

OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2003-1014

**To:** Andrew Scherer  
Executive Director and President  
Legal Services for New York City

New York, New York 10013-9998

**Date:** October 27, 2003

**Subject:** Permissibility of Attorneys' Fees Pursuant to Lease

You requested an Opinion from this Office regarding the permissibility of seeking attorneys' fees pursuant to the terms of a lease containing a reciprocal attorneys' fees provision.

***Brief Answer***

A recipient may, under 45 CFR Part 1642 and LSC's appropriation law, claim, or collect and retain attorneys' fees resulting from a lease containing a reciprocal attorneys' fee provision.

***Background***

As we understand the facts, the most common form lease between landlords and tenants in New York City (the "Blumberg lease") provides that "the successful party in a legal action or proceeding between landlord and tenant for nonpayment of rent or recovery of possession of the apartment may recover reasonable legal fees and costs from the other party." Blumberg Lease, Clause 27. Nothing in New York state law requires

... 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' fees restriction in 45 C.F.R. Part 1642. Specifically, § 1642.2 provides that "the assistant secretary or employee of recipient may claim or

difference in the private contract situation, however, is that under a private contract, the non-LSC party has chosen to expose itself to the possibility of paying for attorneys' fees through the exercise of its choice to enter into a contract that provides for attorneys' fees. Allowing the awarding of attorneys' fees pursuant to a private contract does not force the non-LSC party to pay attorneys' fees twice in the same way that an award of fees pursuant to a Federal or State law does.

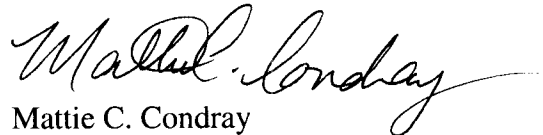
Moreover, a literal reading of the language of 504(a)(13) supports a construction allowing attorney's fees awarded pursuant to a private contract. The McCollum-Stenholm version of the attorneys' fees restriction language did not contain the "pursuant

something by the addition of this language. Further, it is an established principle of

October 27, 2003

Page 4

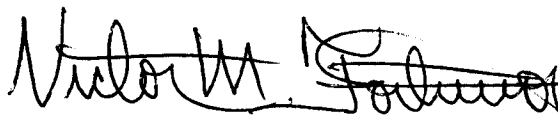
Very truly yours,



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