



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2003-1010

To: Toby J. Rothschild
General Counsel
Legal Aid Foundation of Los Angeles
1102 Crenshaw Boulevard
Los Angeles, CA 90019-3111

Date: July 9, 2003

Subject: Permissibility of Attorneys' Fees Claims Pursuant to State Contract
Reciprocity Statutes

You requested an Opinion from this Office regarding the permissibility of seeking attorneys' fees when a state law provides for interpreting contracts with a one-way attorneys' fees provision as containing a reciprocal attorneys' fees provision.

Brief Answer

A recipient may not, under 45 CFR Part 1642 and LSC's appropriations law, claim, or collect and retain attorneys' fees resulting from a state law providing for the reading into contracts of reciprocal attorneys' fees provisions.

Background

As we understand the facts, a staff attorney in your office successfully represented a tenant-defendant in an eviction case. Although the rental agreement between the tenant and the landlord itself only provided that the tenant would pay the owner's attorneys' fees in the event the owner should initiate litigation to enforce the lease, Section 1717 of the California Civil Code provides that any contractual attorney's fees provision is reciprocal, so that the client in this case, as the prevailing party, was entitled to such fees from the owner. Pursuant to this rental agreement, as construed by the state statute, the

Analysis

Section 504(a)(13) of the FY 1996 Appropriations Act provides that none of the funds appropriated in the Act may be used to provide financial assistance to an entity "that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees." This restriction has been carried forward in each subsequent appropriations measure and is

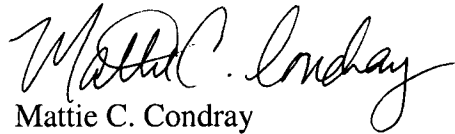
incorporated by reference in the current appropriations act. Pub. L. 108-7. LSC has implemented the statutory attorneys' fee restriction in 45 C.F.R. Part 1642. Specifically, §1642.3 provides that, generally "no recipient or employee of a recipient may claim, or collect and retain attorney's fees in any case undertaken on behalf of a client of the recipient."¹ The regulation defines attorneys' fees "an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees...." 45 C.F.R. § 1642.2.

In your case, the only reason the client (tenant-defendant) was entitled to attorneys' fees was because of the action of section 1717 of the California Civil Code which required the lease's attorneys' fees provision to be read in a reciprocal manner. Although the claim for attorneys' fees was putatively made under the contractual provision of the lease, the claim to the fees was, in fact, only viable pursuant to the State law. Thus, the award was made pursuant to a State law permitting the awarding of attorneys' fees. As the attorneys' fees fell within the definition "attorneys' fees" in §1642.3, the claim for attorneys' fees was subject to the restriction of §1642.2.

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Very truly yours,



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