

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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OLUBUKUNOLA OSINUBEPI-ALAO,)	
)	
	Plaintiff,)	
)	
v.)	Civil Action No. 13-1111 (RBW)
)	
PLAINVIEW FINANCIAL SERVICES,)	
LTD., <u>et. al.</u> ,)	
)	
	Defendants.)	
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ORDER

On August 12, 2014, this Court referred this case to Magistrate Judge Deborah Robinson for a sixty day period of mediation. Referral to Magistrate Judge, ECF No. 23. On September 4, 2014, Magistrate Judge Robinson recused herself from this case, referred the case to the Circuit Executive for mediation, and ordered counsel to “jointly contact [the] Circuit Mediator[] regarding scheduling of the initial mediation session.” Order Referring Civil Action for Mediation, ECF No. 25. The plaintiff’s counsel failed to comply with this Order and did not contact the Circuit Mediator. Opposition to Motion to Dismiss at 3. On August 8, 2014, this Court had also issued an Order directing the parties to appear at a post-mediation status conference on October 17, 2014, at 9:15 a.m. August 8, 2014 Minute Order. Plaintiff’s counsel also failed to appear at the status conference, resulting in the Court issuing an Order requiring plaintiff’s attorney to show cause in writing why he did not appear at the status conference and why this case should not be dismissed without prejudice for want of prosecution. Order to Show Cause, ECF 26. The plaintiff’s attorney yet again failed to comply with the Show Cause Order and he was held in contempt of Court and fined \$1,000.00. Moreover, the Court also ordered the

plaintiff's attorney to pay the defendants' any costs incurred as a result of his failure to attend the October 17, 2014 status conference. October 31, 2014 Minute Order. The case was also dismissed without prejudice. Id.

On November 5, 2014, the defendants requested that the Court reopen the case for the sole purpose of allowing them to seek sanctions against the plaintiff and her counsel pursuant to Federal Rule of Civil Procedure 16(f). See Defendants' Motion for Relief from Order of Dismissal and For Sanctions Pursuant to Rule 16(f) ("Defs.' Mot."). The Court granted the defendants' motion and conducted a show cause hearing on November 20, 2014, at which time its October 31, 2014 Order was vacated.¹ Order, ECF No. 29. The case was then rescheduled for December 16, 2014, for the Court to determine what amount of the \$9,380.00 of attorneys' fees requested by the defendants as a sanction pursuant to Rule 16(f) were reasonably attributable to the plaintiff's counsel's failure to comply with the orders of the Court.

Rule 16(f) unambiguously emphasizes the importance of scheduling and other pretrial orders by granting the Court express authority, on motion or on its own, to sanction parties and attorneys who fail to comply with scheduling and other pretrial orders. Fed. R. Civ. P.16(f); Landmark Legal Found. v. EPA, 272 F.Supp.2d 70, 88 (D.D.C.2003). Specifically, the Rule provides that:

The [C]ourt may issue any just orders . . . if a party or its attorney: (A) fails to appear at a scheduling or other pretrial conference; (B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or (C) fails to obey a scheduling or other pretrial order.

¹ During the show cause hearing the plaintiff's counsel provided the Court with an ex parte explanation as to why he failed to comply with the various Court orders. Although the circumstances he described are unfortunate, they do not absolve counsel of his numerous professional transgressions in this case. However, the Court did find those circumstances sufficiently compelling to mitigate against holding counsel in contempt and fining him \$1,000.00 as earlier ordered. See Order, ECF No. 29.

Fed. R. Civ. P. 16(f)(1). “[I]n addition to any other sanction, the [C]ourt must order the party, its attorney, or both to pay the reasonable expenses—including attorney’s fees—incurred because of any noncompliance with this rule”² Fed. R. Civ. P. 16(f)(2) (emphasis added). The Court’s power to impose sanctions for plaintiff’s counsel’s transgressions is both express, in the form of the Federal Rules, and implicit, flowing from the very nature of the Court as an institution. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991). Indeed, courts have the inherent discretion “to fashion an appropriate sanction for conduct which abuses the judicial process.” Id. at 44–45. It is therefore within the Court’s power to assess attorney’s fees as a sanction for the “willful disobedience of a court order.” Id. (internal quotation omitted). Rule 16 encompasses court orders pertaining to mediation and other forms of alternative dispute resolution. See Fed. R. Civ. P. 16(c)(2)(I), (d); see also Fed. R. Civ. P. 16 1993 Amendments Advisory Committee Notes, (“[T]he judge and attorneys can explore possible use of alternative procedures such as . . . mediation”). Thus, the Court has authority to sanction the plaintiff’s attorney for failing to comply with the Court’s Order to participate in mediation, as well as for not appearing for the scheduled status conference on October 17, 2014.

