

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

LabMD, Inc., Petitioner,

v.

Federal Trade Commission,

Respondent

No. 1:19-MI-00071

) 7 & ¶ 6 6 8 3 3 / (0 (1 7 5 I E F %

Introduction & Summary

As the FTC explained in its opposition, D E 0 ' ¶ V S H W L W L R f e s i R U D W
should be rejected for three principal reasons. First, LabMD is not entitled to any
fee award because W K H) 7 & ¶ V S R V L W L R Q

in other matters. FTC Br. 224; 28 U.S.C. 2412(d)(1)(A); *undin v. Mecham*, 980

) G ' & & L U tatute expressly forbids the award of

IHHV LQ DFWLRQV RYHU ZKLFK WKH FRXUW ODFNV I

. LOSDWULFN UHSUHVHQWHG /DE0' LQ D FROODW

trative proceeding in the Northern District of Georgia, *LabMD, Inc v. FTC*, No.

1:14-cv-810 (N.D. Ga.) See *Veccione Decl.*, part 2 at 882. Nearly all of the

\$155,000 in fees and costs that LabMD claims for. L O S D W U L F N I n c

in that case, not this one. Even if EAJA did not outright forbid an award for that

work, an award would be inappropriate because LabMD did not prevail in any as-

pect of the case. WKH GLVWULFW FRXUW JUDQWHG WKH)7&

Eleventh Circuit affirmed *LabMD, Inc. v. FTC*, 776 F.3d 1275 (11th Cir. 2015)

/DE0' VRXJKW WR VWD\ WKH)7& ¶V DGPLQLVWUDWL

pending, but the Court denied the stay. *LabMD, Inc. v. FTC* No. 1412144

WK & LU 0D\ 7KH & RXUW OLNHZLVH GHQL

ing en banc.

Some of the work reflected on. L O S D W U L F N I n c v. FTC have

nothing to do with the FTC. For example, several entries (totaling \$1,960 in fees)

ZHUH LQFXUUHG LQ WKH 3% XWVFKHN PDWWHU ' ZKL

pute. See Ex. B pp. 3, 4, 5, 6, 10, 13 (timekeepers RDA and RDH) Other entries (totaling \$4,864 in fees) U H I H U W R D 3 S R W H Q W L D a 0 2 7 2 8 . L W D P U H EAJA does not authorize any fee award for work for those other matters.

Dinsmore & Shohl

None of the time billed by Dinsmore & Shohl was spent litigating D E 0 ' ¶ V Eleventh Circuit appeal or the one winning issue in that appeal. Dinsmore represented V H Q W H G / D E 0 ' L Q W K H D G P L Q L V W U D W L Y H S U R F H H G lateral attacks on that proceeding. It did not represent LabMD in the appeal. LabMD lost the administrative proceeding: the FTC found that the company had violated the FTC Act and the Eleventh Circuit did not disturb that finding. The limited success LabMD achieved on appeal Y D F D W L Q J W K H n e R P P L V V L dial order² does not justify a fee award for L Q V P R U H ¶ V X W Q K X F H V V I X O administrative proceeding, which would improperly be based³ R Q W K H O L W L J D W Z K R O Villano v. City of Boynton Beach, 254 F.3d 1302, 1306 (11th Cir. 2001) (quoting Hensley v. Eckerhart, 461 U.S. 424, 436 (1983)). The remaining work on collateral (and unrelated) matters does not justify any award for the reasons explained above. D Q G L Q W K H) 7 . & ¶ V R S S R V L W L R Q

³ Citations to LabMD's unredacted bills refer to the pdf page numbers in the ver- s1 (tat)-15.n BT / TT0 13.92

Although Dinsmore represented LabMD in multiple other matters in addition to the administrative proceedings, a large number of its time entries are far too many to list² do not include the context necessary to identify which matter they relate to, making it impossible to determine whether the work was reasonable. Some entries that clearly relate to court actions rather than the administrative proceedings include references to *W K H F R X U W ¶ V* ³ *V E X H E Q P L K V R L U R Q H U W R D W Q K* (id. at 98), *D ³ > K @ H D U L Q J E* (id. at 87), *a ⁷ M [R & Q & H W d. At 97), L R Q ' ³ O R F D O F R X Q V* (id. at 68, 76), and a preliminary injunction hearing (id. at 58). See also id. at 31, 78, 85, 100, c ()0806.997 (,)-7.94 (i)1119d.

Moreover, many entries are so generic that it is impossible to determine what work was performed at all, such as³ D W W H Q W L R Q W R F O L H Q W P D P X Q L F D W L R Q V ' ³ D G P L Q L V V X H V ' D Q G V L P L O D U O D work was performed. E.g., id. at 4, 18, 12, 63, 64, 67, 75, 134, 142, 148, 151 152, 156.

DZDUG RI DWER U Q b M D Wer b He r wise etitled to an award,
which, as explainedt is not.

'LQVPRUH a s r e f e c t O O V

