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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

**FILED**

2015 OCT 15 P 2: 53

LAURA PETRAS  
Plaintiff

Case No: CV-13-818963

Judge: MICHAEL E JACKSON

CLERK OF COURTS  
CUYAHOGA COUNTY

CENLAR FSB, ET AL  
Defendant

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

PLAINTIFF LAURA PETRAS' APPLICATION FOR ATTORNEYS FEES AND EXPENSES, FILED 07/21/2015, IS GRANTED.  
O.S.J.  
COURT COST ASSESSED TO THE DEFENDANT(S).  
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER  
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL  
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

O.S.J.

Judge Signature

Date

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

LAURA PETRAS, ) Case No. CV 13-818963  
)  
)  
PLAINTIFF, ) JUDGE MICHAEL E. JACKSON  
)  
v. )  
) **JOURNAL ENTRY AND OPINION:**  
) **MOTION FOR LEGAL FEES AND**  
CENLAR FSB, ET AL ) **EXPENSES**  
)  
DEFENDANTS. )

On August 12, 2015, this Court held a hearing on Plaintiff Laura Petras' ("Petras") motion for legal fees and expenses.<sup>1</sup> Arguments were presented by counsel for Petras, and responded to by counsel for Cenlar FSB ("Cenlar"). Petras was represented by attorneys Robert S. Belovich ("Belovich") and Anand N. Misra ("Misra") throughout the pendency of her claims in this action. For their legal services and expenses, Petras seeks recovery in the amount of \$224,339.50. For reasons stated in this Journal Entry and Opinion, the Court orders that Belovich and Misra are entitled to \$27,213.00 in attorneys' fees and related expenses.

Belovich and Misra presented a joint application for attorneys' fees and costs relating to count two of the complaint concerning Cenlar's violation of the Real Estate Settlement Procedures Act (RESPA), which permits Petras as a successful plaintiff on this claim to recover reasonable attorney fees and expenses. 12 U.S.C. § 2605(f)(3). The Court considers the fee agreement, as well as the following factors to analyze this application: (1) prevailing party; (2)

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<sup>1</sup> This journal entry and opinion considers only the requested legal fees and expenses up to and through the trial of this case. This journal entry and opinion does not consider any fees or expenses that could be awarded for an appeal or re-trial of the case.

reasonableness of hours expended; (3) reasonableness of the rate requested, and (4) results obtained. *Hensley v. Eckerhart*, 461 U.S. 424, 433-35, 103 S.Ct. 1933 (1983).

After a seven-day jury trial that concluded on July 7, 2015, the jury awarded Petras \$6,000.00 on her RESPA claim. The sole issue in this case was whether Cenlar and Wright-Patt Credit Union ("Wright Patt") violated RESPA by failing to timely respond to a letter sent to Cenlar by Petras. This Court determined that letter was a "Qualified Written Request" (QWR) under 12 U.S.C. § 2605(e)(1)(B) which necessitated that Cenlar or Wright-Patt respond in writing within a specific time. Cenlar's written response was sent eight days beyond that time period, and Petras requested that the jury award her damages for that violation. As a result of this violation, Petras did not lose her home, suffer a foreclosure, or suffer any economic damages. 12 U.S.C. § 2605(f)(1). Her damage claim was based on non-economic damages.

#### **Prevailing Party**

On December 17, 2013, Petras filed her four count complaint against Defendants Cenlar and Wright-Patt asserting the following claims: (1) declaratory judgment; (2) RESPA violation; (3) fraud; and (4) conversion. These claims arise out of a loan modification agreement Petras had with Defendants. Wright-Patt is the loan servicer of this Fanny Mae federal loan and Wright-Patt entered in an agreement with Cenlar to administer the loan, as the "sub-servicer." Subsequent to filing suit, the parties were able to negotiate successfully a settlement agreement that included a new loan modification for Petras, in exchange for Petras dismissing the state claims - counts one, three, and four. However, the parties were not able to negotiate a settlement as to count two, the RESPA claim because Wright-Patt denied liability for this claim, and Petras' demanded \$37,500.00 in attorney fees without providing Defendants documentation to substantiate the demand.

