

Ranch's Motion for Leave to File Motion to Disallow Attorney Fees, Second Memorandum of Attorneys Fees setting forth \$3,703.50 in claimed fees and a *Third Affidavit of Counsel*.

II. STANDARD OF REVIEW

A prevailing party may recover reasonable attorney fees where the criteria established by I.R.C.P. 54(e)(1) are met. Idaho Rule of Civil Procedure 54(e)(1) provides, in pertinent part:

Rule 54(e)(1). Attorney Fees. - - In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation. . . .

I.R.C.P. 54(e)(1).

Rule 54(d)(1) requires a court to consider “the final judgment or result of the action in relation to the relief sought by the respective parties, whether there were multiple claims, multiple issues, . . . or other multiple or cross issues between the parties, and the extent to which each party prevailed upon each of such issue or claims.” I.R.C.P. 54(d)(1).

I.R.C.P. 54(e)(2) provides that when a court awards attorney fees under I.C. § 12-121, it shall make written findings as to the basis and reasons for awarding such attorney fees. The amount of attorney fees granted by the court shall be considered pursuant to the factors set forth in I.R.C.P. 54(e)(3). In reviewing the request by Allen for attorney fees, the following factors were considered: (a) whether Allen was the prevailing party; (b) whether attorney fees are provided for by statute; (c) whether Charter Mountain brought, pursued or defended its second *Motion to File Late Objection* frivolously, unreasonably, or without foundation; and (d) the factors set forth in I.R.C.P. 54(e)(3).

III. ANALYSIS

A. Allen is the Prevailing Party

Allen is the prevailing party in the *Motion to File Late Objection*. Charter Mountain filed a *Motion to File Late Objection* that was denied by this Special Master, and then filed a second *Motion to File Late Objection* that was also denied in its entirety. This Special Master has considered the factors set forth in I.R.C.P. 54(d)(1) and concludes that Allen is the prevailing

party.

B. Attorney Fees are Provided by I.C. § 12-121.

Idaho Code section 12-121 provides for attorney fees in certain limited circumstances. I.C. § 12-121 allows for an award of reasonable attorney's fees to the prevailing party, so long as the provisions of I.R.C.P. 54(e)(1) are met. Therefore, there is a statutory provision for attorney fees in this instance only if the court finds that Charter Mountain Ranch, Inc. brought the *Motion to File Late Objection* frivolously, unreasonably, or without foundation.

C. The Motion to File Late Objection was Unreasonable

An award of attorney fees is not a matter of right, and a court should award fees under I.C. § 12-121 only where the court is left with the abiding belief that the action was pursued, defended, or brought frivolously, unreasonably, or without foundation. *Owner-Operator Independent Drivers Ass'n Inc. v. Idaho Public Utilities Commission*, 125 Idaho 401, 408 (1994).

An action is not deemed frivolous by a court merely because it ultimately fails. *Automobile Club Insurance Co. v. Jackson*, 124 Idaho 874, 879 (1993) “[I]n deciding whether an award of attorney’s fees is proper, ‘the sole question is whether the losing party’s position is plainly fallacious as to be deemed frivolous, unreasonable, or without foundation.’” *Id.* Also, I.C. § 12-123(b) defines “frivolous conduct” as conduct that obviously serves merely to harass or maliciously injure or is not supported in fact or warranted under existing law or a good faith argument for modifying the existing law.

In subcases for which partial decrees have not been entered, the legal standard for filing late objections in the SRBA has long been determined pursuant to the standards set forth in **AO1 § 4(d)(2)(d)** and I.R.C.P. 55(c) which require a showing of good cause for untimeliness. Charter Mountain filed its first *Motion to File Late Objection* without providing evidence of good cause for the untimeliness of its Objection, and without providing evidence of its assertion that it was entitled to 150 AFY. The motion was denied. Charter Mountain then filed a second *Motion to File Late Objection*, asserting facts that indicate the first *Motion* claiming 150 AFY was without merit. The second *Motion to File Late Objection* rested on a “newly discovered” Warranty Deed showing that Charter Mountain’s grantor Annalee Melton reserved 20 AFY. Charter Mountain now claimed 130 AFY.

