Case No. 01-3301

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TENAFLY ERUV ASSOCIATION, INC., CHAIM BOOK, YOSIFA BOOK, STEFANIE DARDIK GOTLIEB, and STEPHEN BRENNER

Plaintiffs-Appellants,

v.

THE BOROUGH OF TENAFLY, ANN MOSCOVITZ, individually and in her official capacity as Mayor of the Borough of Tenafly, CHARLES LIPSON, MARTHA B. KERGE, RICHARD WILSON, ARTHUR PECK, JOHN T. SULLIVAN, each individually and in their official capacity as Council Members of the Borough of Tenafly

Defendants-Appellees.

PLAINTIFFS-APPELLANTS TENAFLY ERUV ASSOCIATION, INC. AND STEFANIE DARDIK GOTLIEB'S REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS ' FEES AND COSTS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
Case No. 00 CV 6051

Richard D. Shapiro
HELLRING LINDEMAN GOLDSTEIN
& SIEGAL LLP
One Gateway Center
Newark, New Jersey 07102
Telephone: (973) 621-9020

Robert G. Sugarman
Harris J. Yale
Craig L. Lowenthal
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Attorneys for Plaintiffs-Appellants

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PRELIMINARY STATEMENT

Contrary to the assertions of the defendants-appellees ("defendants-appellees"), the fee application submitted by plaintiffs-appellants Tenafly Eruv Association, Inc. and Stefanie Dardik Gotlieb ("plaintiffs-appellants") is entirely reasonable and appropriate.

First, this case involved highly complex and novel legal issues that had never before been addressed, in any way, by either this Court or any other circuit court. Defendants-appellees' argument notwithstanding, the First Amendment argument in this case was not simple and straightforward. Supreme Court and Third Circuit jurisprudence on the First Amendment issues is extremely intricate. Furthermore, as a result of the District Court's decision and the briefs of both defendants-appellees and amicus ACLU, plaintiffs-appellants also had to research and evaluate for the first time the applicability of the Establishment Clause to the facts of this case. As this Court itself recognized in its opinion in this case, Establishment Clause case law is not the model of clarity.

Second, plaintiffs-appellants did not prevail on any of their three claims in the court below, forcing them to re-evaluate their case in light of the District Court's decision, re-analyze the relevant cases, respond to defendants' motion to strike, draft two briefs and a letter brief, and prepare the entire joint appendix (without any assistance from defendants-appellees).

Third, the specific objections raised by defendants-appellees concerning the amounts billed by counsel are without any legal or factual basis. For example, defendants-appellees ignore the fact that plaintiffs-appellants exercised sound billing judgment and did not seek reimbursement for any of the work done by any of the paralegals or attorneys other than Messrs. Sugarman, Yale, Lowenthal, and Shapiro (over 137 hours), and only seek reimbursement for less than two-thirds of the time that Mr. Lowenthal worked on this case. Indeed, the total hours about which defendant-appellees complain is less than the hours of Mr. Lowenthal's time that plaintiffs-appellees eliminated.

Finally, the hourly rates sought for Messrs. Sugarman, Yale, Lowenthal and Shapiro are all exactly in line with what attorneys of similar experience and expertise charge throughout

the state of New Jersey, as established by a survey done less than three months ago by the New Jersey Law Journal and three cases in this circuit in which the hourly rate awarded matches the hourly rate sought for one or more of plaintiffs-appellants' attorneys.

ARGUMENT

I. The Number Of Hours Claimed By Plaintiffs-Appellants Were Reasonable And Were Neither Excessive Nor Duplicative

A. The Number Of Hours Were Reasonable

Conceding that plaintiffs-appellants' are the prevailing party in this matter and are entitled to recover their attorneys' fees under 42 U.S.C. § 1988, defendants-appellees' main objection to the fee request is that a significant amount of hours billed were unwarranted and/or excessive. However, given the complexity of the legal issues involved in this case, the great importance of the legal rights involved, and the numerous challenges this litigation presented, the number of hours requested by plaintiffs-appellants is both reasonable and appropriate.