Defendants filed a joint motion for summary judgment on the RESPA claim and this Court denied that motion on June 10, 2015, and the case was tried to a jury on June 29, 2015. After a seven-day trial, the jury returned a \$6,000.00 verdict in favor of Petras on her RESPA claim against Defendant Cenlar, but returned a verdict in favor of Defendant Wright-Patt against Petras on the same RESPA claim.

Belovich and Misra were both present each day of trial, and at all pretrial conferences and hearings leading up to this jury trial. In their application, they did not explain or otherwise justify why two experienced attorneys were needed to participate in each of these events.

Pursuant to 12 U.S.C. § 2605(f)(3), Cenlar is liable to Petras, as the successful plaintiff, for "the costs of the action, together with any attorneys' fees incurred in connection with such action as the court may determine to be reasonable under the circumstances." Conversely, because Petras was not successful for her RESPA claim against Wright-Patt she is not entitled to the attorney fees in prosecuting her RESPA claim against it. Moreover, where claims can be separated into causes of action which permit recoverable fees, and those that do not, the trial court must award fees only for the amount of time spent pursuing the claim for which fees may be awarded. *Bittner v. Tri-Cnty. Toyota, Inc.*, 58 Ohio St.3d 143, 466-67, 569 N.E.2d 464 (1991), citing, *Hensley v. Eckerhart*, 461 U.S. 424, 435, 103 S.Ct. 1933 (1983). Accordingly, this Court can only award fees to Petras for her successful RESPA claim against Cenlar and not against Wright-Patt. In addition, this Court cannot consider the time Belovich and Misra spent pursuing and settling her state law claims because she is not entitled to attorney fees for those claims, and because Belovich and Misra failed to prove these claims are so tied to the RESPA claim that they cannot be separated for the purpose of awarding fees under this application. As noted, these state

law claims were settled long before preparation for trial commenced in earnest on the RESPA claim.

Cenlar's argument that these fees do not qualify for payment under RESPA's provision authorizing such fees and costs is not persuasive. However, its argument that the application is unreasonable and excessive is well taken, as analyzed below.

**Fee Agreement**

Belovich and Misra offered into evidence the fee agreement with Petras at the hearing.<sup>2</sup> Receiving this fee agreement for the first time, Cenlar's counsel examined the document with its expert witness and observed the following: (1) Belovich's signature appeared to be an original and the balance of the agreement was a photocopy; and (2) the agreement was executed on April 26, 2013 by way of a handwritten change with the typewritten words "August, 2012" marked out and replaced by the handwritten date. Belovich acknowledged to the Court that he signed the document on the original copy on the day of this hearing, but then explained that the fee agreement was executed by Petras in August 2012 and it was executed by him on or about April 26, 2013 when Petras made her final payment on the \$2,500.00 fee to engage Belovich's representation. Belovich then signed the agreement, and sent it to his client. In preparing for the

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<sup>2</sup> Belovich and Misra did not attach the fee agreement to their application. Cenlar stated in its opposition brief that case law requires such a fee agreement as part of the process in granting their request. Belovich and Misra explained that their fee agreement with Petras was a contingency fee agreement arrangement, and as such, they acknowledged it must be in writing in order to satisfy Ohio Professional Conduct Rule 1.5(C)(1).

Belovich and Misra were reluctant to provide this fee agreement when questioned by the Court whether Cenlar was correct on this issue. They first argued that such agreement was not necessary for the purposes of determining reasonable attorney's fees under RESPA, even if Ohio Professional Conduct Rules regarding attorneys require contingent fee agreements to be in writing. Additionally, they argued that their particular fee agreement was "proprietary" in nature; therefore, they were reluctant to disclose it. Belovich and Misra further argued that the fee agreement was not necessary for the Court to review because Petras was not going to receive any monies back if Belovich and Misra were successful on their application. This statement is not correct as explained on page five of this section.

