

Draft

At IAS Part 30 of the Supreme Court of the State of New York, at the Courthouse, 60 Centre Street, Borough of Manhattan, City and State of New York, on the th day of December, 1992.

P R E S E N T:

HON. HELEN E. FREEDMAN, Justice.

-----X
YVONNE MCCAIN, et al., :
Plaintiffs, :
-against- : Index No. 41023/83
DAVID N. DINKINS, et al., :
Defendants. :
-----X ORDER
In the Matter of the Application of
MARIA LAMBOY and OSCAR SERRANO, et al. :
Petitioners, :
For a judgment pursuant to Article 78 :
of the Civil Practice Law and Rules :
-against- : Index No. 41108/85
BARBARA J. SABOL, et al., :
Respondents. :
-----X
KAREN SLADE, et al., :
Plaintiffs, :
-against- : Index No. 45177/86
DAVID N. DINKINS, et al., :
Defendants. :
-----X

UPON (1) the Orders to Show Cause for enforcement and civil and criminal contempt, filed by plaintiffs/petitioners (hereafter

"plaintiffs") and dated May 24, 1991, June 7, 1991, June 19, 1991, July 3, 1991, July 10, 1991, and August 7, 1991 with supporting papers including the individual affidavits of 64 plaintiff-intervenors;

(2) the Affidavit of defendant Kenneth Murphy, sworn to June 18, 1991;

(3) the Attorney's Affirmation of Bruce Rosenbaum, dated June 18, 1991;

(4) the Attorney's Affirmation of Nancy Rosenbloom, dated June 19, 1991, with supporting papers;

(5) the Attorney's Affirmation of James Capozziello, dated June 28, 1991;

(6) the Attorney's Affirmation of Steven Banks, dated July 1, 1991;

(7) the Attorney's Affirmation of Barry Ensminger, dated July 12, 1991;

(8) the Affidavit of defendant Kenneth Murphy, sworn to July 12, 1991;

(9) the Attorney's Affirmation of Steven Banks, dated July 22, 1991, with supporting papers;

(10) the Affidavit of Anna Lou Dehavenon, Ph.D., sworn to July 22, 1991;

(11) the Affidavit of Roland Acevedo, sworn to July 23, 1991;

(12) the Affidavit of defendant Kenneth Murphy, sworn to July 23, 1991, with supporting papers;

(13) the Order of this Court, dated on August 6, 1991:

a. Directing that the City defendants submit a plan for Court approval to end placement of homeless families with children in "overnight" shelter beds that are not State approved or that otherwise violate legal requirements;

b. Directing that such plan specifically indicate implementation dates for each of the homelessness prevention initiatives recited in the July 12, 1991 affirmation of Barry Ensminger as being undertaken by the City; and

c. Vacating the "sunset" provisions contained in ¶¶ 1 and 7 of the June 1, 1990 Order "due to the City defendants' ongoing noncompliance with the orders of this Court";

(14) the Affidavit of defendant Kenneth Murphy, sworn to August 13, 1991, with supporting papers, including the Affidavit of Jeremy Ben-Ami, sworn to June 26, 1991; the Affidavit of Martin Brome, sworn to August 8, 1991; the Affidavit of Brendan Collins, sworn to August 9, 1991; the Affidavit of Linda Penoyer, sworn to August 9, 1991; the Affidavit of Gerald Maguire, sworn to August 12, 1991; the Affidavit of Roger Newman, sworn to August 13, 1991; the Attorney's Affirmation of Clinton Eubanks, dated August 13, 1991; and the Affidavit of Geoffrey Cohen, sworn to August 13, 1991, with supporting papers;

(15) the Attorney's Affirmation of Bruce Rosenbaum, dated August 14, 1991, with supporting papers;

(16) the Attorney's Affirmation of Bruce Rosenbaum, dated August 21, 1991, with supporting papers;

(17) the City defendants' plan to eliminate overnight placements for homeless families submitted to this Court on August 23, 1991;

