

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LELAND DeGRASSE

PART 25

Index Number : 111070/1993 *Justice*

CAMPAIGN FOR FISCAL EQUITY

vs
STATE OF NEW YORK

Sequence Number : 33

OTHER RELIEFS

EX NO. _____

FILED DATE MAR 25 2005

FILED SEQ. NO. _____

FILED CAL. NO. _____

The following papers, numbered _____

relate to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

APR 11 2005

NEW YORK
COUNTY CLERK'S OFFICE

DECISION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION.

DECISION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION.

Dated: MAR 28 2005

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CAMPAIGN FOR FISCAL EQUITY, INC., et al,

Plaintiff.

-against-

THE STATE OF NEW YORK, et al,

Defendants.
-----X

Index No. 111070/93

FILED

APR 11 2005

NEW YORK
COUNTY CLERK'S OFFICE

DeGrasse, J.:

Motion sequences 33, 34 and 35 are consolidated. Referees John D. Feerick, E. Leo Milonas and William C. Thompson move for orders fixing their fees in connection their assignment to hear and report regarding defendants' compliance with the directives of the Court of Appeals set forth in its opinion at 100 NY 2d 893 (2003). Defendants oppose the motions on the ground that the hourly rate of compensation requested by the referees "plainly exceeds hourly rates that have been recently awarded in the vast majority of New York case to lawyers of similar experience and background." As noted by defendants, careful consideration must be given to the taxpayers upon whom the burden will be imposed.

The motions are granted to the extent that court shall conduct a evidentiary hearing for the purpose of determining the amount of compensation to which the referees are entitled. Proof regarding (1) the complexity of the reference, (2) the volume of testimony adduced at the hearing, (3) the number of hours spent by the referees, (4) the thoroughness of their report and (5) the referees' background and experience will be considered. Defendants are ordered to bring to the hearing copies of the retainer agreement and the billing statements relating to payments made by the State of New York to the law firm of Sutherland Asbill and Brennan LLP for services

rendered in this action.¹ The documents to be produced shall reflect the rates for time billed by attorneys John W. Bonds, Jr., Lovida H. Coleman, Jr., Alfred A. Lindseth, John R. Munich, Teresa Wynn Roseborough, Daniel H. Schlueter and Rocco E. Testani. Given the novelty and complexity of this case, the court is of the opinion that the Sutherland Asbill retainer agreement and billing statements can provide a baseline for its consideration of the reasonableness of the referees' requests for compensation. Notwithstanding defendants' citation of CPLR 4321, it is within this court's discretion to fix the referees' compensation after the matter is heard (*Blake Terrace Assocs. v Sommers*, 176 AD2d 394, 395 [3rd Dept 1991]; *Garay v Soling*, 169 AD2d 616, 618 [1st Dept 1991] , *clarified* 172 AD2d 342 [1991]; *O'Dwyer v Robson*, 103 AD2d 1036 [4th Dept 1984]. **The hearing shall be conducted on April 27, 2005 at 10:00 a. m. at IAS Part 25.**

Dated: March 28, 2005

915
FILED
J. L. C.
APR 11 2005
NEW YORK
COUNTY CLERK'S OFFICE

¹Privileged communications shall be redacted.