Nevertheless, Belovich and Misra said that they would provide the fee agreement if the Court requested or required it. The Court responded by stating that they had the obligation to demonstrate that they are entitled to the fees they seek to recover, accordingly, whether to submit the fee agreement was solely their decision. They decided to introduce the fee agreement.

hearing on that day, Belovich discovered that he did not have a fully executed copy and decided to sign his name to a copy of the agreement that had only his client's signature. He then used this newly signed agreement to make copies for use in court. It is clear that he handed the copy of the fee agreement with his signature in ink to Cenlar's counsel in error. Belovich's conduct lacked candor and it appears that he had no intention of informing the Court of the circumstances surrounding the submission of this agreement into evidence until he was challenged by Cenlar's counsel. As an officer of the court and the author of his motion, the Court expected him to explain the actual circumstances. His failure to do so affects his credibility.

Paragraph 4 of the fee agreement states:

Client [Petras] hereby assigns to attorney [Belovich] all her rights to any award of attorney's fees to which she may be entitled by way of settlement or court award. In the event attorney's fees are paid by an adverse party in an amount not less [sic, than] the value of the attorney's time spent at attorney's regular billing rate of \$425 per hour, then attorneys shall refund to client amounts paid under paragraph 3.

The Court interprets this provision to mean that if Belovich is awarded "an amount not less [than] the value of the attorney's time at attorney's regular billing rate of \$425.00 per hour," then Petras could be reimbursed for her \$2,500.00 payment. Conversely, if Belovich does not receive the amount as specified in this provision, then Petras is not entitled to reimbursement, and Belovich is entitled to keep her payment along with additional amounts he may be awarded or receive.

### **Reasonable Hours**

Because Petras is the prevailing party under § 2605(f), the Court must determine what fee is "reasonable." *Hensley*, at 433. "A reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Id.*

Belovich and Misra each presented a summary of his time in exactly the same format, as set forth in Petras' Exhibits 3 and 4 respectively.<sup>3</sup> Each summary has three columns – date, activity, and time. The descriptions in the activity column are primarily one-line entries that do not distinguish among Petras' claims and do not identify which Defendant that the work these attorneys were performing was directed. Each testified that his summary was based on recordkeeping that he maintained on or about the time the activity occurred and these events were noted on separate documents. Neither attorney testified to using paper timesheets or timekeeping software systems. Belovich testified on cross-examination that he had a software system for timekeeping, but did not use it in this circumstance. However, these separate timekeeping documents were not attached to the application, and Cenlar's counsel had no opportunity to review these documents or cross-examine Belovich and Misra on these documents. Neither Belovich nor Misra provided an explanation why these contemporaneous records and time sheets were not attached to the application.

Cenlar called attorney Thomas Barni Esq. ("Barni"), an attorney with twenty years practice experience, as its expert witness to express an opinion on what constitutes reasonable attorney's fees and expenses under RESPA. Seventy-five percent of his practice is litigation, dispute resolution, including plaintiff consumer litigation and arbitration. He testified that he has experience bringing and defending claims for attorney's fees dealing with consumer related state and federal statutes, including RESPA. He submitted an expert report dated August 7, 2005 and testified at this hearing based on his report and on the testimony of Belovich and Misra that he heard during the hearing.

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<sup>3</sup> Petras' Exhibit 1 and Cenlar's Exhibit A both addressed duplicative time entries (performance of the same task or work) by Belovich and Misra.

At the time Attorney Barni wrote his report, he considered the dual engagement of Belovich and Misra to be unnecessary and unreasonable because he was under the assumption that each was a seasoned litigator and each appeared capable to represent effectively Petras' RESPA claim on his own. He did not believe that two experienced attorneys, each expelling approximately the same amount of hours, was necessary for this claim.