- (18) the Attorney's Affirmation of Steven Banks, dated August 30, 1991;
- (19) the Attorney's Affirmation of Steven Banks, dated September 7, 1991, with supporting papers;
- (20) the decision of this Court, dated September 20, 1991 holding that a contempt finding was inevitable in view of the fact that the City admitted over 1300 violations of Court orders (i) prohibiting placing of homeless families including pregnant women and/or children under six months old in congregate shelters; and (ii) leaving families for multiple nights in overnight shelter placements;
- (21) the September 20, 1991 letter from James Capozziello;
- (22) the Reply Affidavit of defendant Kenneth Murphy, sworn to September 24, 1991, with supporting papers;
- (23) the Supplemental Attorney's Affirmation of Clinton Eubanks, sworn to September 24, 1991;
- (24) the Supplemental Affidavit of Geoffrey Cohen, sworn to September 24, 1991, with supporting papers;
- (25) the Attorney's Affirmation of Joanna Gliedman, dated September 24, 1991, with supporting papers;
- (26) the contempt hearing held by this Court on thirty-two days from September 26, 1991 to April 2, 1992, that hearing having been transcribed;
- (27) Plaintiffs' motion filed April 7, 1992 pursuant to CPLR § 3025(c);
- (28) the Attorney's Affirmation of George Gutwirth, dated

April 14, 1992;

(29) the Attorney's Reply Affirmation of Nancy Rosenbloom, dated April 16, 1992;

(30) the May 29, 1992 letter from Steven Banks;

(31) Defendants' Proposed Findings of Facts and Conclusions of Law, dated July 9, 1992;

(32) Plaintiffs' Proposed Findings of Facts and Conclusions of Law, dated July 13, 1992;

(33) Defendants' Responses to Plaintiffs' Proposed Findings of Fact and Conclusions of Law, dated August 14, 1992;

(34) the Orders to Show Cause for enforcement and civil contempt filed by plaintiffs and dated September 22, 1992, September 25, 1992, and October 2, 1992 and the Order to Show Cause for enforcement and civil and criminal contempt filed by plaintiffs/petitioners and dated October 9, 1992, with supporting papers including the individual affidavits of 12 plaintiff-intervenors;

(35) the Affidavit of James Capozziello, sworn to on October 5, 1992, with supporting papers;

(36) the Affidavit of defendant Marsha Martin, sworn to on October 5, 1992, with supporting papers;

(37) the Attorney's Affirmation of George Gutwirth, dated October 13, 1992;

(38) the Attorney's Reply Affirmation of Seven Banks, dated October 14, 1992;

(39) the Order of this Court, dated October 14, 1992,

granting plaintiffs' request for an expedited deposition of James Capozziello;

(40) the Affidavit of James Capozziello, sworn to on November 2, 1992, with supporting papers;

(41) the Attorney's Affirmation of George Gutwirth, dated November 8, 1992;

(42) the Attorney's Affirmation of Steven Banks, dated November 12, 1992, with supporting papers;

(43) the Order of this Court, dated November 13, 1992:

(a) Granting the application to consolidate the contempt motions of September 22, September 25, October 2, and October 9, 1992 with the September 1991 contempt motions;

(b) Granting the application to join Cesar Perales, Marsha Martin, and Norman Steisel as defendants;

(c) Finding the City in civil contempt of this Court's order and that of the Appellate Division in Lamboy v. Gross as well as related cases;

(d) Ruling that preliminary contempt findings against individual defendants would be determined during the week of November 16, 1992; and

(e) Continuing other orders,

(44) the Affidavit of Ruth Messinger, sworn to on November 19, 1992;

(45) the Affidavit of defendant Cesar Perales, sworn to on November 20, 1992;

(46) the oral argument on November 13, 1992 and the further argument on November 20, 1992, those arguments having been transcribed;

and this Court having issued a decision dated November 20, 1992; and upon all prior proceedings in these actions,

IT IS HEREBY ORDERED THAT:

I. Compensation Of Class Member Families

1. The City defendants shall compensate class member homeless families with children who, during the period September 20, 1991 - November 20, 1992, were left to stay overnight in the City's Emergency Assistance Unit (hereafter "EAU") offices in violation of the prior orders and rulings of the Appellate Division and this Court (hereafter "affected class member families").

2. Compensation shall be made to affected class member families in accordance with the following schedule:

a. \$50 for each shelter eligible family who on any date during the specified period applied for emergency shelter at any EAU before midnight and was not placed in lawful emergency shelter before 8:00 a.m. on the following day;

or

b. \$100 for each such family so applying for shelter who was not placed before 12:00 noon on the following day;

and

c. An additional fine of \$100 per family per 24-hour period or portion thereof until such time as the family was placed (running from 12:00 noon on the day following the family's application for shelter).

3. The City defendants shall provide the payments set forth in paragraph two (2) directly to affected class member families as compensation pursuant to Judiciary Law §773.

4. These fines shall not in any manner be counted as income for the purpose of computing any needs-based public benefits. The City defendants shall ensure that all City employees responsible

for administering such public benefits are instructed that compensation issued pursuant to this Order is not to be counted as income in computing public benefits payments. The City defendants shall provide to the Court and plaintiffs' counsel a copy of these instructions prior to issuance.

