

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

THOMAS M. DAMIANO and RITA DAMIANO,

Plaintiffs,

vs

5:04-CV-1012

CITY OF AMSTERDAM, NEW YORK; and  
GREGORY J. CULICK, ARIEL SANTIAGO,  
OWEN FUHS, and DEAN PALMIERI, Each  
Individually, and as an Agent and/or Employee  
and Police Officer of the City of Amsterdam,  
and the City of Amsterdam Police Department,

Defendants.

---

APPEARANCES:

TOBIN & DEMPFF  
Attorneys for Plaintiffs  
33 Elk Street  
Albany, New York 12207

PENNOCK BREEDLOVE & NOLL  
Attorneys for Defendants  
Building 4, 2<sup>nd</sup> Floor  
1407 Route 9, Nine North  
Clifton Park, NY 12065

DAVID N. HURD  
United States District Judge

OF COUNSEL:

KEVIN A. LUIBRAND, ESQ.

JOHN H. PENNOCK, JR., ESQ.

**ORDER**

On September 5, 2007, in open court, defendant made an offer of \$100,000 to settle this matter. The trial was scheduled for September 10, 2007.

The plaintiffs and plaintiffs' attorney stated that the offer was fair and reasonable and agreed to accept same. The Court also found the offer to be fair and reasonable. The

Court further found that a plaintiffs' attorney's fee of \$29,000 plus \$3,000 for expenses for a total of \$32,000 was fair and reasonable. This was based upon 1/3 or 33 1/3% of the settlement after deducting plaintiffs' previous payment to the plaintiffs' attorney for defending the criminal case (\$10,000) and the expenses (\$3,000), leaving \$87,000 to be distributed from the settlement.

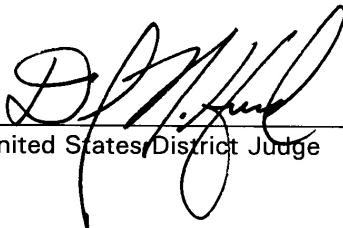
After making the above ruling, plaintiffs' attorney requested the Court to reconsider and to review his records for hours and rate which he claimed would justify an attorney's fee award in excess of \$63,000. If accepted, this would have resulted in an attorney's fee of over 72% ( $\$63,000/\$87,000$ ), and leave the plaintiffs with only \$24,000.

There is no need to review the plaintiffs' attorney's hourly and rate records. With a settlement disbursement of \$87,000, any award above 1/3 or 33 1/3% would be excessive and unreasonable. In fact, if plaintiffs' attorney's reasonable hours multiplied by the Northern District's reasonable rate turned out to be less than \$29,000, the attorney's award of \$29,000 would be unreasonable. However, the plaintiffs were fully advised prior to the above ruling, and were completely in agreement with the distribution, including an attorneys' fee award of 1/3 or 33 1/3%.

Therefore, plaintiffs' attorney's request to reconsider and review his hourly and rate records is DENIED.

IT IS SO ORDERED.

Dated: September 7, 2007  
Utica, New York.

  
United States District Judge

