

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THOMAS ZIMMERMAN and
PATRICIA ZIMMERMAN,

Plaintiffs,

v.

1ST RATE MORTGAGE CORP.,

Defendant.

ORDER

09-cv-210-slc

Before the court is plaintiffs' motion for an award of attorney fees against defendant 1st Rate Mortgage Corporation on plaintiffs' successful claims under the Credit Repair Organizations Act, 15 U.S.C. § 1679b(a). Dkt. 265. Plaintiffs' CROA claim against 1st Rate was one of many they brought against various parties who allegedly tricked them into borrowing more money than they could afford for the purchase of a home. Plaintiffs alleged that 1st Rate, through its agent, Greg Logemann, violated 15 U.S.C. § 1679b(a), which states:

No person may—

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness, credit standing, or credit capacity to—

* * *

(B) any person—

(I) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit.

In their summary judgment motion, plaintiffs asserted that Logemann and 1st Rate violated this provision by overstating plaintiffs' income on loan applications to First National

Bank and Countrywide and AWL. 1st Rate did not file any opposition to the motion; Logemann did not dispute that the income figures he used on the loan applications substantially overstated plaintiffs' income and that he did not take steps to verify plaintiffs' actual income. Accordingly, I found that plaintiffs had established that these defendants had violated the CROA. *See* Op. and Order, dkt. 248, at 32. *See also Whitley v. Taylor Bean & Whitacker Mortgage Corp.*, 607 F. Supp. 2d 885, 899 (N.D. Ill. 2009) (1679b(a) applies to all persons, not just credit repair organizations).

Plaintiffs later moved for summary judgment on damages against 1st Rate. (In the meantime, plaintiffs settled their claims against Logemann.) Again, 1st Rate did not appear through licensed counsel. Finding that plaintiffs had supported their claim for damages with citations to evidence in the record and that the CROA's penalty provision appeared on its face to authorize plaintiffs' sought-after relief, I granted the motion, ordered the clerk to enter judgment against 1st Rate and awarded plaintiffs damages in the amount of \$6,965. Dkt. 262. I gave 1st Rate two weeks to move for reconsideration, with the condition that any motion had to be filed by a licensed attorney. 1st Rate did not file such a motion.

Now before the court is plaintiffs' motion for an award of attorney fees under the civil liability provision of the Credit Repair Organizations Act ("CROA"), 15 U.S.C. § 1679(g)(a), which provides:

(a) **Liability established.** Any person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) **Actual damages . . .**

(2) **Punitive damages . . .**

(3) **Attorney's fees.** In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorney's fees.

Although I am not aware of any Seventh Circuit case addressing this provision of the CROA, its language mirrors that of the Fair Debt Collection Practices Act, which the court has held establishes a mandatory award of attorney fees to a plaintiff who succeeds in obtaining actual damages. *Accord Zagorski v. Midwest Billing Services, Inc.*, 128 F.3d 1164, 1166 (7th Cir. 1997); *Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995) (finding similar language in Fair Debt Collection Practices Act establishing mandatory entitlement to attorney fees). Thus, the only question before the court is whether the fees sought by plaintiffs are reasonable. 1st Rate has contested the amount sought; even so the court must determine whether plaintiffs have adequately supported and justified their request.

In determining the amount of a reasonable fee, the court uses the familiar methodology established in civil rights cases. *Zagorski*, 128 F.3d at 1166 (citing *Hensley v. Eckhart*, 461 U.S. 424, 433 (1983)). The starting point in determining whether fees are reasonable is calculating the lodestar amount by multiplying the reasonable number of hours worked by the market hourly rate. *Gautreaux v. Chicago Housing Authority*, 491 F.3d 649, 659 (7th Cir. 2007). The court also must consider the degree of success obtained, “not only in the amount of the recovery but also in terms of the principle established and the harm checked.” *Zagorski*, 128 F.3d at 1167.

Plaintiffs request attorney fees in the amount of \$15,487.75, which represents the total of 30.5 hours of work performed by attorney Mary Catherine Fons at a rate of \$350 an hour plus 17.5 hours of work performed by attorney Judy Tomczak at the rate of \$275 an hour. As

the party seeking attorney fees, plaintiffs have the burden of justifying their requests. *Spellan v. Board of Education for District 111*, 59 F.3d 642, 646 (7th Cir. 1995) (citing *Hensley*, 461 U.S. at 437).

Plaintiffs have supported their requested rates with affidavits demonstrating Fons's and Tomczak's credentials and experience in the field of consumer protection law, dkts. 266, 269, 270, and with empirical evidence showing that the rates of \$350 and \$275, respectively, are within the range of hourly rates billed by other consumer law attorneys in the Midwest Region. *See* Br. in Supp., dkt. 267, at 3. From this, I am satisfied from this evidence that the rates of \$350 for Fons and \$275 for Tomczak are reasonable and justified.

Turning to the time records, I find the hours spent on plaintiffs' CROA claims to be reasonable. I note, however, that although Fons and Tomczak have averred that they adjusted their time records so that they reflect time spent only on the CROA claims, there is one entry on Fons's time sheet that does not reflect any time spent on the CROA claim. Specifically, the entry for December 29, 2010, shows that Fons spent 4.2 hours drafting various arguments for plaintiffs' brief in support of their summary judgment motion, but none of these arguments relates to the CROA. Accordingly, I am reducing plaintiffs' fee request by \$1,470, which reflects 4.2 hours multiplied by Fons's hourly rate of \$350. In all other respects, the requested fees are reasonable.

Finally, I note that it is somewhat difficult to measure the degree of success obtained as a result of the efforts of plaintiffs' counsel because 1st Rate never mounted any defense to the alleged CROA violation. Nevertheless, counsel succeeded in establishing 1st Rate's liability and obtaining nearly \$7,000 in damages for plaintiffs. It's not plaintiffs' fault that 1st Rate declined

to contest plaintiffs' claims. Therefore, I see no reason to limit the amount of fees based on any limited degree of success obtained in this case.

Finally, plaintiffs request an award of \$2,398.45 in costs. Dkt. 268. Having reviewed the itemized list of costs and hearing no objection from 1st Rate, I find it appropriate to award costs in the amount of \$2,398.45.

ORDER

IT IS ORDERED THAT:

1. Plaintiffs are awarded attorney's fees against defendant 1st Rate Mortgage Corporation in the amount of \$14,017.75 pursuant to 15 U.S.C. § 1679(g)(a)(3).

2. The clerk of court shall approve plaintiffs' bill of costs, dkt. 268, in the amount of \$2,398.45.

Entered this 28th day of December, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge