

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

ARNOLD HOFFMAN,

Plaintiff

v.

Civil No. 04-160-P-C

APPLICATOR SALES AND SERVICE,  
INC. d/b/a PARADIGM WINDOW  
SOLUTIONS, RICHARD ROBINOV, and  
ANDREW SEVIER,

Defendants

Gene Carter, Senior District Judge

**ORDER DENYING DEFENDANT’S MOTION FOR ATTORNEY’S FEES**

Now before the Court is Defendant Applicator Sales and Service, Inc. d/b/a Paradigm Window Solutions (“Paradigm”) motion, pursuant to Local Rule 54.2, for an award of attorney’s fees as the prevailing party under both the Maine Human Rights Act (“MHRA”), 5 M.R.S.A. §§ 4551–4634, and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C §§ 621–634. Docket Item No. 54. Plaintiff Arnold Hoffman (“Hoffman”) opposes the motion.

Hoffman commenced this action by filing a Complaint against Paradigm, Richard Robinov, and Andrew Sevier in the Maine Superior Court alleging: (1) age discrimination in violation of the MHRA and the ADEA (Count I); (2) defamation (Count II); and (3) breach of contract (Count III). Defendants removed the case without

objection to this Court and filed their answer and affirmative defenses. At the completion of discovery, Defendants filed a motion for summary judgment on all counts of Hoffman's complaint. This Court granted summary judgment in favor of Paradigm on Hoffman's claims for age discrimination and remanded the case to the Maine Superior Court for adjudication of the two remaining state law counts. *Hoffman v. Applicators Sales & Service, Inc.*, 366 F. Supp. 2d 177 (D. Me. 2005). Hoffman appealed the summary judgment entered on his claims for age discrimination and the Court of Appeals for the First Circuit affirmed the judgment. *Hoffman v. Applicators Sales and Service, Inc.*, 439 F.3d 9 (1st Cir. 2006).

Paradigm asserts that under both of the statutes, which Hoffman pursued his claim for age discrimination – the Age Discrimination in Employment Act and the Maine Human Rights Act – it is entitled to an award of attorney's fees as the prevailing party. *See* 5 M.R.S.A. § 4614 ("MHRA"); 29 U.S.C. § 626(b) ("ADEA") (stating that the attorney's fees provision of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), applies to actions brought under the ADEA). Under the MHRA, Paradigm claims that "a district court may in its discretion award attorney's fees to a prevailing defendant . . . upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation even though not brought in subjective bad faith." *Tang v. State of Rhode Island*, 163 F.3d 7, 13 (1st Cir. 1998) (emphasis added) (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978)). Paradigm also contends that it is entitled to fees as the prevailing defendant under the more stringent standard for awarding fees applicable to its ADEA claim (as adopted from the FLSA) because plaintiff litigated in bad faith and for "oppressive reasons."

Assuming that both standards apply to this Court's determination of whether Defendant is entitled to an award of attorney's fees for the age discrimination claims, the circumstances of this case do not warrant an award of fees to Paradigm under either standard. To support its contention that Hoffman's lawsuit was frivolous and without foundation, Paradigm principally relies on a letter written by Hoffman to Jerry Robinov two months after his employment with Paradigm ended, which neither states nor implies that age was a factor in the decision to terminate him. Hoffman Depo. Ex. 10 attached to Defendants' Motion for Summary Judgment (Docket Item No. 12). The Court has reviewed the letter, but does not find that Hoffman's failure to specifically allege age discrimination in the letter permits the Court to infer that such claims were without any foundation or made against Paradigm simply to vent his anger or punish the company. Moreover, although Hoffman did not prevail in the case, the Court does not find that the action was "frivolous, unreasonable, or without foundation." *Christiansburg Garment*, 434 U.S. at 421. Therefore, Paradigm may not recover its attorney's fees.

Accordingly, it is **ORDERED** that Defendant Paradigm's Motion for Attorney's Fees be, and it is hereby, **DENIED**.

/s/ Gene Carter  
Gene Carter  
Senior United States District Judge

Dated at Portland, Maine this 16th day of January, 2007.

**Plaintiff**

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