AMERICAN ARBITRATION ASSOCIATION

DONALD J. TRUMP FOR PRESIDENT, INC.
a Virginia not-for-profit corporation,

Claimant,

-vs-

OMAROSA MANIGAULT NEWMAN,
an individual,

Respondent,

DECISION AND AWARD ON RESPONDENT'S SECOND AMENDED MOTION FOR ATTORNEY'S FEES

T. Andrew Brown - Arbitrator
AAA-Case No.: 01-18-0003-0751

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered a Decision and Order on Respondent's Motions for Summary Judgment dated September 24, 2021, do hereby AWARD, as follows:

Before the Arbitrator is Respondent Omarosa Manigault Newman's motion, through her attorneys, Law Office of John M. Phillips, LLC, seeking an award of counsel's fees following the Arbitrator's September 24, 2021 Decision and Order on Respondent's Motions for Summary Judgment. For the reasons stated herein, Respondent is awarded the sum of $1,293,568.75 for attorney's fees and $17,304.73 for costs, for a total award of $1,310,873.48.

I. Background and Procedural History of the Current Motion

The parties are assumed to be familiar with the history of this action, which was commenced by the filing of a Demand to Arbitrate and a Statement of Claim for Breach of Written Contract on August 14, 2018. Claimant alleged that Respondent had violated non-

disclosure and non-disparagement provisions of a non-disclosure agreement ("the Agreement") which Respondent had signed as a condition of her employment with Claimant. The Arbitrator ruled in the September 24, 2021 Decision and Order on Respondent's Motions for Summary Judgment that the non-disclosure and non-disparagement provisions of the Agreement were void under New York contract law, granted summary judgment to Respondent, and ordered Respondent to submit any request for an award of attorney's fees pursuant to § 8(c) of the Agreement. The Decision and Order further set a briefing schedule for the submission of motion papers on the fee award.

Subsequently, Respondent filed a motion seeking to compel discovery on the amount of attorney's fees paid by Claimant in this case and other cases involving litigation over similar non-disclosure agreements. The Arbitrator denied the motion by Decision and Order dated November 15, 2021.

Respondent filed a motion for attorney's fees on October 12, 2021, requesting that fees be awarded in the sum of $3,009,725.00, plus $41,474.62 in costs. Respondent filed an amended motion for attorney's fees on October 13, 2021, in which the same amounts were requested. Submitted in support of the motion were the Declaration of John M. Phillips in Support of Respondent and Respondent's Counsel's Motion for Attorney Fees and various exhibits. Claimant submitted opposition papers consisting of Claimant Donald J. Trump for President, Inc.'s Opposition to Motions Regarding Attorneys' Fees on October 25, 2021.

The Arbitrator held a telephone conference with the parties on December 14, 2021. During the conference, the Arbitrator discussed that Respondent's moving papers failed to substantially set forth the factors needed to comply with applicable guidelines established by the New York courts to make an award of attorneys' fees in accordance with the prevailing lodestar

method. In the interests of fairness and equity, the Arbitrator granted Respondent the opportunity to submit supplemental papers addressing these deficiencies. A Scheduling Order for the supplemental briefing was issued by the Arbitrator on December 16, 2021. A one-week extension of the scheduling order was subsequently granted by the Arbitrator.

Respondent submitted Respondent and Respondent's Counsel's Second Amended Motion for Attorney Fees on January 11, 2022. Included with the motion was the October 13, 2021 Declaration of John M. Phillips, various exhibits, and a 296 page document labeled "Time Sheets," which contained detailed time entries for Respondent's counsel. Claimant submitted Claimant Donald J. Trump for President, Inc.'s Opposition to Respondent's Second Amended Motion for Attorney Fees on February 2, 2022. Respondent submitted Respondent Omarosa Manigault Newman's Reply to Claimant's Opposition to Respondent's Second Amended Motion for Attorney Fees on February 8, 2021. Respondent further submitted Respondent Omarosa Manigault Newman's Notice of Filing Supplemental Authority on March 23, 2022. Claimant submitted Claimant Donald J. Trump for President, Inc.'s Reply to Respondent's Second Amended Motion for Attorney Fees on April 1, 2022.

