S T A T E O F N E W Y O R K

6904

2011-2012 Regular Sessions

I N A S S E M B L Y

April 5, 2011

Introduced by M. of A. KATZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the recovery of attorney's fees by the prevailing defendant party

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The civil practice law and rules is amended by adding a new article 87 to read as follows:

ARTICLE 87

COUNSEL FEES AND EXPENSES GENERALLY

SECTION 8700. FEES AND OTHER EXPENSES.
8701. DEFINITIONS.
8702. INTEREST.
8703. APPLICABILITY.

S 8700. FEES AND OTHER EXPENSES. (A) WHEN AWARDED. IN ADDITION TO COSTS, DISBURSEMENTS AND ADDITIONAL ALLOWANCES AWARDED PURSUANT TO SECTIONS EIGHT THOUSAND TWO HUNDRED ONE THROUGH EIGHT THOUSAND TWO HUNDRED FOUR AND EIGHT THOUSAND THREE HUNDRED ONE THROUGH EIGHT THOUSAND THREE HUNDRED THREE OF THIS CHAPTER, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY STATUTE, A COURT SHALL AWARD TO A DEFENDANT WHO AFTER FINAL JUDGMENT IS RENDERED THE PREVAILING PARTY, FEES AND OTHER EXPENSES INCURRED BY SUCH PARTY IN DEFENSE OF SUCH CIVIL ACTION, UNLESS THE COURT FINDS THAT THE POSITION OF THE PLAINTIFF WAS SUBSTANTIALLY JUSTIFIED OR THAT SPECIAL CIRCUMSTANCES MAKE AN AWARD UNJUST. WHETHER THE POSITION OF THE PLAINTIFF WAS SUBSTANTIALLY JUSTIFIED SHALL BE DETERMINED SOLELY ON THE BASIS OF THE RECORD BEFORE THE COURT AND THE ACT, ACTS, OR FAILURE TO ACT THAT GAVE RISE TO THE CIVIL ACTION. FEES SHALL BE DETERMINED PURSUANT TO PREVAILING MARKET RATES FOR THE KIND AND QUALITY OF THE SERVICES FURNISHED, EXCEPT THAT FEES AND EXPENSES MAY NOT BE AWARDED TO A PARTY FOR ANY PORTION OF THE LITIGATION IN WHICH THE PARTY HAS UNREASONABLY PROTRACTED THE PROCEEDINGS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) APPLICATION FOR FEES. A PARTY SEEKING AN AWARD OF FEES AND OTHER EXPENSES SHALL, WITHIN THIRTY DAYS OF FINAL JUDGMENT IN THE ACTION SUBMIT TO THE COURT AN APPLICATION WHICH SETS FORTH (1) THE FACTS SUPPORTING THE CLAIM THAT THE PARTY IS A PREVAILING DEFENDANT AND IS ELIGIBLE TO RECEIVE AN AWARD UNDER THIS SECTION, (2) THE AMOUNT SOUGHT, AND (3) AN ITEMIZED STATEMENT FROM EVERY ATTORNEY OR EXPERT WITNESS FOR WHOM FEES OR EXPENSES ARE SOUGHT STATING THE ACTUAL TIME EXPENDED AND THE RATE AT WHICH SUCH FEES AND OTHER EXPENSES ARE CLAIMED.

S 8701. DEFINITIONS. FOR THE PURPOSE OF THIS ARTICLE:

(A) "ACTION" MEANS ANY CIVIL ACTION OR PROCEEDING BROUGHT TO SEEK JUDICIAL REVIEW OF AN ACTION INCLUDING AN APPELLATE PROCEEDING.

(B) "FEES AND OTHER EXPENSES" MEANS THE REASONABLE EXPENSES OF EXPERT WITNESSES, THE REASONABLE COST OF ANY STUDY, ANALYSIS, CONSULTATION WITH EXPERTS, AND LIKE EXPENSES, AND REASONABLE ATTORNEY FEES, INCLUDING FEES FOR WORK PERFORMED BY LAW STUDENTS OR PARALEGALS UNDER THE SUPERVISION OF AN ATTORNEY INCURRED IN CONNECTION WITH AN ADMINISTRATIVE PROCEEDING AND JUDICIAL ACTION.

(C) "FINAL JUDGMENT" MEANS A JUDGMENT THAT IS FINAL AND NOT APPEALABLE, AND SETTLEMENT.

(D) "PARTY" MEANS (I) AN INDIVIDUAL WHOSE NET WORTH, NOT INCLUDING THE VALUE OF A HOMESTEAD USED AND OCCUPIED AS A PRINCIPAL RESIDENCE, DID NOT EXCEED FIFTY THOUSAND DOLLARS AT THE TIME THE CIVIL ACTION WAS FILED; (II) ANY OWNER OF AN UNINCORPORATED BUSINESS OR ANY PARTNERSHIP, CORPORATION, ASSOCIATION, REAL ESTATE DEVELOPER OR ORGANIZATION WHICH HAD NO MORE THAN ONE HUNDRED EMPLOYEES AT THE TIME THE CIVIL ACTION WAS FILED, (III) ANY ORGANIZATION DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1954 (26 U.S.C. 501(C)(3)) EXEMPT FROM TAXATION UNDER SECTION 501(A) OF SUCH CODE REGARDLESS OF THE NUMBER OF EMPLOYEES.

(E) "PREVAILING PARTY" MEANS A DEFENDANT IN THE CIVIL ACTION AGAINST THE PLAINTIFF WHO PREVAILS IN WHOLE OR IN SUBSTANTIAL PART WHERE SUCH PARTY AND THE PLAINTIFF PREVAIL UPON SEPARATE ISSUES.

S 8702. INTEREST. IF THE PLAINTIFF APPEALS AN AWARD AND THE AWARD IS AFFIRMED IN WHOLE OR IN PART, INTEREST SHALL BE PAID ON THE AMOUNT OF THE AWARD. SUCH INTEREST SHALL RUN FROM THE DATE OF THE AWARD THROUGH THE DAY BEFORE THE DATE OF THE AFFIRMANCE.

S 8703. APPLICABILITY. (A) NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO ALTER OR MODIFY THE OTHER PROVISIONS OF THIS CHAPTER.

(B) NOTHING CONTAINED IN THIS ARTICLE SHALL BE DEEMED TO AUTHORIZE THE INSTITUTION OF A CIVIL ACTION FOR THE SOLE PURPOSE OF OBTAINING FEES INCURRED BY A PARTY TO AN ADMINISTRATIVE PROCEEDING.

(C) NOTHING CONTAINED IN THIS ARTICLE SHALL AFFECT OR PRECLUDE THE RIGHT OF ANY PARTY TO RECOVER FEES OR OTHER EXPENSES AUTHORIZED BY COMMON LAW OR BY ANY OTHER STATUTE, LAW OR RULE.

S 2. This act shall take effect immediately.