

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

KIRAN M. DEWAN, CPA, P.A., *et al.*, \*

Plaintiffs, \*

v. \* Civil Action No. RDB-11-02195

ARUN WALIA, \*

Defendant. \*

\* \* \* \* \*

**MEMORANDUM ORDER**

Plaintiffs Kiran M. Dewan, CPA, PA (“KMDCPA”), an accounting company, and Kiran M. Dewan (“Dewan”), in his individual capacity (collectively “Plaintiffs”), brought this action against Arun Walia (“Walia” or “Defendant”) seeking to vacate the Final Arbitration Award (“Final Award”) issued on November 18, 2011 in favor of the Defendant by the American Arbitration Association (“AAA”). On August 3, 2012, this Court entered an Order granting Defendant Walia’s Motion to Dismiss Plaintiffs’ Amended Complaint with prejudice and denying Plaintiffs’ Motion to Vacate the Award (ECF No. 29). Defendant Walia was also asked to submit a supplemental briefing of no more than five (5) pages indicating the grounds under which he is entitled to attorneys’ fees and expenses. Pending before this Court is Defendant Walia’s Motion for “Grant of Attorneys’ Fees and Costs” (ECF No. 33). This Court has reviewed the record and finds that no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2011). For the reasons stated below, Defendant’s Motion for “Grant of Attorneys’ Fees and Costs” (ECF No. 33) is GRANTED. Accordingly, Plaintiffs Kiran M. Dewan, CPA, PA and Kiran M. Dewan are jointly and severally liable for the

amount of \$14,423.75, as an award of reasonable attorneys' fees and costs for defending the action.

### BACKGROUND

The facts of this case are fully set forth in this Court's Memorandum Opinion issued on August 3, 2012 (ECF No. 28). A brief summary of the facts will adequately frame the pending motion.

Plaintiff Kiran M. Dewan ("Mr. Dewan") is a certified public accountant and attorney licensed to practice both professions in Maryland. Dewan Decl. in Supp. of Mot. for Partial Summ. J. ¶ 2, ECF No. 6-1. Mr. Dewan is the sole owner of Kiran M. Dewan, CPA, P.A. ("KMDCPA"), an accounting company organized under Maryland law and with its principal place of business in Maryland. *Id.* Defendant Walia ("Defendant" or "Mr. Walia") is a Canadian national who worked as an auditor and accountant for KMDCPA under an H1-B status.<sup>1</sup> Pls. Am. Compl. ¶¶ 8, 11, ECF No. 15. Mr. Walia was employed by KMDCPA from 2003 until August 21, 2009, when he allegedly elected to terminate his employment. Pls.' Am. Compl. ¶¶ 11, 13.<sup>2</sup>

On January 29, 2010, Plaintiffs initiated arbitration proceedings against Mr. Walia. *Id.* ¶ 21. Plaintiffs relied on two documents to bring their dispute before the arbitration tribunal: (1) the May 2006 Employment Agreement entered into by the parties on May 10, 2006, and (2) the 2009 Employee Settlement and Release Agreement ("Release Agreement") entered into on November 3, 2009 as a result of claims brought by Mr. Walia against

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<sup>1</sup> The H1-B visa program allows employers in the United States to hire foreign nationals in specialty occupations. *See* Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(15)(H).

<sup>2</sup> In the Final Award, the Arbitrator concluded that Walia was "still currently employed as an Accountant to present at the prevailing wage rate, as there was no Letter of Termination received by" him. Final Award at 6, ECF No. 13-1.

Plaintiffs for their withdrawal of his H-1B status sponsorship. *Id.* ¶¶ 12, 14-16. Defendant Walia in turn raised several counterclaims. Interim Award, ECF No. 1-1, at 37-38.

Dr. Andr e Y. McKissick (“Arbitrator”) of the American Arbitration Association arbitrated the proceedings and issued an Interim Award largely in the Defendant’s favor on July 11, 2011. Interim Award at 37-38; Pls.’ Am. Compl ¶ 40. After receiving files from the Department of Homeland Security (DHS) and the Internal Revenue Service (IRS) pursuant to Defendant’s Freedom of Information Act (FOIA) request, the Arbitrator issued a Final Award on November 18, 2011. Final Award, ECF No. 13-1. The Final Award largely reiterated the findings and conclusions contained in the Interim Award and further concluded that Plaintiffs had engaged in fraud by submitting disparate income information under penalty of perjury to the Department of Homeland Security, the IRS and the arbitration tribunal. *Id.* at 5, ¶¶ 13-15. In sum, the Final Award dismissed all but one of the Plaintiffs’ claims, granted the Defendant’s counterclaims, and awarded the Defendant compensatory and punitive damages.<sup>3</sup> *Id.* at 6.

