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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DR. RICHARD S. TROWBRIDGE,
LUCILLE DONADIO, RICHARD CORIASCO,
DR. BETTY JO MERRITT, PATRICIA BROPHY,
DR. ALEX ZEMCOV, and
DR. MICHAEL ZEBROWER,

Individually and on behalf of all other Persons
similarly situated,

Plaintiffs,

- against -

98 CV 3529 (SJ)
ORDER

INSTITUTE FOR BASIC RESEARCH IN
DEVELOPMENTAL DISABILITIES,
THOMAS A. MAUL, THE OFFICE OF MENTAL
RETARDATION AND DEVELOPMENTAL
DISABILITIES, JEAN S. MILLER, THE NEW
YORK STATE DEPARTMENT OF MENTAL
HYGIENE, GEORGE C. SINNOTT, NEW YORK
STATE DEPARTMENT OF CIVIL SERVICE,
DR. HENRYK M. WISNIEWSKI,
MELVIN HICKS, PETER VIETZE,
THE PUBLIC EMPLOYEES FEDERATION,
AFL-CIO and MICHAEL FENKO,

Defendants.

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A P P E A R A N C E S :

JEREMIAH B. McKENNA, ESQ.
56 Bay Street, 7th Street
Staten Island, NY 10301
Attorney for Plaintiff

ELLIOT SPITZER
New York State Attorney General
120 Broadway
New York, NY 10271
By: Leonard A. Cohen, Esq.
Attorneys for Defendants

JOHNSON, District Judge:

Plaintiffs brought this action against multiple defendants alleging violation of the Age Discrimination in Employment Act ("ADEA"), the Labor Management Relations Act § 301, and 42 U.S.C. §§ 1983 and 2000e et seq.. On October 24, 2000, this Court issued an Order dismissing Plaintiffs' Second Amended Complaint as to Defendants Public Employees Federation, AFL-CIO, and Michael Fenko. By Order dated January 25, 2001, the Court dismissed the Second Amended Complaint as to Defendants Institute for Basic Research in Developmental Disabilities, Thomas A. Maul, The New York State Office of Mental Retardation and Developmental Disabilities, George C. Sinnott, The New York State Department of Civil Service, Melvin Hicks, and Peter Vietze (the "State Defendants"). Defendants New York State Department of Mental Hygiene, Jean S. Miller, and Henry M. Wisniewski (the "Remaining Defendants"), now request, by letter dated February 29, 2001, that the Court dismiss the Second Amended Complaint pending against them. For the following reasons, the request is granted.

First, Defendant New York State Department of Mental Hygiene is a statutory

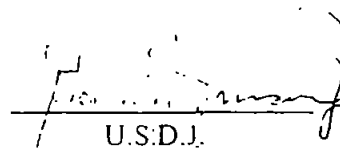
construct, and therefore, not a cognizable entity which would be subject to suit.¹

Second, Defendant Jean S. Miller, named in the Second Amended Complaint as the "Commissioner of the Department of Mental Hygiene," is the Commissioner of the Office of Alcohol and Substance Abuse and, according to the record in this action, was never served with a copy of the Second Amended Complaint.² Finally, Defendant Henry W. Wisniewski is deceased and Plaintiffs have failed to move to substitute his estate as a party to this action. See Fed. R. Civ. P. 25. Accordingly, Plaintiff cannot maintain the claims brought in the Second Amended Complaint against any of the Remaining Defendants.³

For the foregoing reasons, the Second Amended Complaint is hereby dismissed as to the Remaining Defendants. The Clerk of the Court is directed that this Order closes this case.

SO ORDERED.

Dated: April 4, 2001
Brooklyn, New York


U.S.D.J.

¹ The New York State Department of Mental Hygiene was created as a means of collectively referring to three autonomous offices: Defendant Office of Mental Retardation and Developmental Disabilities, the New York State Office of Mental Health, and the New York State Office of Alcoholism and Substance Abuse.

² The Court notes that there is no Commissioner of the Department of Mental Hygiene

³ Although the Remaining Defendants did not join the State Defendants' Motion to Dismiss, Plaintiffs are not prejudiced by their delayed request for dismissal. Plaintiffs' submissions in opposition to the State Defendants' Motion to Dismiss addressed Defendants Miller, Wisniewski, and New York State Department of Mental Hygiene as parties to that motion.