Briefing having concluded, the Arbitrator now issues the following Decision and Award.

II. Respondent's Supplemental Submissions are Accepted in Accordance with Principles of Fairness and Equity Set Forth in the Commercial Rules of the American Arbitration Association

Claimant argues first that the Arbitrator should not have allowed Respondent to supplement Respondent's earlier submissions. Claimant argues that Respondent's initial failure to submit detailed time records was a fatal defect to Respondent's motion and that the Arbitrator should not have permitted Respondent a chance to cure the defects. The Arbitrator finds that principles of equity and fairness outweigh Claimant's argument. In permitting the supplemental

briefing, the Arbitrator was guided by the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, which the parties agreed to be bound by.

Rule 47 of the Commercial Rules states that, "The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties…" The parties' Agreement states that, "[A]ny dispute arising under or relating to this agreement may, at the sole discretion of each Trump Person, be submitted to binding arbitration in the State of New York pursuant to the rules for commercial arbitrations of the American Arbitration Association…" (See § 8(b) of the Agreement). Further, "Any court judgment or arbitration award shall include an award of reasonable legal fees and costs to the prevailing party." (See § 8(c) of the Agreement).

In deciding to permit supplemental briefing, the Arbitrator took into consideration that Respondent did not bring this case. Respondent was defending herself in a claim which was extensively litigated for more than three years, against an opponent who undoubtedly commanded far greater resources than did Respondent. Principles of equity and justice, which the Arbitrator is bound to apply in accordance with the Commercial Rules, did not comport with summarily denying the motion after the initial briefing was complete.

Therefore, Claimant's argument that the motion should be denied because the initial motion papers were defective is rejected and the Arbitrator has given full consideration to the supplemental motion papers submitted by Respondent.

III. The Contract Provision for the Award of Attorneys' Fees to the Prevailing Party is Enforceable Pursuant to the Commercial Rules of the American Arbitration Association

Claimant next argues that the Arbitrator's finding that the non-disclosure and non-disparagement provisions of the Agreement were invalid must result in the remainder of the

Agreement, including the provision for the award of attorneys' fees to the prevailing party, being likewise held invalid. The cases cited by Claimant in support of this argument do not discuss the specific issue currently before the Arbitrator of whether a contract provision providing for attorneys' fees to a successful litigant is severable if other provisions of the contract are held to be invalid. The Arbitrator would have been reluctant to endorse a position which would have allowed Claimant to bring this case and subject Respondent to all of the inconveniences and costs, in time and money, that are inherent in contract litigation, secure in knowing that if Claimant did not prevail Respondent would be denied an award of the attorneys' fees to the prevailing party under the Agreement. In any event, the Commercial Rules of the American Arbitration Association, which govern here, preclude such an outcome.

Rule 7(b) of the Commercial Rules states:

> The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

As discussed above, the Agreement at issue contained an arbitration agreement whereby any dispute involving the Agreement could, at the sole discretion of Claimant, be submitted for arbitration pursuant to the Commercial Rules of the American Arbitration Agreement. (See § 8(b) of the Agreement). § 8(c) of the Agreement provided that the prevailing party to any arbitration shall be entitled to an award of counsel fees and costs. The attorneys' fee provision is in the same section of the Agreement as the provision stating that the parties agreed to arbitrate any dispute upon Claimant's sole designation. Moreover, § 8(c) specifically references that the prevailing party in an arbitration proceeding is entitled to attorneys' fees and

costs. The Arbitrator finds that the fee provision is part of the arbitration agreement, and therefore survives the Arbitrator's invalidation of other parts of the Agreement pursuant to Rule 7(b) of the Commercial Rules.

IV. The Arbitrator Does Not Find Bad Faith on the Part of Respondent or Respondent's Counsel

Claimant next argues that Respondent's motion should be denied because both Respondent and Respondent's counsel engaged in bad faith before and during this proceeding. Claimant argues that Respondent engaged in bad faith by making false and disparaging statements about Donald Trump by publishing her book which was at issue in this proceeding and by making other disparaging statements regarding Donald Trump while the action was pending. In making this argument, Claimant not only relies on the allegedly disparaging statements which were the subject of this action, but also goes into a tangential discussion on the prior dealings between Respondent and Donald Trump. A recitation of Respondent's appearances on Donald Trump's former reality television show *The Apprentice* have no relevance either to the claims presented in this arbitration proceeding or the issues surrounding the current attorneys' fee motion. Claimant's other arguments regarding Respondent's conduct amount to no more than an effort to relitigate the facts of this case. The Arbitrator does not find any bad faith displayed by Respondent such as would demand a denial of an award for fees.

The Arbitrator likewise finds no bad faith on the part of Respondent's counsel. Claimant contends that counsel's "rude, obnoxious, abusive, and condescending" behavior was so egregious that it should result in a total denial of fees. While at times Respondent's counsel's tone and temperament pushed the boundaries, the Arbitrator fails to find that counsel's conduct rose to the level of bad faith or unethical conduct. Litigation is necessarily adversarial and the

Arbitrator does not fault Respondent's counsel for vigorously advocating for his client. Claimant's arguments that Respondent's counsel engaged in delaying tactics and unnecessary filings are decisions regarding litigation strategy, not unethical behavior, and therefore shall be addressed further below.

The Arbitrator finding no bad faith on the part of either Respondent or Respondent's counsel, Claimant's argument that fees should be denied on this ground is rejected.

V. Calculation of Fees Under the Lodestar Method

Having considered and rejected Claimant's general objections to the award of attorneys' fees, the Arbitrator now turns to the calculation of the fee award. State and federal courts in New York use the lodestar method when evaluating a request for an award of attorney's fees. *See Rahmey v. Blum*, 95 A.D.2d 294 (2nd Dep't 1983), *N.Y. State Ass's for Retarded Children, Inc. v. Carey*, 711 F.2d 1136 (2d Cir. 1983). "Under the lodestar approach, attorney's fees are calculated by multiplying the number of billable hours that the prevailing party's attorneys spend on the case by the hourly rate normally charged for similar work by attorneys of like skill in the area." *N.Y. State Ass's for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1140 (2d Cir. 1983), citing *City of Detroit v. Grinnell Corp.*, 560 F.2d 1093 (2d Cir. 1977). After calculating the base fee in this manner, the lodestar method then allows the court to make adjustments based upon factors such as the risk of the litigation, the complexity of the issues, and the skill of the attorneys involved. *Id*.

Before addressing the individual lodestar factors, the Arbitrator will make note of certain deficiencies in Respondent's moving papers. As discussed above, Respondent's initial moving papers lacked certain elements necessary to assess the fee request under the lodestar method. Most notably, the initial moving papers did not contain any contemporaneous time sheets or

other records of how the claimed number of hours were spent. Respondent's papers simply presented an unsupported statement that Respondent's counsel and paralegal staff had spent 2,795 hours of billable attorney time and 685 hours of paralegal time on the matter and requested a fee of $3,009,725.00 based on that time. The Arbitrator could not rubber stamp such a staggering fee request upon such flimsy support, but further determined that the principles of equity and fairness discussed above did not allow for a summary rejection of the motion. The Arbitrator therefore permitted Respondent to supplement her moving papers to correct these deficiencies.