Particularly significant at this juncture in the case is the Arbitrator’s finding that the Release Agreement of 2009, in which Mr. Walia waived certain claims against his employer, was valid and enforceable. *Id.* The Arbitrator found that Walia willingly signed the Release Agreement and under Maryland Law was therefore bound by its terms. Interim Award at 34; Final Award at 6. The release clause reads in pertinent parts:

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<sup>3</sup> In terms of compensatory damages, the Arbitrator awarded Mr. Walia wage and wage shortfalls, medical and disability expenses, cash paid for legal representation, reimbursement for the absence of work during the relocation of the office, expenses relating to the arbitration of his counterclaims and percentages of the Plaintiffs net profits from 2006-2009 and gross profits of revenue from tax. Final Award at 6. Additionally, Walia was awarded punitive damages in the amount of \$70,000 “for the cost of having to defend himself against the baseless claims” brought against him by Plaintiffs. *Id.*

EMPLOYEE, . . . releases and discharges COMPANY and COMPANY's former, current or future officers, . . . from any and all claims, . . . which EMPLOYEE ever had, now has, or hereafter can, shall or may have for, upon or by reason of any act, transaction, practice, conduct, matter, cause or thing of any kind whatsoever, relating to or based upon, in whole or in part, any act transaction, practice or conduct prior to the date hereof, including but not limited to matters dealing with Employee's employment or termination of employment with the COMPANY, or which relate in any way to injuries or damages suffered by EMPLOYEE (knowingly or unknowingly). This release and discharge includes, but is not limited to, claims arising under federal, state and local statutory or common law, . . . and the laws of contract and tort; and any claim for attorney's fees. EMPLOYEE promises never to file a lawsuit or assist in or commence any action asserting any claims, losses, liabilities, demands, or obligations released thereunder.

Release Agreement ¶ 3, ECF No. 33-5. Accordingly, the Arbitrator determined that the Release Agreement precludes Walia from bringing all tort and contractual claims in state and federal courts as well as . . . from receiving attorney fees.” Final Award at 6. However, the Release Agreement also includes a provision by which the parties agreed that the prevailing party in an action to enforce any provision of said agreement was entitled to recover “in addition to any other relief, reasonable attorneys' fees and costs and expenses of litigation or arbitration.” Release Agreement ¶ 10.

Having lost the arbitration proceedings which they initiated, Plaintiffs brought this action before this Court requesting vacatur of both the Interim and Final Awards. This Court denied Plaintiffs' Motion to Vacate the Award and granted Defendant's Motion to Dismiss the Amended Complaint in its Memorandum Opinion and accompanying Order issued on August 3, 2012 (ECF Nos. 28 & 29). Unsatisfied with this Court's decision, Plaintiffs' then filed a Motion for Reconsideration (ECF No. 37) on August 22, 2012. A month later, by Memorandum Order (ECF No. 45), this Court both denied Plaintiffs'

Motion for Reconsideration and granted Defendant Walia's Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment against Plaintiffs (ECF No. 35).

#### STANDARD OF REVIEW

Maryland follows the common law "American Rule," which states that, generally, a prevailing party is not awarded attorneys' fees "unless (1) the parties to a contract have an agreement to that effect, (2) there is a statute that allows the imposition of such fees, the wrongful conduct of a defendant forces a plaintiff into litigation with a third party, or (3) a plaintiff is forced to defend against a malicious prosecution." *Nova Research, Inc. v. Penske Truck Leasing Co.*, 952 A.2d 275, 281 (Md. 2008) (internal quotation marks and citation omitted). Accordingly, "[c]ontract provisions providing for awards of attorney's fees to the prevailing party in litigation under the contract generally are valid and enforceable in Maryland." *Myers v. Kayhoe*, 892 A.2d 520, 532 (Md. 2006). However, "Maryland law limits the amount of contractual attorneys[] fees to actual fees incurred, regardless of whether the contract provides for a greater amount." *SunTrust Bank v. Goldman*, 29 A.3d 724, 728 (Md. App. 2011). "Even in the absence of a contract term limiting recovery to reasonable fees, trial courts are required to read such a term into the contract and examine the prevailing party's fee request for reasonableness." *Myers*, 892 A.2d at 532. "The burden is on the party seeking recovery to provide the evidence necessary for the fact finder to evaluate the reasonableness of the fees." *Atlantic Contracting & Material Co., Inc. v. Ulico Cas. Co.*, 844 A.2d 460, 478 (Md. 2004) (citation omitted).

