

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: FAVIOLA SOTO
J.S.C.
Justice

PART 52

Revere J et al

INDEX NO. 45305-92

MOTION DATE _____

- v -

*Bone M. J. as Commissioner of N.Y.S.
Dept of Soc Services et al*

MOTION SEQ. NO. 018

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is resolved and withdrawn pursuant to the accompanying stipulation of Settlement and the December 22 1995 judgment is vacated and replaced by the accompanying stipulation of judgment.

FILED

FEB 28 2005

CLERK
CLERK'S OFFICE

Dated: February 22, 2005

~~FAVIOLA SOTO~~
~~J.S.C.~~

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Conceded

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
JENNY RIVERA, EILEEN TAYLOR, OLGA
LAKER, IDA KRAVITZ, and PATRICIA
TAYLOR, individually and on behalf
of all others similarly situated,

Petitioners,

**STIPULATION OF
SETTLEMENT**

Index No.: 45305/92

(Soto, J)

-against-

MARY JO BANE, as Commissioner of the
New York State Department of Social
Services, and VERNA EGGLESTON, as
Commissioner of the New York City
Human Resources Administration,

Respondents

----- X
WHEREAS petitioners commenced this Article 78 proceeding in November 1992, alleging that the New York City Human Resources Administration ("HRA") was not in compliance with 18 NYCRR § 358-3.7, a regulation issued by the New York State Department of Social Services ("DSS") and also alleging that DSS was not supervising HRA in its compliance with federal and state law and regulations; and

WHEREAS on December 22, 1995, this court entered a judgment, which contained an injunction, against HRA and DSS; and

WHEREAS on November 19, 1997, DSS amended 18 NYCRR § 358-3.7; and

WHEREAS on May 2, 2003 respondent, HRA Commissioner Verna Eggleston moved to vacate the permanent injunction set forth in paragraphs (1) and (3) of the judgment of December 22, 1995; and

WHEREAS on September 15, 2003, petitioner-intervenors cross-moved for intervention and class certification; and

WHEREAS the parties desire to settle the pending motions without further litigation;

The PETITIONERS AND RESPONDENTS HEREBY AGREE to the terms and conditions set forth below.

DEFINITIONS

1. The following definitions apply for the purposes of this Stipulation only:

(a) "HRA": The Human Resources Administration of The City of New York.

(b) "Appellants": persons who are appealing HRA's determinations regarding a denial, reduction, discontinuance or adequacy of benefits under Public Assistance, Medicaid (including Home Care), Food Stamps and Food Assistance.

(c) "Evidence packet": all documents that HRA will present at the fair hearing in support of its determination.

(d) "Specifically identified document": only a document from the appellant's case record, that is not part of the evidence packet, that appellant or the appellant's authorized representative needs to prepare for the fair hearing and has identified and requested for purposes of preparing for the fair hearing.

(e) "requests made": A "request made" for documents by an appellant or appellant's representative shall mean when the request is received by telephone, fax, or mail by HRA at the telephone number, fax number or addresses referenced in paragraph 4(b).

GENERAL PROVISIONS

2. The December 22, 1995 judgment is hereby vacated and replaced by this stipulation.

3. Respondent Commissioner of HRA hereby withdraws her motion to vacate, and petitioners-intervenors hereby withdraw their cross-motions for class certification and intervention.

4. HRA will continue to provide individuals with an adequate notice that sets forth: (a) each appellant's right to obtain, at no cost and by mail if so requested, the evidence

packet, and any other specifically identified documents; and (b) an address, working telephone number, and working fax number where appellants can obtain additional information about access to their case record and obtain mailed copies of documents.

5. HRA shall, upon a request submitted to the HRA location which is listed in the notice described in ¶ 4(b) above, provide the fair hearing appellant and his or her authorized representative with a copy of the evidence packet at no charge, within a reasonable time from the date the request is made as defined in subparagraphs (a) and (b) below. If the appellant or appellant's representative requests that the evidence packet be mailed, such packet must be mailed by first class mail to the appellant and the appellant's representative.

a. For requests for an evidence packet made seven or more business days before the scheduled date of the hearing, a "reasonable time" shall be within five business days after the request is made. If a request for an evidence packet is made seven or more business days before the scheduled date of the hearing, and HRA does not mail the evidence packet within five business days of the date on which the request is made, HRA will withdraw its notice.

b. If a request for an evidence packet is made five or six business days before the scheduled date of the hearing, a "reasonable time" shall be within five business days after the request is made. If a request for an evidence packet is made five or six business days before the scheduled date of the hearing, and HRA does not produce the evidence packet at the hearing, HRA will withdraw its notice.

