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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, ET. AL.,

Plaintiffs,

v.

DKS ENTERPRISES, INC.

Defendant.

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) C.A. NO. 3:91CV00560  
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MEMORANDUM OPINION

This matter comes before the Court on the defendant, DKS Enterprises, Inc.'s ("DKS's") Motion for Attorneys' Fees, Costs and Expenses, pursuant to 22 U.S.C. § 2412. DKS requests \$10,946.50 in attorneys' fees and \$1,579.55 in costs resulting from a Title VII action brought against it by the Equal Employment Opportunity Commission ("EEOC"), in which this Court granted summary judgment in favor of DKS.

BACKGROUND

DKS is a small, closely-held corporation that operates a number of sandwich shops. A former employee of DKS, Susanne Newton, filed a discrimination charge with EEOC in which she alleged that she had been subjected to sexual harassment and attempted rape in the course of her employment as a cashier with DKS. EEOC conducted an examination of the charges and issued a Letter of Determination on February 22, 1991, finding that there was probable cause to believe the said charges. The parties

prevails on summary judgment, judgment on the law (directed verdict) or even judgment notwithstanding the verdict (JNOV).

DKS has not shown bad faith or even unreasonable conduct on the part of EEOC. Quite to the contrary, EEOC undertook an examination of Ms. Newton's allegations and was apparently satisfied that her claims were meritorious, prior to filing the suit against DKS. Even the more stringent EAJA standard for determining when attorneys' fees and costs are appropriate would not lead to a contrary result. DKS admits, as it must, that the test of whether the Government's position is substantially justified is essentially one of reasonableness in law and in fact. See Pullen v. Bowen, 820 F.2d 105 (4th Cir. 1987); Lively v. Bowen, 858 F.2d 177 (4th Cir. 1988).

For the foregoing reasons, in addition to the strong policies in support of the vigorous enforcement of our anti-discrimination laws, DKS's Motion for Attorneys' Fees, Costs and Expenses is DENIED.

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DATE

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UNITED STATES DISTRICT JUDGE