Respondent's supplemental papers, presented as Respondent's Second Amended Motion for Attorney Fees, did contain extensive records detailing the time spent by Respondent's counsel on specific tasks related to the litigation. However, the supplemental papers still contained a glaring lack of some information required for a proper lodestar calculation. A moving party is required to set forth the qualifications and experience of all counsel who worked on the matter, so that a court may determine if the rates being requested for each attorney are in conformity with rates charged by other attorneys of similar qualifications and experience. *See N.Y. State Ass's for Retarded Children, Inc. v. Carey*, 711 F.2d 1136 (2d Cir. 1983). Respondent's moving papers contained the Declaration of John M. Phillips, lead counsel for Respondent, which set forth Mr. Phillips' qualifications and experience. But there are four other attorneys listed as having worked on the matter, two of whom were not associated with Mr. Phillips' firm, but who appeared as co-counsel. The moving papers contained nothing at all regarding any of those four attorneys, their experience, or their qualifications. Likewise, a considerable block of time is claimed for "Paralegals," without naming the paralegal/s or setting forth the paralegals' experience or qualifications.

Respondent was given every opportunity to research the necessary procedure for making a fee request. Not only did the Arbitrator permit Respondent to supplement her first insufficient set of papers, Respondent was also permitted to submit reply papers after receiving Claimant's opposing papers to the supplemental briefing. Yet Respondent still failed to correct this obvious deficiency in the moving papers. While principles of equity weigh against denying the fee request in its entirety, these factors have been given serious consideration in the Arbitrator's analysis of the fee request.

A. The Number of Billable Hours

The assessment of the number of billable hours the Arbitrator will allow for in making the lodestar calculation requires a two-part determination. First, are the number of hours claimed in the fee application supported by sufficient proof of the time claimed; and second, was the time spent reasonably related to the conduct of the case and the results achieved.

The calculation of the number of hours claimed by Respondent's counsel is complicated by the initial failure to include contemporaneous time sheets in the moving papers. Respondent's initial moving papers made a request to be reimbursed for a total of 3,480 hours, which included 2,795 hours of attorney billable time from five attorneys and 685 hours of paralegal time. The initial moving papers noted that the requested time "only represents a fraction of the time and effort spent in the case," but contained no explanation of how those numbers had been arrived at or how much of a deduction had been made.

The supplemental papers submitted by Respondent included detailed time records of time spent by Respondent's counsel. The detailed time log sets forth 3,567.75 hours of billable attorney time and 724.75 hours of paralegal time, for a combined total of 4,292.5 hours. This is approximately 20% more than the number of hours claimed in the initial fee request, although

the initial number of hours claimed was through October 2021, while the detailed time records documented time through the end of December 2021. The time documented on the detailed log between when the initial moving papers were submitted and the end of December 2021 was 86.5 hours for all personnel. Respondent's counsel represents in the supplemental papers that he is seeking only the time claimed in the initial request, not all of the time documented on the detailed log.

Claimant objects to the detailed log on the grounds that the detailed log does not contain contemporaneous time sheets as required by New York law. Respondent's counsel admits in the Reply that the detailed time log is in part a reconstruction based upon review of the documents in the case. The Arbitrator has reviewed the time log and finds that the time log does explain in detail the tasks reportedly worked on by each attorney on any given day. The Arbitrator further accepts Mr. Phillips' representation as an attorney and officer of the court that the detailed time log is a fair and accurate recitation of the time spent by each attorney, compiled in a format easily accessible to review.

Of greater concern to the Arbitrator is the failure to include any separate documentation from attorneys J. Wyndal Gordon and Joey Jackson, who did not work for Mr. Phillips' firm but appeared as co-counsel for Respondent. While the time spent by Mr. Gordon and Mr. Jackson was a relatively small percentage of the total time claimed, there were no separate fee affidavits presented from either Mr. Gordon or Mr. Jackson or invoices from their respective offices for their services rendered. Nor was there any explanation given as to how the figures presented for Mr. Gordon and Mr. Jackson were arrived at in Respondent's calculation. It is unclear if the time claimed for those two attorneys was forwarded to Mr. Phillips directly by the attorneys for inclusion in the fee application or was a reconstruction by Mr. Phillips' office based upon

records kept by Mr. Phillips about the time he or his staff spent consulting with Mr. Gordon and Mr. Jackson. As mentioned earlier, the Arbitrator was provided no information as to the experience or qualifications of these attorneys.