6. HRA shall, upon a request submitted to the HRA location which is listed in the notice described in ¶ 4(b) above, provide the fair hearing appellant and his or her authorized representative with a copy of specifically identified documents at no charge, within a

reasonable time from the date the request is made as defined in subparagraphs (a) and (b) below. If the appellant or appellant's representative requests that the specifically identified documents be mailed, such documents must be mailed by first class mail to the appellant and the appellant's representative.

a. For requests for a specifically identified document, a "reasonable time" shall be before the date of the hearing. For requests made less than five business days before the hearing, a reasonable time shall be at the hearing.

b. If HRA fails to produce the specifically identified documents before or at the hearing, the hearing officer must either: allow a brief recess for the appellant to review the documents, adjourn the case if necessary to allow the appellant sufficient time to review the documents, direct HRA to withdraw its notice, or take other appropriate action to ensure that the appellant is not harmed. In taking any action, the hearing officer shall consider the nature and size of the request and the date the request was made.

7. If HRA does not provide one or more of the documents requested by the appellant based upon HRA's position that such document or documents do not fall within the definition set forth in ¶ 1(d) above, HRA shall notify appellant of its objection in a written response within the timeframes for producing the documents set forth in ¶ 6(a) above. The hearing officer shall determine whether or not the documents fall within the definition in ¶ 1(d) above.

a.) If HRA does not provide one or more of the documents requested by the appellant in accordance with the time-frames set forth in ¶ 6(a) based upon HRA's objection to the scope of appellant's document request and timely notifies appellant of its objection, and the hearing officer subsequently determines that the documents do fall

within the definition in ¶ 1(d) above, the hearing officer must either allow a brief recess for the appellant to review the documents, adjourn the case if necessary to allow the appellant sufficient time to review the documents, direct HRA to withdraw its notice, or take other appropriate action to ensure that the appellant is not harmed by non-compliance with these requirements. In taking any action, the hearing officer shall consider the nature and size of the request, the timeliness of HRA's objection, and the date the request was made.

8. Respondent HRA shall collect and provide to plaintiffs' counsel the data detailed below in this paragraph on a quarterly basis, within 45 days of the close of each quarter. The first such quarter shall begin 90 days after this Stipulation is signed and "so ordered." Such results shall include, for each case in which a request for the evidence packet or specifically identified documents is made during the applicable quarter, the following information: 1) the fair hearing number; 2) the case number; 3) the date of the fair hearing; 4) the date the request for the evidence packet and/or specifically identified documents was made; 5) the date HRA provided appellant with the evidence packet and/or specifically identified documents; and 6) the date of any objection made by HRA to a request for specifically identified documents. Compliance with this Stipulation shall be measured based on those requests made to HRA at locations HRA identifies on its notices as referenced in ¶ 4(b). HRA's monitoring shall be prepared by HRA in the regular course of its business.

9. The State respondent shall collect and provide to plaintiffs' counsel the data detailed below in this paragraph on a quarterly basis, within 45 days of the close of each quarter. The first such quarter shall begin 90 days after this Stipulation is signed and "so ordered." Such results shall include, for each fair hearing held during the applicable quarter for

which the ALJ entered a Code "07" (Reversal: Agency Failure to Send Requested Documents to Appellant); "47" (Remand: Agency Failure to Send Requested Documents to Appellant); or "23" (Agency Withdrawal: Agency Failure to Send Requested Documents to Appellant), the following information: 1) the fair hearing number; 2) the case number; 3) the fair hearing decision date; and 4) the code that was entered by the ALJ. In addition, each quarter plaintiffs' counsel may request, within 60 days after receiving both HRA's and the State's data as detailed in ¶¶ 8 and 9, and the State defendant shall provide within 30 days of such request, copies of fair hearing decisions for those fair hearings that HRA has identified to plaintiffs' counsel pursuant to paragraph 8, for which HRA failed to provide the evidence packet within the timeframes set forth in paragraph 5(a)-(b) and the ALJ did not enter a code of 07, 47, or 23.

10. In the event an appellant or authorized representative requests documents or information that are not the "evidence packet" or "specifically identified documents," such request shall not be governed by this Stipulation.

11. The State respondent shall supervise the City respondent in accordance with applicable regulations and statutes regarding an appellant's right to obtain copies of the evidence packet and other specifically identified documents.

12. During the term of this Stipulation, if petitioners have evidence that respondents are systemically failing to comply with this Stipulation, petitioners' counsel shall notify respondents' counsel in writing of the specific basis and evidence for the claim of systemic non-compliance.

13. At least sixty (60) days prior to making a motion for enforcement of this Stipulation based upon claimed violations by respondents, petitioners shall provide respondents with written notice of the nature and specifics of the claimed violations in order to give

respondents an opportunity to cure such alleged violations. The parties shall thereafter attempt to resolve the allegation of systemic non-compliance in good faith without the need for judicial intervention. If the parties are unable to resolve the allegation of systemic non-compliance within sixty (60) days of petitioners' counsel providing written notice consistent with the terms of this paragraph, petitioners may move for enforcement of this Stipulation.