II. Identification Of Affected Class Member Families

5. To ensure the identification of affected class member families, the City defendants shall provide the Court and plaintiffs' counsel with a comprehensive list of all affected class member families within ^{forty five} ~~thirty~~ (30) days of service of a copy of this Order with notice of entry. For each family so identified, this list shall include:

a. Each date and time that the family ^{applied for housing at} ~~signed into an~~ EAU;

b. Each date and time that the family is recorded by the City defendants as having been ~~sent~~ from an EAU to lawful emergency shelter; and ^{assigned housing}

c. The amount of compensation to be provided pursuant to the schedule set forth in this Order at paragraph two (2).

6. The list of affected class member families shall be generated by a review of City and State records, including but not limited to the following records:

a. EAU sign-in logs;

b. EAU van logs;

c. EAU Service Time Reports, including reports prior to mid-August 1992, corrected to record EAU stays of twenty-four (24) hours or more;

d. EAU Activity Sheets;

e. EAU Holdover Lists;

- f. HERO Holdover Lists;
- g. Daily and weekly Code 5 lists and statistical reports;
- h. Cash Hotel Placement receipts and records;
- ✓ i. The HOMES database; and
- j. State EAU inspection records and State EAU inspection correspondence.

7. Within five (5) days of submission of the list described in paragraphs five (5) and six (6) to plaintiffs' counsel and this Court, plaintiffs' counsel may submit comments, if any. After the submission of the list and any comments, the Court may approve, disapprove, or direct that changes be made to the list.

III. Notices And Forms To Be Provided To Affected Class Member Families

8. Within fifteen (15) days of the service of this Order with notice of entry, the City defendants shall also submit for Court approval the following proposed notices and forms:

a. A form notice, in English and Spanish, to inform individual affected class member families of their eligibility for compensation, with blanks for the specific amount of compensation to be made, the specific period of time covered, and the date and manner by which compensation will be provided. Such notice shall also inform the class member families of their rights under this Order. The notice shall be sent by first class mail to families identified pursuant to paragraphs five (5) and six (6), no later than fifteen (15) days after court approval of the list described in paragraphs five (5) and six (6). The notice shall be sent to each family at the address recorded in the HOMES database, if the family is residing in emergency shelter, or, if the family is no longer residing in emergency shelter, the last address recorded by the City defendants' Division of Income Support;

b. A public notice, in English and Spanish and in a form and type size to be agreed to by the parties, setting forth the availability of compensatory payments under this Order, the mechanism for obtaining such benefits,

and their rights under this Order, which shall be prominently posted, published and distributed in the manner set forth in paragraph ten (10); and

c. A claims form, in English and in Spanish, to be used by families not identified by the City defendants or plaintiffs' counsel, and for families identified by the City defendants who contest the amount of the compensation or the period covered by the compensation.

9. Within five (5) days of receipt of the City defendants' proposed notices and forms described in paragraph eight (8), plaintiffs' counsel may submit comments, if any. After the submission of the notices, forms, and comments, if any, the Court may approve, disapprove, or modify the City defendants' proposed notices and forms.

10. Within fifteen (15) days of the Court's approval of the public notice described in paragraph eight (8), the City defendants shall: (a) prominently post the notice in all Income Support Centers, Emergency Assistance Units, family shelters, hotels, and domestic violence shelters; (b) publish the notice once a week for four weeks in the Daily News, the Amsterdam News, Newsday, The City Sun, and El Diario (in Spanish); (c) provide the notice to appropriate organizations as designated by plaintiffs' counsel and approved by the Court; and (d) reproduce the text of the notice in the City defendants' EPFT informational letter distributed at all EPFT outlets for three (3) public benefits payment cycles. *starting again 45 days*

IV. Procedures For Payment Of Compensation To Affected Class Member Families

A. Class Member Families Identified On The List

11. Within thirty (30) days of this Court's approval of the list as described in paragraphs five (5) and six (6), the City

defendants shall distribute the approved compensation payments set forth in the list to those identified class member families, as follows:

a. For class member families with active public assistance cases, the City defendants shall provide the amount of compensation due and owing along with each family's next Welfare Management System (hereafter "WMS") electronic benefits payment, and include an abbreviated WMS notice of the payment to each family;

Special Payment

b. For class member families who are residing in the City's emergency shelter system and who are not in receipt of regular public assistance benefits, the City defendants shall provide each family with an individual check for the amount of compensation due and owing. The City defendants shall distribute those checks at the family's emergency shelter location recorded in the HOMES database; and

c. For class member families who are not residing in the City's emergency shelter system and who are not in receipt of regular public benefits, the City defendants shall provide each family with an individual check for the amount of compensation due and owing. The City defendants shall provide a single accessible location where these class member families can pick up their compensation checks, which shall be identified in the notice pursuant to paragraphs eight (8) and nine (9).

