *Neitzke*, 490 U.S. at 325, *cited in Graves*, 1 F.3d at 317). Because Respondent, "an employer who in compliance with statutory obligations . . . deducts withholding tax and social security contributions, . . . is statutorily immunized from suit[,]" Hamilton's action is frivolous and meritless. *Austin*, 6 OCAHO 923, at 22, 1997 WL 235918, at *17.

"In any complaint respecting an unfair immigration-related employment practice, an [ALJ], in the judge's discretion, may allow a prevailing party . . . a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact." 8 U.S.C. §1324b(h). I find that there is "no legal or factual basis for any of [Hamilton's] allegations," and award Respondent **$3,007.80** in attorney's fees and related expenses. *Lee v. Airtouch Communications*, 7 OCAHO 926, at 6. Respondent's prevailing party status and Hamilton's action against an employer legally immunized from liability satisfy the threshold requirements of the 8 U.S.C. §1324b(h) two-part test for award of attorney's fees. This result accords, for example, with *Kosatchkow v. Allen-Stevens Corp.*, 7 OCAHO 966 (1997), *Lareau v. U.S. Airways*, 7 OCAHO 963 (1997), and *Horne v. Town of Hampstead*, 7 OCAHO 959 (1997).

B. *Reasonableness of Attorney's Fees Request*

"Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses

were computed." 28 C.F.R. §68.52(c)(2)(v). In *Hamilton,* counsel supplies the following figures to support its request:

Date	*Services*	*Hours*	*Amount*
9/9/97	Review materials re Complaint; conference with tax attorney Zielinski	1.3	292.50
9/10/97	Tel. conferences w. attorney Miller, client OCAHO clerk; review of procedures	1.8	405.00
9/22/97	Review cases/papers	1.8	405.00
9/24/97	Telephone conference w. client	.1	22.50
9/25/97	Review case and draft Answer, Motion To Dismiss	4.0	900.00
9/26/97	Telephone conferences w. client, OCAHO; Letter to OCAHO; review and revise Answer, Motion To Dismiss	2.8	630.00

Total Attorney Fees at $225.00 an hour for 11.8 hours: **$2,655.00**

Disbursement Purpose	*Amount*
Copying	44.85
Fax	16.95
Computer-assisted legal research	291.00

Total disbursements: **$352.80**

The reasonableness of these amounts must be assessed.[13]

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of

[13]The United States Court of Appeals for the First Circuit requires "the lower court to explain its actions [in awarding attorney's fees]. . . . The explanation need not be painstaking . . . but at a bare minimum, the order awarding fees, read against the backdrop of the record as a whole, must expose the court's thought process and show the method and manner underlying its decisional calculus." *Coutin v. Young & Rubicam Puerto Rico, Inc.*, 124 F.3d 331, 337 (1st Cir. 1997).

the value of a lawyer's services." *Hensley*, 461 U.S. at 433; *Coutin v. Young & Rubicam Puerto Rico, Inc.*, 124 F.3d 331, 337 (1st Cir. 1997) ("the lodestar method is the strongly preferred method"). This calculation, set forth in *Hensley*, and adopted by the First Circuit in *Coutin*, is the "lodestar" amount. "The courts may then adjust this lodestar calculation by other factors. . . . [I]n *Hensley* and in subsequent cases, [the Supreme Court has] adopted the lodestar approach as the centerpiece of attorney's fee awards." *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989).

"The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the 'results obtained.'" *Hensley*, 461 U.S. at 434. "The district court also may consider other factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–719 ([5th Cir.] 1974), though it should note that many of these factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate." *Hensley*, 461 U.S. at 434 n.9. "The *Johnson* factors may be relevant in adjusting the lodestar amount, but no one factor is a substitute for multiplying reasonable billing rates by a reasonable estimation of the number of hours expended on the litigation." *Blanchard*, 489 U.S. at 94. "The amount of the fee, of course, must be determined on the facts of each case. On this issue the House Report simply refers to twelve factors set forth in *Johnson*. . . . The Senate Report cites to *Johnson* as well . . . ." *Hensley,* 461 U.S. at 430.

"A number of circuits, following the lead of the Fifth Circuit in *Johnson v. Georgia Highway Express*, . . . have announced that their district courts are to consider and make detailed findings with regard to twelve factors relevant to the determination of reasonable attorneys' fees. . . . " *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir.), *cert. denied*, 439 U.S. 934 (1978). The First Circuit has adopted the *Johnson* factors. *Coutin*, 124 F.3d at 337 n.3. The twelve *Johnson* factors are:

> (1) The time and labor required. . . . (2) The novelty and difficulty of the questions. Cases of first impression generally require more time and effort on the attorney's part. . . . (3) The skill requisite to perform the legal service properly. . . . (4) The preclusion of other employment by the attorney due to acceptance of the case. . . . (5) The customary fee. . . . (6) Whether the fee is fixed or contingent. [*But see Blanchard v. Bergeron*, 489 U.S. 87 (1989)]. . . . (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. . . . (12) Awards in similar cases.