Attorney Barni analyzed the timesheets submitted by each counselor. He first cited Belovich and Misra's failure to maintain contemporaneous records that detail the amount of time spent on prosecuting Petras' RESPA claim against Cenlar as warranting a reduction in the number of hours claimed, if not completely dismissing the application. He went on, however, to determine that 83.2 hours were duplicative; and therefore reduced the 517.3 hours submitted by Belovich and Misra by 41.6 hours, resulting in 465.7 total hours. Next, he determined that only one counselor was needed to handle competently Petras' case, and he considered Misra's submitted time to be unreasonable by two thirds of the time submitted, 170.2 hours, leaving a balance of 295.5 hours. He considered Misra's time unreasonable and duplicative because Belovich was the original attorney in the case.

Further, Attorney Barni testified that approximately half of the time requested by counsel concerned the trial time incurred by each counsel. He considered this excessive because he determined there were no complex issues of fact or law, no experts were utilized, only two nonparty witnesses were called to testify, and that the trial was prolonged by unnecessary questioning of witnesses. As a result, Attorney Barni concluded that 133 hours was justified in this matter.

Cenlar's argument that the failure to maintain contemporaneous records that detail the amount of time spent on prosecuting Petras' RESPA claim against Cenlar warrants a reduction in

the number of hours claimed is well taken because the Court cannot determine what time was specifically spent on the RESPA claim against Cenlar. Petras is only entitled to fees for her successful RESPA claim against Cenlar, not against Wright-Patt, and not for the three state claims that settled. See, *Henley*, at 428-29 and 435.

This Court has considered applications of attorney's fees and expenses in numerous cases involving different legal issues and factual scenarios. This is the first case where an application did not include the underlying timesheets to document the accuracy of the time expended by counsel seeking attorneys' fees. The accuracy of the amount of time expended on a matter is a key component in determining what constitutes reasonable fees. Since Belovich and Misra have the burden of establishing the number of hours for which they seek compensation, their failure to include the actual time entries creates credibility issues and calls into question the accuracy of their application.

#### **The Reasonableness of the Requested Rate of \$425.00 per Hour**

Factors to be included when determining the reasonableness of a fee are governed by Ohio Professional Conduct Rule 1.5. Belovich and Misra each requested a rate of \$425.00 per hour and supported that request by stating that each is an "experienced litigators in the field of consumer law." Petras' Memorandum in Support, p. 4. Each attached their affidavits and the affidavits of three other attorneys who submitted affidavits in another consumer related case supporting a fee application by these attorneys<sup>4</sup>. Based on the affidavits of two of those attorneys, it appears the other consumer case is a class action case, unlike this case, which is an individual plaintiff asserting a one count RESPA violation. Those attorneys testified that in consumer class action cases the hourly rate ranges for attorneys were from \$450.00-\$650.00, and

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<sup>4</sup> *Asset Acceptance LLC v. Sean C. Caszatt*, Lake County Common Pleas Court, No. 002587 (August 8, 2008).

\$550.00 – \$1000.00, respectively. None of these affiants state the reasonable hourly rate range for an individual plaintiff asserting a one count RESPA violation.

The third affiant, attorney Donald Burdge, is the author of a recently published national and regional survey concerning consumer law attorney's fees. The survey also includes a state by state determination of attorney rates. Belovich and Misra attached this survey as Exhibit 11 to their application. Attorney Burdge testified in the consumer class action case that Belovich's reasonable hourly rate was \$525.00 and that Misra's reasonable rate was \$450.00 based on what he considered to be "Consumer Law." In his survey at page 3, Consumer Law is:

recognized as a specialized area of law dealing with issues arising from transactions involving one or more persons acting as individuals or as a family. Consumer law, has an area of practice, typically includes bankruptcy, credit discrimination, consumer banking, warranty law, unfair and deceptive acts and practices, and more narrow topics of consumer laws such as consumer protection rights enabled by specific statutes such as the fair credit reporting act, the uniform consumer sales practices act, state and federal lemon laws and many others.

However, attorney Burdge does not testify as to what areas of law Belovich and Misra litigated in the other case. Additionally, he stated in paragraph 45 that in developing his opinions in the other case:

"I did not consider the time and labor required in this case<sup>5</sup>, the novelty and difficulty of any question involved in this case, the amount involved, the results obtained, any time limitations imposed by the client or the circumstances of the case, the nature and length of the professional relationship of any of these attorneys with the client or whether the fee was fixed or contingent."