When analyzing whether to assess attorney fees against Charter Mountain, this Special Master looks at Charter Mountain's conduct in bringing the second *Motion*. Charter Mountain continues to argue that the Secretary/Treasurer of Charter Mountain was told by someone at IDWR that Charter Mountain had been allocated all of the water in the reservoir. It claims that it had, therefore, no reason to investigate other claims to the reservoir such as Allen's claim. That contention is unsupportable as previously analyzed in both ***Orders Denying Motion to File Late Objection***. Charter Mountain was legally charged with the duty of reviewing the *Director's Report* for its own claims and with reviewing the *Director's Report* for competing claims as well. The *Director's Report* for Charter Mountain's own claim clearly shows that IDWR recommended fewer AFY than claimed by Charter Mountain. That alone put Charter Mountain on notice that it should investigate the basis for the recommendation before the deadline for Objections. The Warranty Deed dated October 14, 1983 was one to which Charter Mountain principal John McCallum was a grantee. The Warranty Deed existed prior to the deadline for Objections and its contents should have been investigated prior to the deadline.

The assertions in the second *Motion to File Late Objection* were not factually different than in the first *Motion*, although the assertions were at least supported by factual allegations contained in affidavits. This Special Master had already ruled once. Charter Mountain failed to allege anything new regarding good cause, and the ruling did not change. The so-called "newly discovered" evidence is not helpful to Charter Mountain's cause. In light of the Warranty Deed, the first *Motion* appears disingenuous.

Charter Mountain's filing of the second *Motion* without alleging new facts, with the benefit of the court's first ruling, and with heavy reliance on a document known to one of its principals long before the objection deadline leads this Special Master to conclude that the second *Motion* was brought unreasonably.

D. Amount of Attorney Fees

Where a court grants attorney fees to a party in a civil action, the court is charged with considering the factors set out in I.R.C.P. 54(e)(3). This Special Master has reviewed the *Memorandum of Costs and Affidavit* submitted in support and is familiar with the record and issues involved in the matter. Those factors include the time and labor required, the novelty and

difficulty of the questions, the requisite skill needed, the experience and ability of the attorney in the particular field of law, prevailing charges for like work, whether the fee is fixed or contingent, time limitations imposed by the client, the amount involved and the results obtained, and undesirability of the case, the nature and length of the professional relationship with the client, awards in similar cases, and other factors which the court deems appropriate in the particular case.

This Special Master finds that the *Motion for Late Objection* and the questions regarding attorney fees are not novel or difficult. The skill required to represent Allen in this matter was not above average, but the experience and ability of a litigator familiar with the SRBA was helpful in making persuasive arguments. The attorney fees were fixed, and not contingent. The time limitations imposed by the client were somewhat greater than those in other cases since the client did not obtain counsel until the second *Motion* was filed. The nature and length of the professional relationship with Allen was short in duration. The results obtained were clearly in Allen's favor. The case was not undesirable.

This Special Master has considered the time and labor actually expended by counsel for Allen, and information regarding prevailing charges for like work and finds both to be acceptable. This Special Master has considered other factors that seem relevant. Here there was no discussion of why paralegal fees were needed, the court declines to award paralegal fees. In addition, the appearance of two billing attorneys in addition to Mr. Campbell has been considered. The court is concerned that where several attorneys bill time on a simple matter, there are charges for those additional attorneys to get "up to speed". Such attorney fees are not something that should be charged to the losing party. Therefore, the request for fees is reduced by \$109.50 in paralegal fees and \$1,000 in attorney fees.

IV. CONCLUSION

Charter Mountain filed its second *Motion to File Late Objections* without alleging new facts showing good cause for the untimeliness of the *Objections*. The second *Motion* was filed with the benefit of this Special Master's first ruling, and with reliance on a document known to one of its principals prior to the objection deadline. This Special Master concludes therefore, that the second *Motion* was brought unreasonably.

IT IS RECOMMENDED that Charter Mountain be assessed attorney fees in the amount of

\$2,594.00. The *Motion to Disallow Attorney Fees* is **denied**.

DATED September 17, 2002.

THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING ATTORNEY FEES, DISALLOWING PARALEGAL FEES AND DENYING MOTION TO DISALLOW ATTORNEY FEES was mailed on September 17, 2002 with sufficient first-class postage to the following:

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