Johnson, 488 F.2d at 717–19. To award attorney's fees, a "court must first apply the *Johnson* factors in initially calculating the reasonable hourly rate and the reasonable number of hours expended by the attorney; the resulting 'lodestar' fee, which is based on the reasonable rate and hours calculation, is presumed to be fully compensatory without producing a windfall." *Trimper v. City of Norfolk, Va.*, 58 F.3d 68, 73 (4th Cir. 1995) (referencing *Daly v. Hill*, 790 F.2d 1071, 1078 (4th Cir. 1986)), *cert. denied*, 116 S. Ct. 535 (1995).

Applying the twelve *Johnson* factors to *The Recorder's* request, I find that Respondent's Application is reasonable: fully successful[14] in its defense against this frivolous action, counsel billed Respondent 11.8 hours at $225 an hour for researching, drafting, and finalizing Respondent's Answer and Motion To Dismiss and for conducting related reviews and telephone calls. Affidavit in Support of Motion for Attorney's Fees, Exhibit B. Counsel's rate of $225 an hour is reasonable for an attorney with eight (8) years' experience in the Boston, MA, market. Gail Goolkasian, the experienced counsel, holds a J.D., *cum laude*, from Harvard University Law School. In addition to her Associate's position at Hill & Barlow, P.C., Goolkasian has served as a Special District Attorney for the Middlesex County District Attorney's Office in Malden, MA. Goolkasian's hourly rate is also reasonable in light of recent OCAHO case law in which ALJs awarded attorney's fees ranging from $75 per hour to $284.75 per hour: *Austin v. Jitney Jungle Stores of Am., Inc.,* 7 OCAHO 969 (1997) (awarding $4,971 in attorney's fees and related expenses, rates including $175 an hour for a partner with thirty-six (36) years' experience in the Jackson, MS, market); *Kosatchkow v. Allen-Stevens Corp.,* 7 OCAHO 966 (1997) (awarding $4,474 in attorney's fees and related expenses at rates ranging from $180 per hour for a partner to $95 an hour for a new associate in the Detroit, MI market); *Lareau v. US Airways, Inc.,* 7 OCAHO 963 (1997) (awarding $5,296.47 in attorney's fees and related expenses at rates ranging from $284.75 per hour for the work of a Senior Partner with twenty-

[14]As the First Circuit noted, "the Supreme Court has identified results obtained as a preeminent consideration. . . . If a prevailing party is successful on all . . . of her claims, and receives complete relief, it goes without saying that reasonable fees should be paid for time productively spent, without any discount"). *Coutin*, 124 F.3d at 338.

six (26) years' experience at a major Washington area law firm to $207 an hour for the services of "Of Counsel"); *Horne v. Hampstead*, 7 OCAHO 959 (1997) (awarding $630 in attorney's fees at $150 an hour for work by a partner and an associate in Towson, MD, a suburb of Baltimore); *Werline v. Public Service Electric & Gas Co.*, 7 OCAHO 955 (1997) (awarding $512.50 in attorney's fees at $125 per hour for work by an associate attorney general for respondent in Cedarville, NJ); *Jarvis v. AK Steel*, 7 OCAHO 952 (1997) (awarding "legal fees" in the amount of $1,833.75 with compensation for attorneys in Pittsburgh, PA, at rates of $275 per hour and $240 per hour); *Lee v. Airtouch*, 7 OCAHO 926 (1997) (awarding $7,531.26 for attorney's fees including $15.70 in costs billed for the San Diego, CA, market at rates of $155 per hour for in-house counsel and $216.75 per hour for outside counsel); and *Wije v. Barton Springs/Edwards Aquifer Conservation Dist.*, 5 OCAHO 785 (1995), 1995 WL 626204 (O.C.A.H.O.) (awarding "legal fees" of $51,530.34 in the Austin, TX, market at the rate of $185 per hour for a partner and the rates of $120 per hour and $75 per hour for associate attorneys).[15]

I find attorney's fees and expenses of **$3,007.80**, representing $225 an hour for a seasoned attorney with eight (8) years' experience, and small related expenses, reasonable in the Boston, MA, market.

III. *Conclusion*

Complainant is directed to pay to Respondent the amount of $**3,007.80** for attorney's fees and expenses related to defense against Complainant's frivolous action.

SO ORDERED.

Dated and entered this 17th day of November, 1997.

MARVIN H. MORSE
Administrative Law Judge

[15]As this is not a fee award under the Equal Access to Justice Act (EAJA), 5 U.S.C. §504, I am not bound by the generally applicable EAJA statutory limit of $125 per hour. 5 U.S.C. §504(b)(1)(A)(ii) ("attorney or agent fees shall not be awarded in excess of $125 per hour. . . .").