In determining appropriate fee awards, this Court typically conducts a "lodestar" analysis whereby the Court multiplies the reasonable number of hours expended by a

reasonable hourly rate. *See, e.g., Bd. of Educ. of Frederick Cnty. v. I.S.*, 358 F. Supp. 2d 462, 465 (D. Md. 2005). Next, the Court applies a number of factors to determine the reasonableness of that initial number. *See, e.g., id.; First Bankers Corp. v. The Water Witch Fire Co., Inc.*, RDB–09–975, 2010 WL 3239361, at \*1 (D. Md. Aug.16, 2010). However, the “lodestar” approach is “an inappropriate mechanism for calculating fee awards . . . [in] disputes between private parties over breaches of contract.” *Monmouth Meadows Homeowners Ass’n, Inc. v. Hamilton*, 7 A.3d 1, 7 (Md. 2010). Instead the Court “should use the factors set forth in Rule 1.5 [of the Maryland Rules of Professional Conduct (“MRPC”)]<sup>4</sup> as the foundation for analysis of what constitutes a reasonable fee when the court awards fees based on a contract entered by the parties authorizing an award of fees.” *Id.* at 8. Those factors are:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

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<sup>4</sup> MRPC 1.5(a) is a standard of professional ethics, generally applicable to all attorney-client relationships, which mandates that an attorney “shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.”

(8) whether the fee is fixed or contingent.

MRPC 1.5(a). However, this Court need not evaluate each factor separately, and need not “make explicit findings with respect to Rule 1.5 at all, or even mention Rule 1.5 as long as it utilizes the rule as its guiding principle in determining reasonableness.” *Nautical Girl LLC v. Polaris Investments Ltd.*, ELH-10-3564, 2011 WL 6411082, at \*2 (D. Md. Dec. 19, 2011)(quoting *Suntrust Bank*, 29 A.3d at 730 and *Monmouth*, 7 A.3d 1, at 10 n. 3).

### ANALYSIS

Plaintiffs Kiran M. Dewan, CPA, PA (“KMDCPA and Kiran M. Dewan (“Dewan”) contend that Defendant Arun Walia (“Walia”) is not entitled to attorneys’ fees under the 2009 Employee Settlement and Release Agreement (“Release Agreement”). Specifically, Plaintiffs contend that the agreement was entered into by KMDCPA and Walia, and that Dewan is under no obligation to pay attorneys’ fees. Additionally, Plaintiffs contend that the agreement “is limited to ‘any action [brought] to enforce any provision’ of the *Agreement*.” Pl’s Resp. in Opp. at 4, ECF No. 36. As this action was brought to vacate the interim and final awards, it is not covered by the attorneys’ fee provision of the Release Agreement. Moreover, according to Plaintiffs’ reading of the award, the Arbitrator has precluded Walia from receiving attorneys’ fees in all circumstances. Finally, Plaintiffs argue that even if Walia were entitled to such fees, Walia has failed to demonstrate the “reasonableness” of the fees. Plaintiffs’ position is meritless.

First, the Arbitrator along with this Court have already determined that Plaintiff Dewan as the sole owner of KMDCPA, the attorney who drafted the agreements signed between the parties and represented Defendant Walia in his immigration matters, and the

instigator of both the arbitration proceedings and the case before this Court, is liable under both agreements.

Second, the Arbitrator has determined that the Release Agreement is enforceable and this Court has already held that it found “substantial support for the decisions made by the Arbitrator, that the Arbitrator did not go beyond the scope of the submissions, and that the Arbitrator’s determinations were not arbitrary.” Mem. Op. at 19, ECF No. 28. Because “an arbitrator’s fact finding and contract interpretation [are] accorded great deference [along with his] interpretation of the law,” *Upsbur Coals Corp. v. United Mine Workers of America*, 933 F.2d 225, 229 (4th Cir. 1991), this Court also holds that the Release Agreement is enforceable.

