

# Judge Denies Contingency-Fee Rules for Plaintiff's Lawyer in False-Arrest Suit

By Henry Gottlieb

After four years of pursuing a false-arrest claim against Belleville police officers, Timothy Alexander obtained a \$320,000 settlement for his client. Then Alexander got his own reward: a 50 percent fee enhancement.

Instead of the \$106,000 permitted under the contingency rule, Alexander deserves \$160,000, Essex County Assignment Judge Patricia Costello ruled on Feb. 20 in *Ehler v. Belleville Police Department*, ESX-L 32-68-03.

She found that the difficulty, novelty and length of the case, which included a trip to the Appellate Division and thorny issues of municipal immunity, merited an enhancement for Alexander, of Goldstein, Vespi & Vazquez in Totowa.

Darian Ehler alleged that officers arrested him on a bogus drunken-driving charge in 2002 and put him in jail for 14 hours. He claimed they were trying to make trouble for him because he was dating a woman who had recently separated from another officer.

A judge dismissed the case after finding that the tape from the video camera on the police cruiser contradicted the arrest report that said Ehler seemed to be drunk and refused to take a Breathalyzer. The complaint said other officers covered up the wrongdoing.

The civil rights case was heading for trial when it settled in January.

Alexander says Ehler's net recovery is fair recompense for the dam-

ages: spending 14 hours in jail. But it would have been far more if a punitive damage claim against the officers had survived dismissal.

One of the defense lawyers, John O'Reilly of Day Pitney in Florham Park, says the officers had good evidence to support their contention that their actions were motivated by probable cause to arrest Ehler. He says the videotapes support their defense.

But he says the settlement was driven by the mounting fees for defense work and the fear that even a minor recovery for the plaintiff would trigger the fee-switching provisions of civil-rights law. That would give Ehler and Alexander a far larger pay day than they received.

Ehler signed off on the enhancement. "That gentleman worked 24/7 and I'm pleased with his excellence," Ehler says. "He deserved probably even more."

Herbert Tan, who has a firm in Newark, filed the complaint on Ehler's behalf in 2003. Alexander took it over in 2005 after hearing intriguing updates from Ehler over burgers, chicken and ribs at a restaurant that Ehler partly owns, Jim Dandy's in Nutley. It's near Alexander's former office and he was a regular.

"He makes a mean Cajun chicken and he used to tell me about the case over and over," Alexander says.

Alexander told the judge he spent 2,000 hours of work on the case. That makes his hourly rate, with the enhancement, \$80 an hour. ■