IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LAUREN S. HICKS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 01C-10-268 CLS
	:	
BEST BUY CO. OF MINNESOTA, INC. ,	:	
a Minnesota Corporation; and	:	
BEST BUY STORES, L.P.,	:	
a Delaware Limited Partnership,	:	
	:	
Defendants.	:	

Submitted: October 8, 2003
Decided: January 28, 2004

On Plaintiff's
Motion for Costs.
GRANTED in the amount of $1,067.75.

MEMORANDUM ORDER

Joseph M. Bernstein, Esquire, Wilmington, Delaware, Attorney for Plaintiff.

James S. Yoder, Esquire, White and Williams, LLP, Wilmington, Delaware, Attorney for Defendants.

SCOTT, J.

I. INTRODUCTION

Plaintiff Lauren S. Hicks ("Hicks") has filed a Motion for Taxation of Costs pursuant to Superior Court Civil Rules 16.1 and 54. Upon a review of Hicks' motion, this court concludes her motion should be **GRANTED in the amount of $1,067.75**.

II. BACKGROUND

Hicks brought an action for malicious prosecution against defendants Best Buy Co. of Minnesota, Inc. and Best Buy Stores, L.P. ("Best Buy"). A jury trial was held from September 22 through 24, 2003. The jury returned its verdict in favor of Hicks, awarding $10,000 in compensatory damages and $30,000 in punitive damages.

Hicks filed a Motion for Taxation of Costs on October 8, 2003. Best Buy did not file a response.

III. STANDARD OF REVIEW

Delaware Superior Court Civil Rule 54 ("Rule 54") provides that "costs shall be allowed . . . to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the court otherwise directs.[1]

Delaware Superior Court Civil Rule 16.1(k)(11)(D)(iii) ("Rule 16.1(k)") provides "If the party who demands a trial de novo [after an arbitrator's order] fails

to obtain a verdict from the jury . . . more favorable to the party than the arbitrator's order, that party shall be assessed the costs of the arbitration. . . ."[2]

IV. DISCUSSION

Hicks has requested reimbursement for the following costs:

(1) New case filing fee	$150.00
(2) Sheriff's cost for service	65.00
(3) Plaintiff's arbitration cost	100.00
(4) Sheriff – service of subpoenas	30.00
(5) Brandywine Process Servers	25.00
(6) Arbitration transcript	411.50
(7) Depositions	386.25
(8) Trial exhibit enlargements	207.00

The court finds the fees in (1), (2), (4), (5), (6), and (7) are trial costs that are recoverable under Rule 54.[3] This court has previously held that enlargement of

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[1] Super. Ct. Civ. R. 54(d).

[2] Super. Ct. Civ. R. 16.1(k)(11)(D)(iii).

[3] *Nygaard v. Lucchesi*, 654 A.2d 410, 412 (Del. Super. 1994) (trial costs recoverable); *Benjamin v. Appliance & Refrigeration Services, Inc.*, 2002 WL 32068070 at *1 (Del. Super.) (finding cost of transcript from arbitration was a trial cost) .

trial exhibits (item (8) above) is not a "necessarily incurred" expense and, therefore, is not recoverable under Rule 54.[4]

The record shows both Hicks and Best Buy demanded a trial *de novo* after the arbitrator's order. The filings were both made on the same day.[5] Hicks' filing was actually the earlier filing.[6] Rule 16.1(k) does not address the case where both parties file for a trial *de novo* after the arbitrator's order. Rule 16.1(k) merely assesses the total arbitrator's fee to the party who requests a trial de novo and fails to receive a more favorable result at trial.

The court in *Ellingsworth v. Hudson*[7] assessed defendant's share of the arbitrator's fee to plaintiff. In that case, both parties had filed for a trial *de novo*. The arbitrator had found for the plaintiff and defendant prevailed at trial.[8]

This court declines to follow *Ellingsworth*. The court finds that Rule 16.1(k) is meant to assess the arbitrator's fee to a party who appeals the arbitrator's order and fails to receive a more favorable verdict at trial than the arbitrator's order – not to reward a party who appeals the arbitrator's order and subsequently does better at

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[4] *Patterson v. Coffin*, 2003 WL 22853657 at * 6 (Del. Super.); *See also Nygaard*, 654 A.2d at 415.

[5] Docket Items 8 & 9, filed May 14, 2002.

[6] Hicks' filing was at 3:57 p.m., Best Buy's filing was at 4:18 p.m.

[7] 1992 WL 207266 at *3 (Del. Super.).

[8] *Id.* at *2.

trial than the order. The court holds that because Hicks filed for a trial *de novo*, she thereby waived any right to recover her share of the arbitrator's fee under Rule 16.1(k). Even though Best Buy also filed for a trial *de novo* and obtained a verdict less favorable to them than the arbitrator's order, Hicks may not recover her share of the arbitrator's fee from Best Buy.

V. CONCLUSION

For the above reasons, the court finds, with the exception of the trial exhibit enlargement costs and the arbitrator's fee, the costs submitted reflect trial expenses recoverable under Rule 54. The court, therefore, **GRANTS** Hicks' Motion for Costs in the amount of $1,067.75.

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Calvin L. Scott, Jr.
Superior Court Judge