

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**T. HENLEY GRAVES**  
*RESIDENT JUDGE*

**SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947**

January 11, 2006

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**RE: Cathy S. Chabot v. Gemcraft Homes Delaware, Inc., et al  
Civil Action No. 04C-01-020 (THG)**

Dear Counsel:

On November 23, 2005, I made a case-dispositive ruling in this case. This is the follow-up decision as to attorney's fees.

Plaintiff is entitled to attorney's fees pursuant to the Wage Payment and Collection Act.<sup>1</sup> As noted in my decision as to the merits of this dispute, the majority of everyone's focus was on the issue on which the Plaintiff did not prevail, the "back-end" commissions. During the briefing, Defendant conceded commissions were due amounting to \$1,958.85. This sum was paid. Additionally, the Court awarded Plaintiff liquidated damages pursuant to the Wage Statute in the amount of \$1,958.85. This has also been paid by the Defendant.

Following the dispositive ruling, Plaintiff submitted her arguments and affidavit in support of the request for attorney's fees. Defendant submitted its position and then Plaintiff filed a reply, noting additional Court costs of \$225.00 arising from a very recent Prothonotary bill.

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<sup>1</sup>19 Del. C. §1103(c)

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### **BACKGROUND**

The merits of the case are fully discussed in the Court's decision of November 23, 2005. Plaintiff was paid a salary and commissions for selling Defendant's real estate products. The litigation was initiated by Plaintiff for commissions she believed were due her when she voluntarily left her position with the Defendant.

In Defendant's Answer, it initially denied that any commissions were due. As the case progressed, Defendant acknowledged that three (3) commissions were due and as discussed above, these have been paid.

The total amount of sales contained in the complaint for which Plaintiff sought commissions was sixteen (16). Plaintiff did not prevail on thirteen (13) of her claims. These claims involved the "back end" commissions and the fight over these commissions is where the most effort and energy was expended.

Plaintiff's counsel understandably kept business and billing records for his total time and not for individual issues. Therefore, the determination of the award of the attorney's fees is difficult and as both parties acknowledge, a somewhat arbitrary task.

Plaintiff's counsel has informed the Court he spent 133.4 hours work on the entire case. He has attempted to segregate the time spent on the issue on which he prevailed. He acknowledges the difficulty of this assignment and estimates he spent 47.4 hours on the issue on which he prevailed. This would mean he spent 35% of his time on the three commissions.

Also, Plaintiff reports Court costs to be \$489.16<sup>2</sup>, and court reporter fees and copying generated expenses of \$779.74.

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<sup>2</sup>This does not include the \$225.00 billed by the Prothonotary upon the 50<sup>th</sup> docket entry. The Court's dispositive decision was the 46<sup>th</sup> docket entry. The remaining entries involved the attorney's fees. Therefore, the Prothonotary is waiving the \$225.00.

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### **DISCUSSION**

In reaching my decision, I have considered the guidance provided in *Starrett v. F-O-R-T-U-N-E Consultants of Wilmington, Inc.*, 1996 Del. Super. LEXIS 458, and the factors to be considered in any attorney's fees application as set forth in *Dickinson Medical Group, P.A. v. Sandra C. Foote*, 1989 Del. Super., LEXIS 333.

The "back end" commissions claim was novel. The commissions claim on which Plaintiff prevailed was not novel or difficult.

Plaintiff's counsel's hourly rate is reasonable in view of the fees customarily charged for similar services. Counsel is experienced and enjoys a good reputation.

The results obtained were beneficial to the client, but the majority of the claims were denied.

There is nothing to indicate that the case or relationship of counsel to his client was anything other than a normal client relationship.

Defendant has the ability to pay a reasonable award of attorney's fees.

The difficulty of this determination has been noted by Plaintiff's counsel as he had difficulty in trying to segregate his time spent on the prevailing issue.

The litigation ultimately resulted in an award of \$1,958.85. Defendant also had to pay a 100% statutory penalty. Taking into consideration all of the above, I award Plaintiff \$4,500.00 in attorney's fees for 20 hours at \$225.00 per hour.

I am awarding the Court costs of \$489.16. I am not pro rating the Court costs because whether it is 3 claims or 16 claims, the filing fees, etc., are the same. I am pro rating the remainder of the expenses requested. For the remainder, I am awarding 3/16, or 18.75%. That sum of \$146.20.

Finally, there is the issue of prejudgment interest pursuant to 6 Del. C. §2301(a).

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The Defendant argues the statutory penalty under the Wage Act should be enough of an award for the late payment of her commissions. I do not agree. The Plaintiff was entitled to her compensation and statutory penalty long ago and, therefore, she has lost the benefit of not having the money in her pocket. Finally, I note Judge Herlihy awarded prejudgment interest in the *F-O-R-T-U-N-E* case.

Therefore, prejudgment interest is awarded up until the dates Defendant tendered the check for payment of the commissions and the subsequent check for the statutory penalty. I expect counsel can run these calculations.

**IT IS SO ORDERED.**

Yours very truly,

T. Henley Graves

THG:baj  
cc: Prothonotary