

Commonwealth of Massachusetts
County of Essex
The Superior Court

CIVIL DOCKET#: ESCV2000-00516-B

RE: Duggan v Dowling et al

TO: Anthony R DiFruscia, Esquire
DiFruscia Law Offices
302 Broadway
Methuen, MA 01844

NOTICE OF DOCKET ENTRY

You are hereby notified that on **06/18/2002** the following entry was made on the above referenced docket:

Memorandum: And Order: It is Ordered that Duggan pay to DiFruscia the amount of \$9635.05 in satisfaction of this attorneys' lien. (Merrick, J.) dated 6/17/02

Dated at Salem, Massachusetts this 18th day of June,
2002.

Thomas H. Driscoll Jr.,
Clerk of the Courts

BY:
Assistant Clerk

Telephone: (978) 462-4474

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
C.A. 2000-516B

THOMAS DUGGAN, JR.

VS.

CITY OF LAWRENCE, PATRICIA A.
DOWLING, RONALD POIRIOR,
JOSE SILVA, M.D., MARY CLAIRE KENNEDY and
ROBERT HAYDEN, JR.

MEMORANDUM AND ORDER

This matter came before the Court for a hearing on a Motion for Establishment of Attorney's Lien.

Attorney Anthony R. DiFruscia claims a lien in the amount of \$19,684.15 for attorneys fees together with an additional \$485.05 for costs for a total of \$20,169.20.¹ Thomas Duggan, the former client, did not file a written opposition, as required by the rules. However, he did appear at the hearing. In view of the fact that he was representing himself, *pro se*, this Court determines that justice requires that it consider his arguments made, albeit with no notice to the moving party.

Background

Thomas Duggan ("Duggan") retained the services of Attorney Anthony DiFruscia ("DiFruscia") in December of 1995. At that time, he entered into two separate agreements: one

¹The total fee claimed is \$20,584.15 of which the client, Thomas Duggan has paid \$900.00.

settlement with the City of Lawrence, which resolved all pending matters, by way of a cash payment to Duggan of \$55,000.00. Upon learning of this settlement, DiFruscia lodged the instant lien.

DISCUSSION

DiFruscia has a statutory right to assert this lien to secure compensation for his service. Boswelly, Zephyr Lines, Inc. & another, 414 Mass. 241, 244 (1993), G.L. 221, sec. 50.

However, asserting this lien does not entitle DiFruscia to a specific fee nor does any amount asserted limit the Court in its determination of reasonable fees for services rendered. Cohen v. Lindsey, 38 Mass. App. Ct. 1, 6 (1995).

Here, DiFruscia seeks the Court to apply the quantum meruit standard. In doing so, this Court can consider a number of facts including "the ability and reputation of the attorney, the demand for his services by others, the amount and importance of the matter involved, the time spent, the prices usually charged for similar services by other attorneys in the same neighborhood, the amount of money or value of the property affected by the controversy and the results." Mulhern v. Roach, 398 Mass. 18 (1986). In applying the quantum meruit standard, the terms of the agreement can provide helpful guidance to the Court.

This case presents the Court with an interesting situation. This is so because after withdrawing from the case, Duggan did not hire another attorney but rather represented himself. Further, there were two separate agreements and indeed two separate cases. Finally, what is missing, is any indication as to how and why Duggan was able to obtain this settlement. It was suggested by counsel for DiFruscia, without any factual support, that the reason for renewed interest in settlement was shifting political winds in the City of Lawrence. Duggan suggests that it was his own hard work and perserverance. Neither DiFruscia nor Duggan called the city

was an hourly fee agreement in connection with a "civil service problem". Duggan was, at the time, attempting to secure a civil service appointment in the Lawrence Police Department. Duggan also entered into another agreement, a standard one third of gross recovery plus out of pocket expenses arrangement. This appears to be for the same legal work: "Failure to hire as a police officer".² Why two agreements? DiFruscia intended that in the event of a successful result, he would enforce whichever agreement would result in the lesser legal fee. He did this because in this words, he liked Mr. Duggan.

With this agreements in place, DiFruscia and his lawfirm began to represent Duggan in his effort to gain employment as a police officer (or in the alternative, to receive compensation for any losses suffered).³ There were two separate cases pending in furtherance of this goal. During the pendency of these actions, Duggan became frustrated and believed that DiFruscia was not giving his matter the attention he felt it deserved. This Court does not make any finding one way or the other on this point except to note that both the client and the attorney appear to have come to the view that they could not work together effectively on this matter. Thus, a motion to withdraw, filed in July of 2000, was allowed by this Court on August 15, 2001. This motion was unopposed by Duggan.

At this point, Duggan proceeded to represent himself. Duggan was able to arrive at a

² While at the hearing neither party went into specifics, it appears that the upshot of the entire legal dispute for Duggan, was that while he was of the view that he was qualified to be appointed and legally entitled to the appointment, the City of Lawrence disagreed and refused to hire him off the civil service list.

³ The hourly fee agreement sets forth the rates for various attorneys and Duggan does not appear to take issue with that. He did suggest at the hearing that the bill presented by DiFruscia represented work not done pursuant to the agreement. However, while raising this for the first time at the hearing, Duggan had at no prior time served DiFruscia with any documents or written opposition. For that reason, the Court excluded and will not consider any extrinsic evidence in support of this claim. In any event, this is a moot point, practically speaking, in light of the formula this Court uses in determining the amount of the lien.

attorney to the stand as a witness (despite his presence at the hearing). He may well have shed some light on the motivation behind the settlement (at least from the city's perspective).

Furthermore, this Court was given no real sense as to what role DiFruscia's efforts played, if any, in achieving the settlement for Duggan. Finally, this Court has no way of knowing whether or not that settlement was a good one for Duggan.

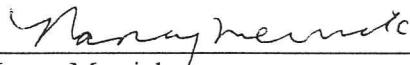
In the absence of all of this information, this Court will rely on its own sense of fairplay, commonsense and justice - factoring in DiFruscia's substantial efforts, whether or not fruitful, for which he has only received \$900 to date.

With this mind, the Court notes that it was DiFruscia's intention to enforce whichever agreement would result in the lower fee. In this instance, this suggests that the contingent fee agreement govern. Further, this Court notes that Duggan was his own attorney. If Duggan had gone to a new attorney and that attorney achieved this settlement, standard protocol would require that the new attorney take a third of the gross and then give half of that fee to predecessor or referring counsel. It hardly makes sense to give DiFruscia an entire third since that would put him in a better position than if Duggan had hired an attorney. Given that Duggan represented himself - did the work in getting the settlement - he should get the one third fee and from that, DiFruscia should take one half (plus his out of pocket expenses). Therefore, the lien is enforced in the amount of \$9635.05, representing one half of what would be a typical one third of the gross recovery, \$18,500, plus \$485.05 in out of pocket expenses.

ORDER

It is **ORDERED** that Duggan pay to DiFruscia the amount of \$9635.05 in satisfaction of this attorneys' lien.

Dated: June 17, 2002



Nancy Merrick
Justice of the Superior Court