The Arbitrator has also given consideration to Claimant's argument that the time spent by Respondent's counsel was excessive and wasteful. Claimant argues that Respondent's counsel filed numerous frivolous and unsuccessful motions and engaged in time-consuming and unnecessary discovery measures. However, Claimant fails to specify precisely which motions, discovery practices, etc. should not be compensated and fails to point to which entries on the detailed time log Claimant feels Respondent should not be compensated for. The Arbitrator would have expected Claimant to undertake this analysis if Claimant was advocating that the fees should be substantially reduced. Claimant's failure to make this effort nonetheless does not relieve the Arbitrator from engaging in his own analysis under the lodestar method.

In determining which time should be compensated under the lodestar method, a court "should exclude excessive, redundant or otherwise unnecessary hours, as well as hours dedicated to severable unsuccessful claims." *Flatiron Acquisition Vehicle, LLC v. CSE Mortg. LLC,* 2022 U.S.Dist. LEXIS 25036, at *34, quoting *Quaratino v. Tiffany & Co.*, 166 F.3d 422, 425 (2d Cir. 1999). In determining whether time was spent on a successful claim and should be compensated for, a court may award fees if the successful and unsuccessful claims are "inextricably intertwined and involve a common core of facts or are based on related legal theories." *Id*. at *35, quoting *Reed v. A.W. Lawrence & Co.*, 95 F.3d 1170, 1183 (2d Cir. 1996). "In determining whether hours are excessive, the critical inquiry is whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures." *Charles v. Seinfeld*,

2022 U.S. Dist. LEXIS 54387, at *7, (S.D.N.Y. 2022), quoting *Samms v. Abrams*, 198 F.Supp. 3d 311, 322 (S.D.N.Y. 2016).

The Arbitrator has given serious consideration to the factors and principles set forth above in considering how to determine the number of hours to use for calculating the lodestar fee. This case involved commercial litigation over a contract dispute, which unquestionably called for skill and expertise on the part of counsel to navigate. The Arbitrator has considered Claimant's arguments about Respondent's filing of frivolous and unsuccessful motions and engaging in unnecessary discovery disputes. To a great extent, these involve decisions about litigation strategy which the Arbitrator is reluctant to analyze under a microscope. The fact that a particular motion or position taken in a case may have been unsuccessful does not necessarily render it frivolous when looked at in the larger context of the case strategy. That is the nature of litigation, and no litigator is expected to be uniformly successful in every position taken in every case.

The guidelines set forth by the courts to look at whether a particular claim was successful or is so inherently intertwined with the successful claim that time spent on it should be compensated are of only limited guidance in this situation. Respondent was defending the case. She presented no counter-claims; her sole aim was the dismissal of the claims brought against her. In this aim, Respondent is undoubtedly the prevailing party. Although the Arbitrator did not adopt every argument advanced by Respondent, Respondent successfully litigated the case to summary judgment and obtained the dismissal of the claims. "In determining whether a party is a prevailing party, fundamental consideration is whether the party has prevailed with respect to the relief sought." *Chainani v. Lucchino*, 94 A.D.3d 1492, 1494 (4th Dep't 2012), quoting *Nestor v. McDowell*, 81 N.Y.2d 410, 416 (1993).

At the same time, the number of hours claimed by Respondent does give the Arbitrator pause. Working with only the hours Respondent is claiming, not the greater number of hours set forth in the detailed time log, Respondent's lead counsel Mr. Phillips claims 1,850 hours of his own time, 945 hours in the time of the other attorneys who worked on the case, and 685 hours of paralegal time. The number of attorney hours claimed amounts to approximately 1 ½ years of attorney time for a single attorney, for a case which went on for approximately three years up to the time the initial fee application was submitted. The Arbitrator does not question the veracity of Respondent's counsel as to the number of hours spent. But the Arbitrator does believe that these hours reflect a certain amount of inefficiency and overlap of time among the attorneys working on the case. The Arbitrator also takes into account that Respondent's counsel did refile several unsuccessful motions which the Arbitrator had already denied, with no new arguments advanced as to why circumstances had changed such that the Arbitrator might wish to revisit his earlier decisions.