Overall, this was a difficult and complex case that required plaintiffs-appellants to create and develop their own original theories on three complex legal issues, each of which involved fundamental constitutional rights. The Free Exercise, Free Speech and Fair Housing Act issues, as applied to this case, had never been addressed by any court prior to the District Court's decision. Nor were there any law review articles or treatises which treated the issues raised by this case.

Moreover, the importance of this Court's decision in this case cannot be overstated, as it would have a profound effect on the ability of Orthodox Jews to erect and maintain eruvim throughout the United States. Counsel for plaintiffs-appellants were well aware that courts throughout the country would rely on this decision in deciding any subsequent case concerning eruvim, as evidenced by the numerous amicus curiae briefs that were filed in this case. The number of hours expended by plaintiffs-appellants, therefore, is reasonable.

B. Defendants-Appellees' Specific Attacks On The Number Of Hours Claimed By Plaintiffs-Appellants Are Unfounded

Defendants-appellees claim that many of the hours claimed by plaintiffs-appellants were redundant and unnecessary because the issues were litigated previously before the District Court and a panel of this Court in a stay application. Br. at 18. This argument is plainly absurd. If anyone had the luxury simply to reiterate their previous arguments it was the defendants-appellees, who as the prevailing party in the District Court had the ability to do nothing more than rely upon the opinion of the District Court.

Plaintiffs-appellants, however, had to file three separate briefs (including a letter brief requested by the Court), and two separate sets of motion papers, all of which required much more than simply reiterating arguments presented to the District Court. Because plaintiffs-appellants were unsuccessful below, counsel had to carefully analyze the decision of the District Court, re-evaluate the facts and legal issues in light of the District Court's conclusions, and conduct new research to address and distinguish the District Court's conclusions. The burden was upon plaintiffs-appellants to discern and frame the issues for this Court.

Moreover, a significant amount of time had to be spent addressing the Establishment Clause, an issue that was never addressed in the District Court. This only became an issue when the District Court ruled that defendant-appellees' concerns about violating the Establishment Clause was a compelling interest. Defendants-appellees thereafter embraced and expanded upon this conclusion in their own Brief to this Court, and the American Civil Liberties Union ("ACLU") submitted an amicus brief which further addressed this issue.[1]

[1] Defendants-appellees cite Maldonado v. Houston, 256 F.3d 181 (3d Cir. 2001), as support for their claim that the amount of fees spent on briefs is excessive. Maldonado, however, is completely inapposite. In that case, there was only one issue on appeal and the prevailing party was successful at both the district court and appellate levels. Id. at 183-84. This Court reduced the amount of fees sought because "appellees' counsel claims an enormous amount of time for researching and briefing an issue which they had successfully tried, researched and briefed in the District Court." Id. at 186 (emphasis added). Here, by contrast, plaintiffs-appellants, having lost below, could not simply rely on the research and briefs previously filed, nor could they simply rely upon "the pertinent law set forth in the District Court decision." Id.

Defendant-appellees also mistakenly cite Maldonado as support for their claim that the time

It was also reasonable for plaintiffs-appellants to spend time responding to defendants-appellees' motion to strike plaintiffs-appellants' brief. Defendants-appellees cite no case law as support that this time should be disallowed. On the contrary, a party must be compensated for meeting the vigorous defense of the opposing party. "A defendant cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." Graham v. Sauk Prairie Police Com'n, 915 F.2d 1085, 1109 (7th Cir. 1990) (citing City of Riverside v. Rivera, 477 U.S. 561, 580, n.11 (1986)).

