

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

SOL Docket No. 09-0177

CHARLES McDONALD,

Complainant

v.

TOM VILSACK, SECRETARY,  
UNITED STATES DEPARTMENT OF AGRICULTURE,

Respondent

**MISCELLANEOUS OPINION AND ORDER**  
**AS TO THE APPLICATION FOR FEES and COSTS OF**  
**SNAVELY KING MAJOROS O'CONNOR & BEDELL, INC.**

This matter is before the Administrative Law Judge for approval of the application for fees and costs which have been submitted in this action by Snavely King Majoros O'Connor & Bedell, Inc. Snavely King Majoros O'Connor & Bedell, Inc. has requested the sum of \$85,915.41 for their services provided on behalf of Charles McDonald in preparing an economic damage analysis. The record reflects that those applications were served upon Counsel for the Respondent and that a Response and Supplemental Response have been filed asking that the request amount be reduced.

As noted in the Decision and Order entered in this case, the costs of the action and attorney fees are added to the award. 15 U.S.C. §1691e(d). The reasonable cost of any study, analysis, engineering report, test, project or similar matter is to be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar

services, and the study or other matter was necessary for preparation of the applicant's case. 7 C.F.R. § 1.186(d). While not rising to the level of presenting a fraudulent claim, the application for the fees and expenses submitted by Snavelly King Majoros O'Connor & Bedell, Inc. reflects a number of inappropriate charges which require downward adjustment of the amount sought.

The summary of charges sought is contained on a Snavelly King Majoros O'Connor & Bedell, Inc. Statement dated August 13, 2010. The Statement contains five individual entries, commencing with the date of December 30, 2009 with a Balance Forward of \$0<sup>1</sup> and ending with an amount due of \$85,915.41.<sup>2</sup>

The second entry is dated January 31, 2010, referencing an Invoice number 10968 and charges of \$10,763.36. The supporting material in the form of time slips (SKA Form MTR-3) for the Invoice was attached. The first entry for the period October 26, 2009 to November 25, 2009 reflects 9 hours spent by Mr. King, with 5.5 hours charged to "Retrieve billing and case information" on Friday, November 13, 2009. A second entry reflects an additional 2.5 hours spent "Prepare billing reconstruction" on Monday, November 16, 2009. A final entry charges 1.0 hour to "Conference with attorneys" on Wednesday, November 18, 2009. Of the three entries, only the last will be considered compensable as the other two deal with administrative overhead actions unrelated to the preparation of the analysis.<sup>3</sup> The second entry reflects 32.0 hours spent by Charles King during the period December 26, 2009 to January 25, 2010. The enumeration of the time

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<sup>1</sup> Although a balance forward of \$0 is reflected at the end of 2009, charges generated in 2009 were later included in the final entry on August 13, 2010 along with interest charges associated with such charges.

<sup>2</sup> Of the total amount due, current charges are \$72,622.05 and \$13,915.41 is reflected as over 90 days past due. It is difficult to understand how current charges are charged interest.

<sup>3</sup> As the 2009 charges for the preparation of the analysis are being favorably considered, charges to retrieve and reconstruct the study are inappropriate.

spent for these charges all appear reasonable and necessary and will be allowed. The third entry covers the same identical period and bears the client identification of Pearson, another ECOA litigant. Those charges clearly are not properly charged against Mr. McDonald and also will not be allowed.

A Detailed Expense Report itemizing expenses of \$1,177.36 for the same period (December 26, 2009 to January 25, 2010) follows. Supporting receipts are attached and the expenses will be allowable in full.

Invoice number 10979 dated February 28, 2010 is for the amount of \$660.00. The first supporting slip is for the period January 26, 2010 to February 25, 2010 and again identifies the charges for 3.0 hours as being related to services performed for a litigant name Pearson and accordingly will not be allowed. A second slip for the same time period identifies the client as Black Farmers-McDonald, but contains an entry for Thursday, February 11, 2010 for 1.5 hours concerning a witness (Koenig) who was not called as a witness in the McDonald case. The remaining 4.0 hours charged appear to be appropriate.

Invoice number 10713 dated March 31, 2010 identifies 3.0 hours devoted to testimony given by Mr. King on February 26, 2010. Those charges are appropriate and will be allowed.

Invoice number 11039 dated August 13, 2010 sets forth charges of \$72,662.05 and identifies the billing period as being February of 2000 through July of 2010. Examination of this billing reflects services of several members of the firm in the preparation of the initial damage analysis by a number of individuals with total billings of

\$15,075.00. The balance of the charges sought are for accumulated interest,<sup>4</sup> which was unrelated to for the preparation of the analysis and in an amount which far exceeds prevailing rates reasonable for the preparation of an initial economic analysis report, the update report prepared immediately prior to the hearing and trial testimony. Counsel for the Respondent have suggested that the requested fees be also reduced as the analysis was not fully accepted in the calculation of damages in this case; however, in light of the reductions made, I will find that the report was necessary for the preparation of the Complainant's case and will decline to make further reduction on that basis.

The following is a summary of the charges sought and those allowed.

<u>Date</u>	<u>Invoice Number</u>	<u>Amount Requested</u>	<u>Amount Allowed</u>
12/30/2009	Balance Forward	\$0.00	\$0.00
01/31/2010	10968 <sup>5</sup>	10,763.36	8,437.36
02/28/2010	10979	1,870.00	0.00
03/31/2010	10713	660.00	660.00
08/13/2101	11039	<u>72,662.05</u>	<u>15,075.00</u>
	Total	\$85,955.41 <sup>6</sup>	\$24,172.36

For the foregoing reasons, it is **ORDERED** that fees and costs in the amount of \$24,172.36 are awarded to Snavelly King Majoros O'Connor & Bedell, Inc. for their services to Charles McDonald in the above styled case.

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<sup>4</sup> Mr. King's penchant for including interest components was rebuffed in the Decision and Order in this case. The inclusion of approximately \$60,000 as such a component in his requested fees will not be allowed.

<sup>5</sup> This amount contains both hourly billings and the expenses contained on the Detailed Expense Report.

<sup>6</sup> It appears that the requested amount of \$85,915. 41 contains a mathematical error as the sum of the invoices is \$85,955.41.

Copies of this Order will be served upon the parties by the Hearing Clerk.

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Peter M. Davenport  
Chief Administrative Law Judge

September 24, 2010

Copies to: Ben Whaley Le Clercq, Esquire  
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