Third, this agreement entitles the prevailing party in “any action brought . . . to enforce” the agreement to reasonable attorneys’ fees. Release Agreement ¶ 10, ECF No. 33-5. While the Arbitrator determined that Walia was not entitled to attorneys’ fees with respect to the claims he willingly relinquished under the Release Agreement, the parties have agreed that to the extent that an action is brought to enforce the Release Agreement’s terms, attorneys’ fees are recoverable. Dewan’s argument that this action was not brought to enforce a provision of the Release Agreement, but instead to vacate the arbitration award, is without merit. In fact, Plaintiffs arguments in support of the vacatur of the award rested heavily on the Release Agreement. As a result, the attorneys’ fees provision of the Release Agreement is applicable here and Walia, as the prevailing party, is entitled to them.

According to Walia, his representation in the matter before this Court was on a contingent fee basis at the hourly rate of \$275.<sup>5</sup> Walia Aff. ¶ 5, ECF No. 33-4; *see also* Engagement Letter, ECF No. 38-2. Walia’s attorneys have presented affidavits and detailed invoices to this Court concerning their representation of Defendant. Khurana Aff., ECF No. 33-2, Chaplin Aff., ECF No. 33-3. As a result, Walia requests \$14,423.75 in attorneys’ fees relating to this action. Mot. for Attorneys’ Fees at 2, ECF No. 33. To determine whether this request is reasonable, this Court must consider it in light of the eight factors<sup>6</sup> outlined in Rule 1.5(a) of the Maryland Rules of Professional Conduct. However, this Court need not evaluate each factor separately, and need not “make explicit findings with respect to Rule 1.5 at all, or even mention Rule 1.5 as long as it utilizes the rule as its guiding principle in determining reasonableness.” *Nautical Girl LLC v. Polaris Investments Ltd.*, ELH-10-3564, 2011 WL 6411082, at \*2 (D. Md. Dec. 19, 2011)(quoting *Suntrust Bank*, 29 A.3d at 730 and *Monmouth*, 7 A.3d 1, at 10 n. 3). Whether separately or as a whole, all the factors weigh in favor of awarding attorneys’ fees. Notably, Walia’s attorneys have represented him on complex issues involving two distinct forums. The considerable time spent on this matter precluded them from employment on other matters. The hourly rate charged was reasonable for legal services provided in a federal court of the Washington, D.C. metropolitan area. Moreover, his attorneys provided him with an effective representation in

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<sup>5</sup> Rule 1.5(c) of the Maryland Rules of Professional Conduct authorizes contingent fee agreements in all matters except those delineated in Rule 1.5(d), which are not at issue in this case.

<sup>6</sup> “(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.” MRPC 1.5(a)

defending Plaintiffs' claims.<sup>7</sup> Although Plaintiffs' challenge the fees charged by Mr. Chaplin because he did not participate in the motions decided on August 3, 2012, his invoice and expertise indicate that he has provided required representation for Defendant Walia and support for Mr. Khurana and as such is also entitled to his fees. Accordingly, Defendant's Motion for "Grant of Attorneys' Fees and Costs" (ECF No. 33) is GRANTED. Plaintiffs Kiran M. Dewan, CPA, PA and Kiran M. Dewan are jointly and severally liable for the amount of \$14,423.75, as an award of reasonable attorneys' fees and costs for defending this action.

#### ORDER

For the reasons stated above, it is this 16th day of October, 2012, ORDERED that:

1. Defendant's Motion for "Grant of Attorneys' Fees and Costs" (ECF No. 33) is GRANTED;
2. Plaintiffs Kiran M. Dewan, CPA, PA and Kiran M. Dewan are jointly and severally liable for the amount of \$14,423.75, as an award of reasonable attorneys' fees and costs for defending the action;
3. The Clerk of the Court transmit copies of this Memorandum Order to Counsel.

/s/

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Richard D. Bennett  
United States District Judge

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<sup>7</sup> Plaintiffs' appeal of this Court's decision to enforce the Final Award is presently pending before Court of Appeals for the Fourth Circuit. *See Kiran M. Dewan, CPA, P.A., et al. v. Arun Walia*, No. 12-2175.