Defendants-appellees' claim that the number of hours expended on telephone conference calls and meetings, and specifically the amount of time spent on telephone conversations by Mr. Shapiro, was unreasonable is also without merit. As defendants-appellees acknowledge, Mr. Shapiro is an experienced federal court practitioner; in addition, he possessed invaluable knowledge about, and familiarity with, this Court and was frequently called upon to share this knowledge and expertise. Thus, no reduction of time is warranted for the conference calls in which Mr. Shapiro participated.[2]

Defendants-appellants also claim that it was redundant for more than one attorney to participate in preparing for and attending the oral argument, citing Planned Parenthood of Central New Jersey v. Attorney General of the State of New Jersey, 297 F.3d 253, 272 (3d Cir. 2002). However, the Court there was addressing the question of whether the plaintiffs had overstaffed the case. Id. at 272. Not only did the Third Circuit conclude that such overstaffing did not in fact occur, the Court affirmed the District Court's determination that plaintiffs were

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spent preparing the Joint Appendix was excessive. In Maldonado, the prevailing party did not bear the burden of preparing and submitting the original appendix. Id. at 186-87. The time plaintiffs-appellants spent on preparing the multi-volume Joint Appendix, which was done without any assistance from defendants-appellees, was reasonable.

[2] Defendants-appellees' reliance upon Maldonado here is, once again, misplaced. In Maldonado, appellees requested payment for 120 hours, 40 hours of which were spent on telephones, conference calls and meetings to plan strategy, while the other 80 hours were for "miscellaneous time." Maldonado, 256 F.3d at 187. The Third Circuit allowed reimbursement for 40 hours – presumably the 40 hours spent on telephones, conference calls and meetings. In this case, plaintiffs-appellants are seeking reimbursement for exactly the types of activities recovered, in full, in the Maldonado case, and not for "miscellaneous time."

entitled to be reimbursed for the time of attorneys who "[were] not addressing questions to a witness or presenting argument to the court" because such counsel "provided necessary support for each other." Id. When a case "present[s] multiple, complex legal questions and [is] an issue of first impression...given the nature of the case...it [is] necessary to use 'other partner level attorneys' and 'associates, law clerks and paralegals'...quite simply, the magnitude of the case mandate[s] the help of numerous attorneys." Id. This was just such a case.

Similarly, it was not redundant for all four attorneys to participate in the overall preparation of the briefs filed with the court. Each attorney performed separate tasks appropriate to their experience and seniority. "The mere fact that services were rendered by more than one attorney on the same day does not necessarily mean that they were duplicative." Swift v. Blum, 502 F. Supp. 1140, 1147 (S.D.N.Y. 1980).

The contention that the time spent by Mr. Sugarman reviewing the District Court's decision and preparing for oral argument was excessive and unreasonable is simply misleading and inaccurate. First Mr. Sugarman did not review the District Court's opinion for a total of 19 hours. Six of these hours occurred on October 25, 2002, and involved review of this Court's decision, which had been issued only a day before. Furthermore, not all of these six hours were spent reviewing this Court's decision, as Mr. Sugarman's time records indicate that during this time he also held numerous conferences with co-counsel and his clients. Nevertheless, these six hours were clearly reasonably and necessarily spent, as Mr. Sugarman was lead counsel and needed to review and discuss this case with his clients and co-counsel. Further, contrary to defendants-appellees' implication, the 13 hours which Mr. Sugarman did spend reviewing the District Court opinion did not occur all at once, or even over the course of two or three consecutive days. Instead, this review occurred on various days over a two-month period. Such careful review of the very opinion plaintiffs-appellants were appealing was both reasonable and necessary, especially in light of the length and detail of the decision, the complexity of the legal issues involved, and the District Court's consideration of the Establishment Clause even though neither party had briefed this issue.

Similarly, the 63 hours spent by Mr. Sugarman preparing for oral argument was not excessive or unnecessary in light of the highly complex nature of this case. Plaintiffs-appellants relied on 32 Supreme Court cases alone, many of which are extremely lengthy, heavily detailed and legally complex. The number of hours that it took Mr. Sugarman to properly prepare for the oral argument was, therefore, reasonable and not excessive.