These three affidavits and the survey provide little if any value or support to the applications of Belovich and Misra. Most importantly, none of these attorneys testified during this hearing, offered no opinions regarding the appropriate fees in this case, and obviously were not subject to any cross-examination. Further, their affidavits were rendered in another case that

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<sup>5</sup> *Asset Acceptance LLC v. Sean C. Caszatt*, Lake County Common Pleas Court, No. 002587 (August 8, 2008).

had significantly different legal issues than this case. Exhibit 10B regarding an award of attorneys' fees to Belovich and Misra by a Summit County Common Pleas Court<sup>6</sup> also fails to support Petras' request for the same reasons. Accordingly, the evidence in support of this application must come from the testimony of Belovich and Misra, and their exhibits.

Belovich and Misra each testified that they are experienced consumer law attorneys with 37 years of practice for Belovich and 32 years for Misra. They contended this was a complex case involving a specialized area of the law, a RESPA claim, which was made more difficult by Cenlar during discovery. However, Belovich and Misra each acknowledged that this was their first RESPA case. Misra further testified that this was his first jury trial, and inferred that this was Belovich's first or that he only participated in a few jury trials. Belovich made no effort to dispute this inference, or inform the Court of his jury trial experience.

Belovich and Misra stated that Cenlar's counsel prevented them from asking key questions during the corporate representative's deposition, and that he had failed to abide by this Court's order regarding discovery. However, Belovich and Misra did not file any discovery motions regarding this issue, and as a result, never raised the issue prior to trial to gain the relief they believe they were entitled. Experienced plaintiffs' trial counsel would have sought the relief they thought appropriate to conduct the deposition in the manner in which they considered necessary to advance their client's cause.

Belovich and Misra argued at trial that not only was Cenlar's required response untimely by eight days, it was also untruthful. They further argued that Petras had prior difficulties obtaining answers to her questions to Cenlar, and these difficulties already caused harm to her because she suffered emotional distress from not having her questions answered before Cenlar

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<sup>6</sup>*Onewest Bank, RSB v. Michael Ruth, et al*, Summit County Common Pleas Court, No. 6682.

violated RESPA. In short, they argued, Petras should be compensated for these difficulties because this conduct existed at the time of Cenlar's untimely response which violated RESPA.

Misra testified that this case involved voluminous documents covering various exhibits for determining the appropriate amount Petras owed on her loan, and how Cenlar answered her questions concerning these issues. The Court inquired why Belovich and Misra did not use Evidence Rule 1008 to summarize these voluminous records and use that summary and/or excerpts of certain documents to display visually to the jury the key points of their argument. Instead, Misra laboriously reviewed each and every document with Cenlar's corporate representative<sup>7</sup> in an attempt to show that Cenlar provided false information in these key documents. After extended and repeated questioning of this witness by Misra, who asked open-ended and non-leading questions concerning the same documents, the Court declared Cenlar's witness to be adverse to Petras and allowed Misra to ask leading questions of this witness. Even though the Court reminded him of this ruling on two occasions, Misra continued to ask open-ended non-leading questions, which permitted Cenlar's witness yet another opportunity to respond in the same manner as it testified on numerous occasions in response to prior questions. When questioned at the fee hearing on this issue, Misra testified that it was their trial strategy to use the voluminous documents in the manner presented and to continue to ask open-ended questions of Cenlar's witness hoping to demonstrate untruthful responses, even though this witness continued to explain that Cenlar's responses were based on the information available at the time.

In the Court's view, experienced trial lawyers would not have handled these trial matters in the same manner. Experienced plaintiffs' trial counsel would have asked at the beginning that

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<sup>7</sup> This witness stated that he has testified throughout the nation in numerous court cases similar to this case, and that is his primary job duty at Cenlar. In the Court's view, he clearly could be considered a "professional" witness.

Cenlar's representative be considered an adverse witness enabling counsel to ask leading questions concerning the key points at issue. By doing so, experienced plaintiffs' trial counsel would have been able to pinpoint each key point and not allow the witness latitude to respond to the question in a manner desired by that witness, which occurred repeatedly during Misra's questions.

An experienced trial lawyer would have presented the important aspects of these voluminous documents to the jury in any number of effective ways, such as by a power pointed demonstration with a timeline, large poster boards with the key language, or simply by highlighting the key language and asking the document to be provided to the jury for examination.<sup>8</sup>

Attorney Barni initially considered the appropriate hourly rate to be between the ranges of \$250.00-\$325.00 per hour, based on his experience in dealing with consumer case fee requests in Northeast Ohio. At the time he wrote his report, and based only on the information available to him, he considered the reasonable hourly rate for both attorneys to be \$300.00 per hour, not \$425.00 per hour, for an award of \$39,000.00 based on the hours that he determined were reasonable. In his view, this range depends upon the years of experience of the attorney, the complexity of the factual and legal issues, and the agreement reached between the lawyer and the client for payment of fees.

However, after Attorney Barni listened to Belovich and Misra testify at the fee hearing, and reviewed the contingency fee agreement produced at the hearing, he changed his opinion

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<sup>8</sup> Belovich and Misra also failed to follow properly this Court's trial order concerning marking exhibits to be admitted into evidence and providing a list of those exhibits to opposing counsel. Moreover, on the day of trial, Belovich and Misra batched together a significant number of important documents such that the exhibit itself became voluminous and difficult to deal with because each document related to a separate point. Reorganizing these documents and providing the necessary list of documents to Defendants caused an unnecessary delay in starting the trial. Experienced plaintiffs' trial counsel seeking payment of \$425.00 per hour would not have acted in this manner.

that he proffered in his report. He testified that the amount of fees should be further reduced because of what he learned during their testimony concerning the factors set forth above by this Court regarding their trial strategy and their trial experience. Based on this testimony, he further opined that the reasonable attorney fees should be reduced to half the amount stated in his opinion, which means the hourly rate was reduced from \$300.00 per hour to \$150.00 per hour for Belovich and Misra. Accordingly, the \$39,900.00 amount for both attorneys should be \$19,950.00 for Belovich and Misra.

Further, he testified that 11.8 hours of the paralegal's time was reasonable at a billing rate of \$85 per hour for a total of \$1,003.00, if she was a certified paralegal. However, the 32.8 hours requested by Belovich and Misra was not reasonable, in part because her time at trial was purely duplicative of both counsels' time. He further testified that the requested costs in the amount of \$1,699.00 should be reduced to \$1,210.00 because counsel failed to submit proof of photocopying costs at \$0.10 per page. Attorney Barni originally stated in his report that the total amount of attorneys' fees the Court should award would be \$42,113.00, but reduced that amount to \$22,163.00 as explained above.

### **Result Obtained**

The Court must determine what a reasonable fee is, in light of the level of success by Petras' counsel. *Hensley* at 438-39. As noted above, the Court raised a number of questions concerning Belovich and Misra's trial strategy. The Court also questioned counsel on their reason for not making a prayer for a specific amount of damages from the jury. Misra explained their trial strategy was not to state an amount to the jury in closing argument that plaintiff considered reasonable or appropriate to compensate her injuries resulting from Defendants' conduct. They did not want to seem overreaching by requesting too much, so they decided to say nothing and

leave it up to the jury to decide. Nevertheless, experienced plaintiffs' trial counsel anticipate that juries expect an amount will be provided to them by plaintiffs' counsel as an indication of what is appropriate composition. Indeed, the damage claim in this case suggests that jurors would need direction as to the amount considered appropriate to compensate Petras for Cenlar's conduct in being eight days late in responding to Petras' QWR. There are cases where the injuries— physical or emotional – are so apparent and so compelling that a few experienced trial counsel would not suggest a damages amount to the jury. However, this is not a case where experienced trial counsel would use that strategy, in this Court's view, because Petras' non-economic – emotional distress – are limited to an eight day delay in responding to Petras' QWR concerning the servicing of her loan that resulted in \$0.00 in economic damages.