On the other side of the ledger, the Arbitrator has also considered that this case involved high profile parties, one of whom was the campaign organization of the then-sitting president of the United States. There was certainly a great disparity between the funds and resources available to the respective parties, and Respondent's counsel has stated in his moving papers that it was the existence of the fee clause in the Agreement which induced him to take on the case. Respondent was certainly in need of experienced, skillful representation to defend herself, and the Arbitrator recognizes that Respondent's counsel undoubtedly assumed something of a risk in taking on this case.

After balancing all of these factors, the Arbitrator has determined that certain reductions will be made in the number of hours claimed. Rather than going line by line through the detailed

time log, the Arbitrator has determined to follow the common method used in the Second Circuit and make a percentage reduction to account for inefficiency and overlap. *See McDonald ex rel. Pendergast v. Pension Plan of the NYSA – ILA Pension Tr. Fund*, 450 F.3d 91 (2d Cir. 2006). The *Charles* case compiled cases decided in the Southern District of New York where reductions of up to 50% have been found reasonable. *Charles v. Seinfeld,* 2022 U.S. Dist. LEXIS 54387, at *16-17.

The Arbitrator has determined to reduce the 1,850 hours claimed by Mr. Phillips by 15%. The Arbitrator is reducing the number of hours claimed by the four other attorneys worked by 50% each. These reductions account for the failure to adequately document the other attorneys' qualifications and experience, as well as inefficiency and overlap between the attorney time. The Arbitrator is likewise reducing the paralegal time claimed by 50% for the same reasons. The number of hours awarded for the lodestar calculation are:

- John M. Phillips 1,572.5 hours
- J. Wyndal Gordon 37.5 hours
- Joey Jackson 5 hours
- Kirby Johnson 357.5 hours
- Erica Jackson 72.5 hours
- Paralegals 342.5 hours

B. A Reasonable Hourly Rate

The second part of the lodestar calculation is the determination of a reasonable hourly rate. "[T]he reasonable hourly rate should be based on the customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented." *Rahmey v. Blum*, 95 A.D.2d 294, 302 (2nd Dep't

1983). "Generally, an attorney's customary billing rate for fee-paying clients is ordinarily the best evidence of a reasonable hourly rate." *Charles v. Seinfeld,* 2022 U.S. Dist. LEXIS 54387, at *7.

Respondent seeks to have the following hourly rates awarded: for John M Phillips, $1,250.00/hour; for J. Wyndal Gordon, $850.00/hour; for Joey Jackson, $850.00/hour; for Kirby Johnson, $650.00/hour; for Erica Jackson, $600.00/hour; and for paralegal staff, $215.00/hour.

In this case, Respondent's counsel did not submit proof of the rates that he typically charged fee-paying clients. Instead, Respondent's counsel argues that New York City rates are appropriate because the Agreement provided that the case was to be arbitrated in New York and apply New York law. Respondent's counsel also argues that Claimant's counsel has been paid between $4 million and $6 million, and so Respondent's counsel should be paid something comparable. Respondent's argument as to the amount Claimant's counsel may have been paid is speculative. Respondent bases this on publicly available campaign finance disclosures. The information cited by Respondent only deals in gross payments made to certain vendors and contains no information as to what these payments were for. It therefore cannot be relied upon to establish fees in this case. Furthermore, the Arbitrator has already ruled that legal fees paid by Claimant are irrelevant to determining how much time was spent by Respondent's counsel and sees no reason to revisit that ruling.

Respondent's counsel also argues that he is entitled to New York City rates because he is admitted to practice in New York and maintains an office there. However, Respondent's counsel was not admitted to practice in New York until 2019, after the commencement of this case, and flew in from Florida for all proceedings held in person in New York, as attested by counsel's itemization of costs incurred. A large percentage of the costs for which Respondent's counsel

seeks reimbursement consist of travel expenses to New York. Although Respondent's moving papers failed to include any information regarding the other attorneys for whom time is claimed, due to the Arbitrator's own familiarity with the case and the attorneys who have appeared, the only attorney who has appeared for Respondent who is based out of New York City is Joey Jackson, for whom only 10 hours of billable time are claimed.