Defendants-appellees' claim that a substantial portion of Mr. Shapiro's time was spent performing administrative and non-substantive tasks is similarly misleading as they only identify nine hours, out of a total of 103.5, they consider to have been spent "on ministerial task." Def. Br. at 2, 9. Moreover, the nine hours identified by the defendant-appellees represents a cumulative total of the time that Mr. Shapiro billed throughout the eight months of this appeal. As co-counsel, it was certainly necessary and reasonable for Mr. Shapiro to review the content and form of the appellate briefs and to review correspondence. Defendants-appellees' position that it was improper for Mr. Shapiro to review the transcript of the oral argument because he had attended the argument is simply absurd.

Defendant-appellees' position that the Court must exclude most, if not all, of 172.1 hours billed by Mr. Yale because the descriptions of the activities performed during this time does not have the requisite specificity to allow the Court to determine whether these hours were reasonably expended simply is simply untenable. "It is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney." Rode v. Dellarciprete, 892 F.2d 1177, 1190 (3d Cir. 1990). In Rode, this Court found acceptable time records which did nothing more than identify the name of the attorney, the name of the client, the general nature of the subject matter and the activity where possible, the date the activity took place and the amount of time worked on the activity. Id. at 1191. Mr. Yale's disputed time records do all of these things; since it is clear from the date of the entry which papers or brief were being worked on by Mr. Yale, the descriptions "attn to brief," "attn to reply," and "attn to papers," are just as specific as the general descriptions of 'settlement' and 'trial brief' accepted by the Third Circuit in Rode. Id. at 1191. Mr. Yale's

entries are therefore specific enough to allow this Court to determine the reasonableness of Mr. Yale's activities.[3]

Defendants-appellees also disregard the fact that plaintiffs-appellees exercised billing judgment by reducing the amount of hours billed by Mr. Lowenthal by over one third, not seeking reimbursement for any work performed by any other attorneys, paralegals or staff, and not seeking "fees on fees." Mr. Lowenthal, the least experienced attorney on the case, may have performed some tasks that arguably could be considered "administrative." This is precisely why plaintiffs-appellants unilaterally reduced the number of hours billed by Mr. Lowenthal by more than 200. Defendants-appellees have not identified to the Court over 200 hours of Mr. Lowenthal's time as unnecessary, redundant or excessive, nor, as detailed below, could they.[4]

Finally, the fact that counsel for plaintiffs-appellants took this case *pro bono* is no basis to conclude that billing for this case was not accurately done. Counsel for plaintiff-appellants did the work they reasonably believed necessary to prevail, and should not be penalized for that. See e.g. Proffitt v. Municipal Authority of the Borough of Morrisville, 716 F. Supp. 845, 851 (E.D. Pa. 1989) ("this court, in reviewing a petition for attorneys' fees, will not engage in second guessing the sound litigation strategy of plaintiff's counsel").

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[3] Defendant-appellees' reliance on Carter v. Sanders, 1992 WL 33844 (D.N.J. 1992) as authority for reducing or excluding Mr. Yale's time is unavailing. In Carter, plaintiff had six causes of action but only prevailed on one, leading the district court to conclude that the time records lacked specificity because they did not clearly show whether the time in question related to the successful civil rights claim. In this case, where all of plaintiffs-appellants claims arose from a common core of facts and were interrelated, it is clear that the activities performed by Mr. Yale unquestionably related to this case.

[4] Defendants-appellees specifically identify only the 29.6 hours Mr. Lowenthal took to prepare the numerous case opening documents as an instance in which Mr. Lowenthal performed administrative tasks. However, some of this work, such as the drafting of the summary of the case, was substantive – which defendants-appellees concede. Moreover, defendants-appellees' assertion that Mr. Lowenthal excessively spent 9.3 hours drafting correspondence with the District Court and Third Circuit on August 30 and 31, 2001 overlooks the time he billed each day performing other substantive tasks. On August 30, 2001, for instance, a majority of the 6.1 hours billed was spent reading and analyzing two separate briefs filed in support of the Emergency Motion for a Stay. Finally, Mr. Lowenthal billed 161.9 hours drafting the various portions of the appellate briefs and the emergency motion for stay that dealt with the FHA. Even if some of these hours are not recoverable, they still do not add up to the 213.9 hours of Mr. Lowenthal's time that plaintiffs-appellants unilaterally eliminated from their fee application. All of the time Mr. Lowenthal billed that defendants-appellees complain of amounts to 200.8 hours.

