

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-023

AUGUST TERM, 2004

	}	APPEALED FROM:
	}	
New England Partnership, Inc.	}	Washington Superior Court
	}	
v.	}	DOCKET NO. 35-1-95 Wncv
	}	
Rutland City School District	}	Trial Judge: Mary Miles Teachout
	}	
	}	

In the above-entitled cause, the Clerk will enter:

In this litigation between an architectural firm, New England Partnership, Inc. (NEPI), and the Rutland City School District, we are asked " for the third time " to render an opinion on a dispute over attorneys' fees. NEPI has not established reversible error, and therefore, we affirm.

In its original 1999 decision in this matter, the Washington Superior Court found that NEPI was entitled to attorneys' fees in an amount equal to one-third of the judgment. This Court affirmed the superior court' s decision that NEPI was entitled to attorneys' fees, but it remanded the case for the superior court to address other issues that the Court reversed on. New England P' ship, Inc. v. Rutland City Sch. Dist., 173 Vt. 69, 80 (2001). On remand, NEPI sought to increase the fee award to forty-two percent of the judgment. The superior court rejected the claim, and a panel of this Court affirmed. New England P' ship, Inc. v. Rutland City Sch. Dist., No. 2002-476 (Vt. June 2003).

On August 8, 2003, following the panel' s remand, the superior court entered an order directing NEPI to submit, within five days, a proposed judgment consistent with the panel' s decision. NEPI took no action in response to that order until the beginning of September. At that time, NEPI filed a motion to amend judgment in which it sought to change the attorneys' fees formula from one-third of the total judgment to fifty percent of the judgment. The superior court rejected NEPI' s motion on two grounds, first because it was untimely and second because it lacked supporting proof. NEPI then took the present appeal.

NEPI presents a single argument on appeal: that the " uncontradicted evidence" before the court shows that NEPI and its counsel entered a modified fee agreement following the second appeal calling for fifty percent of the total judgment. NEPI presents no argument challenging the court' s ruling that its request for increased fees based on a revised formula was untimely. Therefore, NEPI cannot prevail here unless it demonstrates some legal error in the court' s ruling that NEPI' s submission was out of time. We can discern no basis for reversing the superior court' s decision considering that NEPI has not addressed the timeliness issue. Indeed, a review of the record reveals that NEPI never asked the superior court for more time to file its motion nor explained why it delayed its post-remand filing until early September 2003. Because NEPI has not demonstrated any legal defect in the court' s decision to deny its request for more fees as untimely, the order must be affirmed.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice