



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: August 10, 2017

CBCA 5779-C(5179)

PARADISE PILLOW, INC.,

Applicant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Daniel A. Bellman of Bellman Law, Granville, OH, counsel for Applicant.

Michael J. Noble, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **SOMERS**, and **ZISCHKAU**.

DANIELS, Board Judge.

The Board granted an appeal by Paradise Pillow, Inc. (Paradise) of the deemed denial, by a General Services Administration (GSA) contracting officer, of a claim for payment under a delivery order for blankets. *Paradise Pillow, Inc. v. General Services Administration*, CBCA 5179, et al., 17-1 BCA ¶ 36,641. Within thirty days after the decision became final (because neither party timely appealed it to the Court of Appeals for the Federal Circuit), Paradise filed an application for reimbursement of attorney fees incurred in prosecuting the appeal, totaling \$9500.

The application was filed pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2012). The EAJA provides that –

an agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.

5 U.S.C. § 504(a)(1). The purpose of the law is “to eliminate the barriers that prohibit small businesses and individuals from securing vindication of their rights in civil actions and administrative proceedings brought by or against the Federal Government.” *Scarborough v. Principi*, 541 U.S. 401, 406 (2004) (quoting H.R. Rep. No. 96-1005, at 9 (1980)).

To be eligible under this Act for recovery of fees and other expenses incurred in connection with a proceeding, an applicant must meet several requirements. It must:

- (1) have been a prevailing party in a proceeding against the United States;
- (2) if a corporation, have had not more than \$7,000,000 in net worth and five hundred employees at the time the adversary adjudication was initiated;
- (3) submit its application within thirty days of a final disposition in the adjudication;
- (4) in that application, (a) show that it has met the requirements as to having prevailed and size (numbers (1) and (2) above) and (b) state the amount sought and include an itemized statement of costs and attorney fees; and
- (5) allege that the position of the agency was not substantially justified.

5 U.S.C. § 504(a)(1), (2), (b)(1)(B); *Paradise Pillow, Inc. v. General Services Administration*, CBCA 5237-C(3562), 17-1 BCA ¶ 36,628.

In its application, Paradise, with supporting documentation, has met each of these requirements. The applicant made its calculation of attorney fees by multiplying hours expended by its lawyer by \$125 per hour, the maximum rate allowed by the EAJA, save for exceptions not relevant here. *See* 5 U.S.C. § 504(b)(1)(A). The number of hours devoted to the appeal by the lawyer appears reasonable.

GSA’s response to the application states in full:

GSA does not dispute Paradise Pillow's . . . fee petition in terms of Paradise Pillow meeting the EAJA eligibility requirements, its status as a prevailing party, the sufficiency of its billing records, and/or its overall entitlement to the attorney fees and costs/expenses otherwise sought in that petition.

We make one small deduction from the amount sought by Paradise. The applicant has presented time sheets from its lawyer which assert that a total of 76 hours was devoted to the appeal. The entries on the time sheets sum, however, to 74.75 hours, rather than 76. We consequently grant the application in the amount of \$9343.75 (74.75 times \$125), rather than the \$9500 sought (76 times \$125).

Decision

We **GRANT** the application **IN PART**. The General Services Administration shall pay \$9343.75 to Paradise Pillow, Inc. This sum shall be paid "from any funds made available to the agency by appropriation or otherwise." 5 U.S.C. § 504(d).

STEPHEN M. DANIELS
Board Judge

We concur:

JERI KAYLENE SOMERS
Board Judge

JONATHAN D. ZISCHKAU
Board Judge