II. The Hourly Rates Claimed By Plaintiffs-Appellants Are Reasonable

Defendants-appellees' assertion that this Court should adjust the hourly attorney rates requested by plaintiffs-appellants downward or refer the matter back to the District Court for fact-finding is without any merit. Plaintiffs-appellants provided this Court with the results of a survey of the hourly billing rate for attorneys in many of the state's largest law firm that was published on December 23, 2002 in the New Jersey Law Journal, the official legal publication for the forum state.[5] Defendants-appellees' sole "objection" to this article is that it is merely "anecdotal." Nowhere do they take issue with the accuracy of the information therein.

Where the plaintiff has provided sufficient evidence of what constitutes a reasonable market rate for the legal services rendered, the defendant can only challenge the legitimacy and accuracy of this evidence with appropriate evidence of its own, such as affidavits, certifications or surveys. Smith v. Philadelphia Housing Authority, 107 F.3d 223, 225 (3d Cir. 1997). Given the defendants-appellees' failure to provide this Court with any contradictory evidence, this Court should award the hourly rates requested.

III. The Lodestar Should Not Be Adjusted Downward

Defendants-appellees' contention that the lodestar figure should be adjusted downward because plaintiffs-appellants prevailed on only one of the three substantive legal theories presented to this Court is based on a misinterpretation of the Supreme Court's decision in Hensley v. Eckerhart, 461 U.S. 424 (1983), and should be rejected.

In the case at bar, the three substantive legal arguments addressed on appeal arose

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[5] Such surveys are accepted by both this Court and the district courts as sufficient evidence of what is the prevailing market rate for lawyers for the relevant community in question. Blakey v. Continental Airlines, Inc., 2 F. Supp.2d 598, 603 (D.N.J. 1998) (Court determines what is reasonable rate for several associates listed in fee application solely by referring to an article in *New Jersey Lawyer*).

Furthermore, the two cases cited by defendants-appellants as support for reducing the hourly rate claimed by counsel were both decided five years ago. In contrast, the three cases cited by plaintiffs-appellants – Microsoft Corp. v. United Computer Resources of New Jersey, Inc., 216 F. Supp.2d 383 (D.N.J. 2002); In re Cendant Corp., 2002 WL 31443781 (D.N.J. 2002); and Doe v. Terhune, 121 F. Supp.2d 773 (D.N.J. 2000) – are all much more recent and therefore much more relevant to providing this court with accurate evidence as to what is the prevailing market rate for New Jersey attorneys of similar skill, experience and reputation.

from a common core of facts and related legal claims. In Hensley, the Supreme Court noted just such a situation, when it stated:

> In other cases plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim by claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the District Court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation. Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation.

Id. at 435.[6] The Supreme Court also stated that "litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters...where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the District Court did not adopt each contention raised." Id. at 436, 440 (emphasis added). In this case, plaintiff-appellants' counsel achieved significant results with the granting of an injunction which had been denied by the District Court. At the risk of seeming immodest, counsel's work on highly complex issues, was of high quality. Thus, if anything the lodestar should be adjusted upward. It certainly should not be reduced.

