UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--------------------------------X
JAMES BENJAMIN, et al.,

Plaintiffs,

- against -

MICHAEL P. JACOBSON, et al.,

Defendants

and related cases.
--------------------------------X

75 Civ. 3073
(MEL)

ORDER RE: FINES FOR VIOLATION OF COMPLIANCE MONITORING WORK PLAN

In an opinion dated March 1, 1995, the court found that the defendants had failed to comply with a requirement in the Compliance Monitoring Work Plan, adopted by order of February 25, 1994, that certain compliance auditing staff be hired by December 12, 1994. The plaintiffs asserted that the defendants were liable for fines under the Order re: Compliance with Work Plan Deadlines, entered July 10, 1992, and that in addition the defendants should be found in contempt and additional sanctions should be imposed.

For the reasons stated in the March 1, 1995 opinion, the court found that the defendants were liable for fines under the Order re: Compliance with Work Plan Deadlines, but declined to find the defendants in contempt and impose additional sanctions.

As prescribed by the Order re: Compliance with Work Plan Deadlines at ¶¶ 5-6, the Office of Compliance Consultants (OCC) has computed <u>per diem</u> fines in the amount of three times the employees' salary and benefits for the period of the violation.

These computations rely on the defendants' representations concerning the amounts of salary and benefits and the dates on which the defendants purged their noncompliance. Neither the computations nor the basis for them have been disputed. OCC's letter memorializing its calculations is attached to this order.

IT IS THEREFORE ORDERED that:

1. The defendants are fined $138,201.54 for the failure timely to hire compliance auditing staff.

2. Plaintiffs' application for a finding of contempt and for additional sanctions is denied.

Dated: New York, New York
April 10, 1995

[signature]

U.S.D.J.

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Kenneth F Schoen
Director

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Deputy Director

M E M O R A N D U M

TO: Ernesto Marrero, Jr., Department of Correction
Leonard Koerner, Corporation Counsel
John Boston, Legal Aid Society

FROM: Bethany Gertzog BG

DATE: March 8, 1995

SUBJ: Calculation of Fines - Compliance Monitoring

We have received Judge Lasker's decision regarding the hiring delays in the Compliance Monitoring Work Plan. Pursuant to the Order re: Compliance with Work Plan Deadlines, OCC is directed to compute the amount of the sanctions that accrue as prescribed by Section 5(a) of the Order.

Our calculations are based on several assumptions:

• We used a 365-day year to calculate a per diem salary figure. This was based on the annual salary plus fringe benefits figure provided by the Department on January 27, 1995. (When we used a 52-week, 5-business day formula, the figures came out slightly higher.)

• Judge Lasker's January 10, 1995 order provides for a one week grace period in the commencement of the compliance audits. This period reflects the passage of time between the December 12, 1994 work plan hiring date, and the Judge's telephonic denial of the Department's extension request on December 19, 1994. We have interpreted this provision to include a comparable grace period for the hiring of the civilian staff.

• Judge Lasker's March 1, 1995 decision does not note a violation of the audit commencement date, although the audits were commenced without the civilian staff on January 9, 1995.

• The hiring dates for the civilian staff are those indicated in the February 16, 1995 affidavit of Assistant Chief Bruce Sullivan.

Accordingly, we calculate the total fines as follows:

<u>Office Aide</u> $23,867 (total salary + fringe benefits per annum)
$65.389 (per diem) x 42 days (12/19-1/29)
= $2,746.34
Tripled, pursuant to Section 5(a) = $8,239.02
Two positions: $8,239.02 x 2 = **$ 16,478.04**

<u>Staff Analyst</u> $43,517 (total salary + fringe benefits per annum)
$119.224 (per diem) x 46 days (12/19-2/2)
= $5,484.30
Tripled, pursuant to Section 5(a) = $16,452.90
Three positions: $16,452.90 x 3 = **$ 49,358.70**

<u>Management Auditor</u> $44,022 (total salary + fringe benefits per annum)
$120.608 (per diem) x 50 days (12/19-2/6)
= $6,030.40
Tripled, pursuant to Section 5(a) = $18,091.20
Four positions: $18,091.20 x 4 = **<u>$ 72,364.80</u>**

Total **$138,201.54**

If you have any questions about our calculations, please do not hesitate to call.