Claimant argues that New York City rates are inappropriate because Respondent's counsel is not based out of New York and posits that Florida rates should be used instead. However, Claimant's counsel fails to provide any citation to establish what prevailing Florida rates are.

Given these factors, and based on the Arbitrator's 38 years of practice in New York State, his familiarity with the rates typically charged throughout the state, and Mr. Phillips' skill and competency demonstrated in this case, the Arbitrator will award $700.00/hour to Mr. Phillips. In light of the previously discussed failure to include any information about the other four attorneys or the paralegal staff who worked on the case, the Arbitrator will cut the requested hourly rates of all of those persons by 50%. The hourly rates awarded are:

- John M. Phillips $700.00/hour
- J. Wyndal Gordon $425.00/hour
- Joey Jackson $425.00/hour
- Kirby Johnson $325.00/hour
- Erica Jackson $300.00/hour
- Paralegals $107.50/hour

C. Final Calculation of Fees

The total amount of attorneys' fees awarded to Respondent's counsel is calculated as follows under the lodestar method:

• John M. Phillips	1,572.5 hours x $700.00	$1,100,750.00
• J. Wyndal Gordon	37.5 hours x $425.00	$ 15,937.50
• Joey Jackson	5 hours x $425.00	$ 2,125.00
• Kirby Johnson	357.5 hours x $325.00	$ 116,187.50
• Erica Jackson	72.5 hours x $300.00	$ 21,750.00
• Paralegals	342.5 hours x $107.50	$ 36,818.75
Total Attorneys' Fee Awarded		**$1,293,568.75**

VI. Costs Awarded

Respondent's counsel also seeks costs in the amount of $41,474.62 and has provided an itemized statement of the costs sought. Claimant contests that costs are allowed under the Agreement. § 8(c) of the Agreement states that "Any court judgment or arbitration award shall include an award of reasonable legal fees *and costs* to the prevailing party." (Emphasis added). Since the plain words of the Agreement provide for costs, the Arbitrator will award them. The majority of the entries on the itemized log are travel costs, for travel, hotel, and meals in New York. These costs are allowable. Costs for the stenographer for depositions and the arbitration proceeding are also allowable. Document printing and preparation costs are also allowable. The one expense which the Arbitrator declines to award are the charges for Westlaw research. There are three listed charges for Westlaw: the first, dated 2/12/20, is for $122.66; the second, dated 3/19/20, is for $193.23; and the third, dated 7/21/21, is for $23,854.00, totaling in all $24,169.89. The charges for an electronic research service are part of the firm's overhead costs,

just as are rent and utilities, and are not properly chargeable to the opposing party. *See Charles v. Seinfeld,* 2022 U.S. Dist. LEXIS 54387, at *18.

The Arbitrator awards costs to Respondent's counsel in the amount of $17,304.73.

VII. Respondent's Motion for Discovery on Attorneys' Fees

Respondent also renews her motion seeking discovery from Claimant as to the amount of attorneys' fees paid by Claimant in this matter. The Arbitrator issued a ruling on this matter by Decision and Order dated November 15, 2021. Nothing presented in the current motion leads the Arbitrator to reconsider that decision. The motion for discovery is therefore denied.

CONCLUSION

Respondent is awarded $1,293,568.75 for attorneys' fees and $17,304.73 for costs, for a total award of $1,310,873.48.

The administrative fees of the American Arbitration Association totaling $2,950 and the compensation of the arbitrator totaling $149,719.50 shall be borne as incurred.

This award is in full settlement of all remaining claims not already disposed of in this Arbitration.

Dated: April 19, 2022

T. Andrew Brown, Arbitrator

I, T. Andrew Brown do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

Dated: April 19, 2022

T. Andrew Brown, Arbitrator