IV. The Costs And Expenses Submitted By Plaintiffs-Appellants Are In Line With Community Practice And Are Reasonable And Therefore Reimbursable

Costs and expenses incurred by counsel are recoverable as part of a reasonable attorney's fee "when it is the custom of attorneys in the local community to bill their clients separately for them." Apple Corps Limited, MPL, 25 F. Supp.2d 480, 497 (D.N.J. 1998). This Court has held that the following expenses are generally recoverable: photocopying expenses; the attorney's telephone expenses; travel time and expenses of the attorney; and postage. Abrams v. Lightolier, Inc. 50 F.3d 1204, 1225 (3d Cir. 1995). Lexis or Westlaw computerized

[6] See also West Virginia University Hospitals, Inc. v. Casey, 898 F.2d 357, 361 (3d Cir. 1990) ("where a lawsuit consists of related claims, a plaintiff should not have his attorneys' fees reduced simply because some related claims are unsuccessful.").

legal research is also reimbursable because it is the type of expense that attorneys bill separately to their clients. Apple Corps Limited, MPL, 25 F. Supp.2d at 497. Express mail, messenger services, and taxi fares are likewise recoverable, provided that it is the custom of attorneys in the local community to bill their clients separately for these services. Id. at 498-99.

The enclosed declaration of Edward J. Dauber, Esq. a well respected New Jersey attorney who has been practicing in the state of New Jersey for over 28 years, clearly indicates that in New Jersey clients are customarily billed separately for each and every type of expense for which plaintiffs-appellants seek reimbursement.

Moreover, each of the costs included in plaintiffs-appellants fee application were incurred in order for counsel to be able to render his legal services. Abrams, 50 F.3d at 1225. These costs should be reimbursed as part of the reasonable attorney's fees to which plaintiffs-appellants are entitled.

CONCLUSION

For the foregoing reasons, and those set forth in their moving brief, plaintiffs-appellants respectfully request that, pursuant to 42 U.S.C. § 1988, the Court grant plaintiffs-appellants motions for attorneys' fees and costs incurred during the appellate portion of this action in the amount of $347,324.88.

Dated: February 28, 2003

Respectfully submitted,

Robert G. Sugarman
Harris J. Yale
Craig L. Lowenthal
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119
(212) 310-8000

- and -

Richard D. Shapiro
HELLRING, LINDEMAN, GOLDSTEIN & SIEGEL LLP
One Gateway Centre
Newark, New Jersey 07012
(973) 621-9020

Case No. 01-3301

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TENAFLY ERUV ASSOCIATION, INC.; CHAIM BOOK; YOSIFA BOOK; STEFANIE DARDIK GOTLIEB; and STEPHEN BRENNER

Plaintiffs-Appellants,

v.

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Defendants-Appellees.

AFFIRMATION OF CRAIG L. LOWENTHAL

Appeal From The United States District Court For The District Of New Jersey

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HELLRING LINDEMAN GOLDSTEIN
& SIEGAL LLP
Richard D. Shapiro
One Gateway Center
Newark, New Jersey 07102-5386
Telephone (973) 621-9020
Facsimile (973) 621-7406

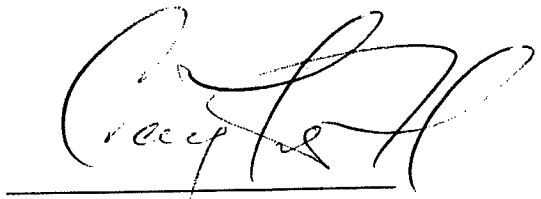
WEIL, GOTSHAL & MANGES LLP
Robert G. Sugarman
Harris J. Yale
Craig L. Lowenthal
767 Fifth Avenue
New York, NY 10153-0119
Telephone (212) 310-8000
Facsimile (212) 310-8007
Attorneys for Plaintiffs-Appellants
Tenafly Eruv Association, Inc.
and Stefanie Dardik Gotlieb

CRAIG L. LOWENTHAL, hereby affirms under penalty of perjury:

1. I am an Associate with Weil Gotshal & Manges LLP and counsel for the Tenafly Eruv Association, Inc. ("TEAI") and Stefanie Dardik Gotlieb, who were appellants in this Court in Tenafly Eruv Association, Inc., et al. v. The Borough of Tenafly, et al., No. 01-3301, that was decided with an opinion on October 24, 2002. I am a member of the bar of this Court. I am submitting this Affirmation in support of Plaintiffs-Appellants' application for attorneys' fees, pursuant to 42 U.S.C. § 1983, et seq., as the prevailing party in the above-captioned matter.

