

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 01-11043 CACE (08)

WAYNE POTTINGER, Plaintiff, vs. AUTONATION USA CORPORATION, a Florida corporation, Defendant.

AMENDED

FINAL JUDGMENT AWARDING PLAINTIFF REASONABLE

ATTORNEYS' FEES AND COSTS

THIS CAUSE having come on to be heard upon Plaintiff, WAYNE POTTINGER's Motion for Attorney Fees and Costs against Defendant, AUTONATION, U.S.A. CORPORATION, on March 20, 2003, and the Court having reviewed said Motion, attachments and Plaintiff's counsels' affidavits, and taken testimony from experts, and having heard argument of counsel for the respective parties and being otherwise fully advised in the premises, the Court, utilizing the criteria set forth in *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), and its progeny, makes the following,

FINDINGS OF FACT:

A. The Court awards attorney fees pursuant to *Florida Statute § 501.2105*, (Unfair and Deceptive Trade Practices) and *Florida Statute § 520.12(3)*, (Motor Vehicle Sales Finance Act), and the contract at issue.

B. Plaintiff's counsel, Rebecca J. Covey, reasonably expended 202 hours representing the Plaintiff in this cause.

C. The hourly rate of \$250.00 per hour is reasonable for this type of case, in this community, considering the experience, reputation and ability of Plaintiff's counsel.

D. Therefore the court finds the reasonable attorney fee for Rebecca J. Covey is \$50,500.00.

E. The Court denies attorneys' fees expended in litigating the issue of attorneys' fees.

F. This is a public policy enforcement case and a tort case in which the risk of nonpayment, the relevant market requirements, the plaintiff's attorney's inability to mitigate the risk of nonpayment and unlikely success at the outset were established justifying a multiplier of 2.5 pursuant to § 501.2105 Fla. Stat.(1997), § 520.12(2), Fla.Stat. 2001 and *Bell v U.S.B. Acquisition Co. Inc.*, 734 So. 2d 403 (Fla. 1999). Thus, Rebecca Covey's basic fee multiplied by 2.5 is equal to a loadstar fee amount of \$126,250.

G. The above stated conclusions were reached by the Court based upon the following

factual findings:

i. The Plaintiff's attorney fee expert, Mr. Raymond Ingalsbe, testified about the bases for a multiplier and enhancement (Transcript pgs 38-63). He gave expert testimony on the relevant market conditions, the risk of non-payment Mr. Ingalsbe testified that the undersigned was "plowing new ground."

ii. He testified that the undersigned was "extremely skillful" and that the results obtained were exactly those sought (even the defense expert conceded this point (T.pg. 78)). He pointed out that based upon the hours devoted to this case the undersigned was precluded from accepting other employment (T.pg. 41)

iii. He attested to the significance of the representation and pointed out that this being a public enforcement act requires the consumer's attorney to act as a private Attorney General (T.pg.43). He pointed out that this case was about "dealer fraud" and is a crime and thus protection of the public depends upon private enforcement (T.pg. 43).

iv. Mr. Ingalsbe testified that Plaintiff's chances of prevailing at arbitration were "far greater" than in front of a judge or jury, and that had the Plaintiff not prevailed the Plaintiff would have been liable for defense counsel's fees and the arbitrator's fees (T.pg. 44). The unrefuted testimony was that the Plaintiff had obtained results twelve and one-half (12.5) times greater than the Defendant's best offer of \$2,000, which he opined was "quite remarkable." (T.Pg. 45).

v. In summary he testified that "it is a virtual impossibility for any consumer in South Florida . . . to obtain contingent representation for consumer cases and that is but for myself and four other lawyers including Ms. Covey." (T.pg. 47). (Even the defense expert conceded there were only about 5-6 lawyers who handle these type cases. (T.pg. 93)

vi. Mr. Ingalsbe's testimony was that a multiplier of 2.5 was appropriate since the chances of success at the outset were substantially less than even. (T.Pg.49)

H. The Court awards an enhancement of \$5,000, for the above stated reasons for a subtotal of \$131,250.00.

I. The Court awards interest on the subtotal attorney fee of \$131,250.00 from January 1, 2003 which was the date of the underlying Arbitration Judgment:

At 6 per cent per annum from: January 1, 2003 to March 31, 2003 \$ 2,913.30

J. The Court awards the following reasonable costs which have not yet been paid Plaintiff's expert witness fee-Mr.Stivers \$ 6,417.00

Court reporter attendance at arbitration \$ 750.00

Costs including depositions, mediation, etc. \$ 3,793.30

Total interest and costs: \$ 13,873.60

Balance due Rebecca J. Covey, P.A. **\$ 145,123.60**

ORDERED AND ADJUDGED

1. Plaintiff's Motion for Fees and Costs be, and the same hereby is, granted.
2. The Plaintiff does have and recover from AUTONATION U.S.A. CORPORATION reasonable attorneys' fees, interest and costs in the sum of **\$145,123.60** for which sum let execution issue forthwith.
3. Until paid in full, interest hereon shall accumulate at the rate of 6% per annum (\$23.86 per day) from the date of this Final Judgment.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Broward County, Florida, this ____ day of September, 2003.

(Signed by the undersigned on September 8, 2003)

J. LEONARD FLEET, Circuit Court Judge

Copies furnished:

Rebecca J. Covey, Esquire
1318 Southeast 1st Avenue
Fort Lauderdale, FL 33316

Mark J. Dearman, Esquire
150 North University Drive, Suite 200
Plantation, FL 33324