*Noted
had known
address, so
pick up claim*

B. Submission Of Claims.

Per go mailing the notice

12. ~~Within fifteen (15) days~~ of service of this order with notice of entry, the City defendants shall establish a mechanism for the submission of claims by class member families responding to the public notice described in paragraph eight (8), and families identified on the City defendants' list who contest the period covered or the amount of the compensation. The City defendants shall designate agency personnel responsible for the provision of compensatory payments pursuant to this Order. The class member families shall have no less than one hundred and ~~eighty (80)~~ ⁽⁴⁵⁾ days to file a claim, on the form approved by the Court pursuant to

paragraphs eight (8) and nine (9). Within thirty (30) days of any claim made by a class member family, the City defendants shall make a determination as to the eligibility of the class member family.

13. Within thirty ⁴⁵ ~~(30)~~ days of the filing of a ^{completed} ~~claim~~ by a class member family, the City defendants shall notify, in writing, any class member family found ineligible for compensation of the grounds for the denial of their claim, with copies of all supporting documentation for the denial. Copies of all correspondence with individual class member families shall be sent simultaneously to plaintiffs' counsel. Any disputes as to the entitlement of individual class member families to compensation may be brought before this Court by plaintiffs' counsel.

14. Within ^{shirly 30} ~~sixty~~ (60) days of ~~filing~~ ^{the determination} a claim, the City defendants shall provide the full amount of compensation required under this Order to those class member families found eligible, as follows:

a. For class member families with active public assistance cases, the City defendants shall provide the amount of compensation due and owing, along with each family's next Welfare Management System electronic benefits payment, and simultaneously provide the individual notice approved pursuant to paragraphs eight (8) and nine (9), and abbreviated WMS notice of the payment to each family;

b. For class member families who are residing in the City's emergency shelter system and who are not in receipt of regular public assistance benefits, the City defendants shall provide each family with the amount of compensation due and owing, along with the individual notice approved pursuant to paragraphs eight (8) and nine (9). These individual notices and compensation checks shall be distributed at the family's emergency shelter location recorded in the HOMES database; and

c. For class member families who are not residing in the City's emergency shelter system and who are not in receipt of

regular public assistance benefits, the City defendants shall provide each family with the amount of compensation due and owing, along with the individual notice approved pursuant to paragraphs eight (8) and nine (9). Those individual compensation checks and notices shall be available to be picked up by class member families at a single accessible location, which shall be identified in the notice approved pursuant to paragraphs eight (8) and nine (9).

15. The City defendants shall provide plaintiffs' counsel with a monthly accounting of the compensation paid pursuant to this Order to individual class member families, commencing with the first month that compensation is paid and continuing through the end of the last month that payments are made pursuant to this Order.

V. Sanctions Against Individual Senior City Officials

16. To coerce prospective compliance with the prior orders and rulings of the Appellate Division and of this Court, this Court finds the following senior City officials, in their official capacities, in civil contempt: Norman Steisel, as First Deputy Mayor of the City of New York; Barbara J. Sabol, as Commissioner of the Human Resources Administration of the City of New York; Jeffrey Carples, as former Executive Deputy Commissioner for Adult Services and as assistant to Deputy Mayor Cesar Perales; and Kenneth Murphy, as Deputy Commissioner of the Crisis Intervention Services of the Human Resources Administration of the City of New York.

17. The four senior City officials set forth in paragraph sixteen (16) shall select a single day no later than December 17, 1992 to be present at separate EAUs. Counsel for these four senior City officials shall notify this Court and counsel for plaintiffs of the date selected by the senior City defendants. Each senior City official will arrive at the designated EAU before 10 p.m. on the

so long as
they
remained in
their
official
capacities

date selected, and shall remain at such EAU until all eligible families applying for emergency shelter before 12:00 midnight have been placed in lawful emergency shelter.

18. The parties are directed to report back to this Court on December 18, 1992.

VI. Provision For Purging Civil Contempt Against The Senior City Officials

19. If the City defendants come into compliance with the prior orders and rulings of the Appellate Division and this Court, the individual senior City officials may apply to this Court to purge civil contempt and to modify the sanctions.

20. The Court shall impose further sanctions if compliance with the orders and rulings of the Appellate Division and this Court does not occur.

Hon. Helen E. Freedman
Justice of the Supreme Court