2. Annexed hereto as Exhibit A is the declaration of Edward J. Dauber, Esq., which is submitted in support of Plaintiffs-Appellants Tenafly Eruv Association, Inc. and Stefanie Dardik Gotlieb's motion for attorneys' fees and costs.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Craig L. Lowenthal

Dated: February 28, 2003

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TENAFLY ERUV ASSOCIATION, INC., CHAIM BOOK, YOSIFA BOOK, STEFANIE DARDIK GOTLIEB and STEPHEN BRENNER, Plaintiffs-Appellants, v. THE BOROUGH OF TENAFLY, MAYOR ANN MOSCOVITZ, individually and in her official capacity as Mayor of the Borough of Tenafly, CHARLES LIPSON, MARTHA B. KERGE, ARTHUR PECK, RICHARD WILSON, JOHN T. SULLIVAN, each individually and in their official capacities as Council Members of the Borough of Tenafly, Defendants-Appellees.	District Court No. 00-CV-6051 (WGB) Docket No. 01-3301(cmh) DECLARATION OF EDWARD J. DAUBER, ESQ.

EDWARD J. DAUBER hereby declares:

1. I am a partner at the law firm of Greenberg Dauber Epstein & Tucker, P.C., One Gateway Center, Suite 600, Newark, New Jersey 07102.

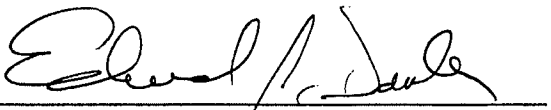
2. I have been a member of the Bar of the State of New Jersey since 1974 and of the Bar of the United States District Court for the District of New Jersey and the United States Supreme Court since 1973.

3. I submit this declaration in connection with the application of plaintiffs-appellants in the above matter for an award of attorneys' fees and costs.

4. It is and has been the practice of Greenberg Dauber Epstein & Tucker, P.C. to bill expenses and costs separately from hourly charges for attorney time that is expended in connection with a matter in litigation. To my knowledge it is the custom of attorneys in the New Jersey legal community to bill clients separately for costs and expenses.

5. The costs and expenses that are generally billed separately by Greenberg Dauber Epstein & Tucker, P.C. include a) photocopy expense and duplicating costs; b) attorney telephone charges; c) postage, overnight courier and messenger costs; d) attorney travel costs and e) computerized legal research expense.

I hereby declare under penalty of perjury that the foregoing is true and correct.



Edward J. Dauber

Executed on: February 27, 2003

CERTIFICATE OF SERVICE

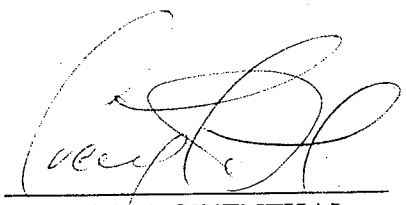
I hereby certify that I caused a true and correct copy of the foregoing Affirmation of Craig L. Lowenthal to be served by Federal Express on February 28, 2003, on the following individuals:

Bruce S. Rosen, Esq.
McCusker, Anselmi, Rosen, Carvelli & Walsh
127 Main Street
Chatham, New Jersey 07928

Noah R. Feldman, Esq.
New York University Law School
40 Washington Square South
New York, New York 10012

Nathan Lewin, Esq.
Lewin & Lewin LLP
1025 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Richard D. Shapiro, Esq.
Hellring Lindeman Goldstein & Siegal LLP
One Gateway Center
Newark, New Jersey 07102



CRAIG L. LOWENTHAL