The jury determined that Cenlar violated RESPA by failing to send timely a letter to Petras answering the questions that she had raised with them about the servicing of her loan in a QWR. However, Petras suffered no economic harm by Cenlar's failure to timely respond in accordance with RESPA. Her restructured mortgage was timely paid by her, she was not in default, and Cenlar had not notified her of any circumstance indicating that she was at risk of losing her house. Also, there was no evidence that Petras suffered any harm with other creditors because of Cenlar's conduct. The jury ultimately awarded non-economic damages for emotional distress in the amount of \$6,000.00.

However, Belovich and Misra believed that \$10,000.00 was a reasonable settlement amount for Petras' damages and Cenlar appeared willing to agree to that amount, but a settlement failed because the parties could not agree on payment of reasonable attorneys' fees. Nevertheless, Belovich and Misra did not request the jury consider \$10,000.00 or even more because of their concern that they would be considered overreaching. Belovich's and Misra's decision to leave the

amount of damages with the jury to determine without any direction from Plaintiff's counsel reflects their lack of understanding of the jury trial process in a case like this. Their decision also reflects a lack of thoughtfulness or trial experience to persuade a jury to award a fair and reasonable amount of damages in a difficult damage assessment case.

Further, during the settlement negotiations, when apparently the parties were able to reach an agreement on damages for Petras, Belovich and Misra refused to provide opposing counsel with written documentation as to the manner and method they used for determining the attorneys' fees demanded for settlement. Belovich and Misra simply stated a flat number for opposing counsel to accept. Opposing counsel stated that it was impossible to consider such demand without reasonable documentation, and this position was supported by Defendant's expert.

The Court finds that Belovich and Misra's position on settlement negotiations for attorney fees to be unreasonable, and not what an experienced plaintiffs' attorney who is demanding \$425.00 an hour for payment would do in this circumstance. The expected course of conduct would be to present the requested documents for opposing counsel to evaluate and determine if such time was actually spent, and whether it was reasonable to do so. Further, since the parties appeared to have come to a reasonable conclusion that Petras' damages could be settled for approximately \$10,000.00, it is clear that the delay or refusal to go forward with settlement discussions concerning attorneys' fees really turned this litigation into an issue about attorneys' fees rather than compensation for Petras. These facts do not weigh in favor of Belovich and Misra because Petras would have been more successful by settling the case for \$10,000.00 if her attorneys had given her the opportunity to do so by acting reasonably concerning their fees during the settlement discussions.

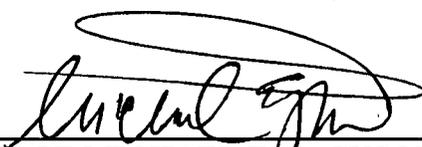
**Court's Award**

The Court has considered all of the testimony, exhibits, Prof. Cond.R. 1.5(a)(1)-(8), and arguments of each party as summarized above, to determine what a reasonable fee is for Petras' counsel in light of the level of success on her RESPA claim against Cenlar. *Hensely*, 461 U.S. at 438-39. The Court concludes that the amount of reasonable attorney's fees for Belovich and Misra in this case is \$25,000.00 (\$150.00 per hour multiplied by 166 hours) plus \$1,003.00 for paralegal time and \$1,210.00 for expenses. The total award is \$27,213.00. In reaching this conclusion, the Court considered the credibility of counsel in this case by the way they handled settlement negotiations regarding their fees, the introduction of the fee agreement into evidence, the way in which they handled keeping track of their time in this case, and the manner in which they addressed pretrial and trial matters.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

10/15/15

  
\_\_\_\_\_  
JUDGE MICHAEL E. JACKSON

**THE CLERK OF COURT SHALL SERVE A COPY OF THE FOREGOING JOURNAL ENTRY AND OPINION ON ALL COUNSEL OF RECORD AT THE ADDRESS LISTED ON THE COURT DOCKET.**