

Significantly, "[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." FED. R. CIV. P. 54(d)(1). "Rule 54(d) embodies a strong presumption that the prevailing party is normally entitled to costs in the district court as a matter of course[.]" *Johnson v. Holway*, 522 F. Supp. 2d 12, 16 (D.D.C. 2007) (internal quotes and citations omitted); *see also Baez v. U.S. Dep't of Justice*, 684 F.2d 999, 1002 (D.C. Cir. 1982) ("[T]he courts of this country continue[] to recognize a strong presumption favoring cost awards to prevailing litigants.") "[T]rial courts have rarely denied costs to a prevailing party whose conduct has not been vexatious when the losing party has been capable of paying such costs." *Johnson v. Holway*, 522 F. Supp. 2d at 16 (internal quotes and citations omitted). On that point, this Court has found that "unsubstantiated assertions of financial hardship...are an insufficient basis on which to deny costs." *Id.* (citing *Chapman v. AI Transport*, 229 F. 3d 1012, 1039 (11th Cir. 2000) for the proposition that a "court may consider non-prevailing party's financial status in awarding costs but should require 'substantial documentation of true inability to pay'"). "Because costs are usually assessed against the losing party, liability for costs is a normal incident of defeat." *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981); *see also Baez*, 684 F. 2d at 1003 ("[T]he assessment of attorneys' fees against losers may be a form of penalty, while taxation of costs merely represents the fair price of unsuccessful litigation.").

The Court should not deny Howard its costs. There is not – and Plaintiff does not contest this point – a statute, applicable procedural rule, or Order that provides otherwise. Also, Plaintiff has not demonstrated that she can overcome the "strong presumption" in favor of awarding prevailing parties their costs. For instance, Plaintiff has not cited to record evidence indicating that Howard's approach to this litigation was vexatious. Indeed, it is plain from the docket sheet

that Howard's actions throughout this matter have been necessitated by Plaintiff and her aggressive approach to this litigation. Further, Plaintiff's allegations of financial inability are conclusory and unsupported. She has failed to provide the Court with "substantial documentation of true inability to pay."

Additionally, even if Plaintiff were a civil rights plaintiff (in actuality, she was a contract plaintiff), she cites no authority providing that that means this Court may not tax costs against her. As this Court acknowledges in *Thomas v. George Washington Univ.*, 286 F. Supp. 2d 38 (D.D.C. 2003), a case Plaintiff cites, civil rights plaintiffs are not immune from an order taxing costs, and such an order may even have desirable, "chilling" results; indeed, imposing costs may "chill" would-be plaintiffs who lack meritorious claims. *See id.* at 40 (upholding award of \$15,355.34 in analogous case involving federal anti-discrimination in employment law claims).

With respect to Plaintiff's arguments regarding her "pending" Rule 60(b) and those concerning discovery issues dating back to 2001, the University respectfully refers the Court to its reply brief in further support of its motion to lift the stay on taxing costs against Plaintiff (Docket #561).

CONCLUSION

At bottom, Plaintiff lost her case (as well as her appeal, her petition for certiorari, and her subsequent motion for reconsideration of the denial of that petition), and "liability for costs is a normal incident of defeat", just "the fair price of unsuccessful litigation". To get to this point (*i.e.*, the near-end of this matter), the University has incurred staggering litigation costs (including reimbursable "costs", attorneys' fees, and other kinds of expenses). The costs the Court has ordered, while not insignificant, are but a fraction of the total financial outlays made by Howard, over the last decade, in defense of the Plaintiff's claims. Moreover, Howard's

litigation expenditures were, in large part, attributable to the aggressive manner in which Plaintiff has guided this litigation. Similarly, consequential amounts of judicial resources have been, and continue to be, expended needlessly in connection with this matter. Therefore, an award of costs against Plaintiff here is fully warranted.

For the foregoing reasons, Defendant Howard University requests that the Court deny Plaintiff's Motion to Retax Costs Pursuant to Local Rule 54.1(e) (Docket #559).

Dated this 19th day of January 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing opposition brief was filed electronically via the Court's Electronic Case Filing System and in turn served electronically on:

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