14. In the event of a motion by petitioners for systemic relief based upon respondents' alleged non-compliance with the substantive requirements of this Stipulation, respondents shall be considered to be in "compliance" with the substantive requirements of this Stipulation unless petitioners establish that respondents' alleged failures or omissions were not minimal or isolated, but were substantial and sufficiently frequent or widespread to be systemic. Non-systemic individual and isolated violations of this Stipulation shall not form a basis for a motion claiming that respondents have acted in contempt of this Stipulation.

15. Nothing contained herein shall be deemed to be an admission by respondents, or by the City of New York, of liability or of the truth of any of the allegations set forth in the complaint, or that they have in any manner or way violated petitioners' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, the City of New York, or any other rules, regulations or bylaws of any department or subdivision thereof.

16. This Stipulation is solely for the purposes of settlement, and does not reflect the positions of the parties in any other judicial or administrative action or proceeding. This Stipulation shall not be admissible in, nor is it related to, any other judicial or administrative action or proceeding or settlement negotiations, except that any party may use this Stipulation in connection with any action or proceeding brought to enforce this Stipulation or the regulations

concerning the provision of an evidence packet or specifically identified documents, including any fair hearing or subsequent appeal in which an appellant raises issues regarding his or her rights under this Stipulation or the regulations.

17. Notwithstanding the provisions of this Stipulation, respondents reserve the right to implement, change, or otherwise alter or amend the procedures and requirements of this Stipulation, if required by intervening changes in federal statute or regulation, or state statute which are inconsistent with the terms of this Stipulation. Respondents shall provide counsel for petitioners with written notification, by certified mail or by hand delivery with written acknowledgment of receipt, of a required change at least thirty (30) days prior to the commencement of implementation, unless respondents are required to commence implementation of such a required change in less than thirty (30) days. If respondents are required to commence implementation of a required change in less than thirty (30) days, respondents shall provide such notice no later than seven (7) working days after learning thereof.

18. If there is an intervening change in State regulation which affects the procedures and requirements of this Stipulation, respondents may move to modify this Stipulation accordingly.

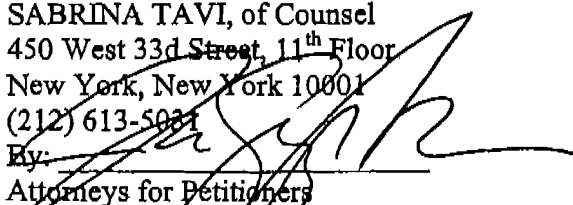
19. The issue of petitioners' entitlement to attorneys' fees and costs and disbursements is reserved for later determination; any application must be made within ninety days of the entry of a "So Ordered" copy of this Stipulation of Settlement and Discontinuance with the Clerk of the County.


20. This Stipulation and Order of Settlement is final and binding upon the parties, their successors and assigns.


JURISDICTION

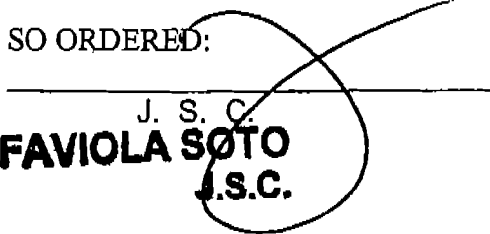
21. This Court shall retain jurisdiction over this Stipulation for the purposes of modification and enforcement until two (2) years after the date this Stipulation is signed by the Court. At the end of that time, the Court's jurisdiction shall end, the claims against respondents shall be dismissed with prejudice, and this Stipulation shall be without any effect whatsoever, except that nothing in this paragraph shall be construed as a limitation on petitioners' right to move for enforcement during the life of this Stipulation (which may include seeking to modify and/or extend the terms of this Stipulation on the ground that respondents have failed to comply with the terms of the this Stipulation) in accordance with ¶ 12-14 of this Stipulation, or of the parties' right to negotiate an extension of the agreement on consent of all parties.

Dated: New York, New York
February 18, 2005

YISROEL SCHULMAN, ESQ.
New York Legal Assistance Group
CONSTANCE P. CARDEN, of Counsel
JANE GREENGOLD STEVENS, of Counsel
SABRINA TAVI, of Counsel
450 West 33d Street, 11th Floor
New York, New York 10001
(212) 613-5031
By: 
Attorneys for Petitioners

ELIOT SPITZER
Attorney General of the State of New York
GARVIN SMITH
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-8575
By: 
Attorney for Respondent Bane

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
JOHN HEWSON
Assistant Corporation Counsel
100 Church Street
New York, New York 10007
(212) 788-0108
By: 
Attorney for Respondent Eggleston

SO ORDERED:

J. S. C.
FAVIOLA SOTO
J.S.C.

FILED

FEB 28 2005

COURT OF THE CITY OF NEW YORK
COUNTY CLERK'S OFFICE