² “Reasonable” attorney’s fees are determined by the reasonable number of hours expended multiplied by a reasonable hourly rate. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Importantly, the movant bears the burden of demonstrating that both the hourly rate and the number of hours expended on particular tasks are reasonable. In re North, 59 F.3d 184, 189 (D.C. Cir. 1995). A movant can show that an hourly rate is reasonable by “submit[ting] evidence on at least three fronts: the attorney’s billing practices; the attorneys’ skill, experience, and reputation; and the prevailing market rates in the relevant community.” Jackson v. District of Columbia, 696 F. Supp. 2d at 101 (internal quotation and citation omitted). If the opposing party seeks to rebut the reasonableness of the rate, “it must do so by equally specific countervailing evidence.” Covington v. District of Columbia, 57 F.3d at 1109 (quoting Nat’l Ass’n of Concerned Veterans v. Sec’y of Def., 675 F.2d 1319, 1326 (D.C. Cir. 1982)). Here, the plaintiff’s attorney does not contest the reasonableness of the defendants’ attorneys’ hourly rate, nor does he contest the number of hours expended by the defendants’ attorney for the services for which payment is sought. Therefore, the Court’s only task is to consider whether each of the defendants’ requested expenses were incurred as a result of the plaintiff’s attorney’s failure to comply with the several Court Orders. See Lewis v. District of Columbia, No. 10-5275, 2011 WL 321711, at *1 (D.C. Cir. Feb. 2, 2011) (per curiam) (“It is well understood in this Circuit that when a plaintiff files an opposition to a . . . motion and addresses only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff failed to address as conceded.”) (citation omitted))

After reading and considering the parties' filings, reviewing the record in this case, assessing the defendants' attorneys' invoices, and taking into consideration the arguments presented during the December 16, 2014 motions hearing, the Court finds that the following fees would not have been incurred by the defendants but for the plaintiff's attorney's failure to "obey a scheduling order," Fed. R. Civ. P. 16(f)(1)(C), and his subsequent failure "to appear at a scheduling . . . conference," Fed. R. Civ. P. 16(f)(1)(A): (1) attending the October 17, 2014 status conference (\$650.00); (2) researching and drafting the motion for the sanctions being requested (\$5,358.75); (3) drafting a letter to the plaintiff's attorney requesting a firm settlement demand, including attorney's fees (\$65.00); (4) three communications with the mediator regarding the plaintiff's counsel's failure to comply with Magistrate Judge Robinson's September 4, 2014 Order (\$97.50); (5) and attending the November 20, 2014 show cause hearing (\$747.50). On the other hand, the defendants are not entitled to recover fees associated with: (1) preparing for or traveling to the scheduled September 4, 2014 mediation (\$975.00); (2) the work performed in preparation for the mediation in compliance with Magistrate Judge Robinson's Order (\$1,040.00); (3) email correspondence between the defendants and their attorneys (\$325.00); (4) research performed regarding the dismissal of this case for failure to participate in mediation (\$65.00);³ and the drafting and revising of a motion to dismiss with prejudice (\$56.25). Accordingly, for the reasons set forth above, it is hereby

ORDERED that the Defendants' Motion for Relief from Order of Dismissal and for Sanctions Pursuant to Rule 16(f) is **GRANTED IN PART AND DENIED IN PART**. It is further

³ This expense was incurred on October 1, 2014, prior to the conclusion of the mediation period, see August 8, 2014 Minute Order, and prior to the date when Magistrate Judge Robinson issued her minute order requiring the plaintiff's counsel to contact the mediator, see October 9, 2014 Minute Order.

ORDERED that the defendants' request that the Court modify its Minute Order dismissing the action to allow the defendants to recover the costs and fees it has incurred is **DENIED AS MOOT**. It is further

ORDERED that the plaintiff's counsel shall personally pay the defendants' attorneys' fees in the amount of \$6,918.75 on or before Monday, March 2, 2015.

SO ORDERED this 18th day of December 2014.

REGGIE B. WALTON
U.S. District Judge