

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ARLYN J. EASTMAN, Personal	)	Case No. 7:07-cv-5004
Representative of the Estate of	)	
LINO LOWELL SPOTTED ELK, JR.,	)	
Deceased,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MOTION TO
	)	ENFORCE SETTLEMENT
COUNTY OF SHERIDAN, a Nebraska	)	
Political Subdivision,; LEVI MCKILLIP,	)	
in his individual and official capacities;	)	
and DOES 1 - 5, in their individual	)	
and official capacities,	)	
	)	
Defendant.	)	

Arlyn J. Eastman, Personal Representative of the Estate of Lino Lowell Spotted Elk, Jr., Deceased, Plaintiff in the above-captioned matter, by and through her counsel of record, moves this Court for an order enforcing the settlement accepted by Plaintiff at 12:05 p.m. on May 6, 2010, in these particulars:

1.

Exhibit "U" to the Evidence Index in support of this Motion is the undersigned's May 6, 2010 e-mail to Mrs. Cecava, with an attachment to the e-mail containing the agreed-upon language and terms for changes to Sheridan County Department of Corrections Policies & Procedures. The attachment to that e-mail, contained in Exhibit "U," constitutes the policy component of this settlement. That would be the component of the settlement that is at issue in this Motion. The payment of \$100,000.00, allowance of Mrs. Eastman and a medicine man into the "drunk tank" to pray and return of Jay Spotted Elk's belongings is not at issue in this Motion.

2.

Since we first made a settlement offer to the defense on January 15, 2010, we have asked for settlement to include both monetary and non-monetary components. The non-monetary components include changes to the suicide prevention policies for the Sheridan County Department of Corrections.

3.

Over the preceding 48 hours, negotiation over the terms of the suicide prevention policies has focused primarily on (1) how the jail will agree to interface with the Suicide Prevention Programs of the Pine Ride Oglala and Rosebud tribes; and (2) how Plaintiff may enforce the settlement (to include COUNTY agreeing to provide an annual compliance report beginning February 2, 2011 until 2014). These negotiations took place via e-mail between the undersigned and defense counsel Kris Cecava. Policy language was drafted by the undersigned and provided in attachments to e-mails to Mrs. Cecava; Mrs. Cecava would write back and suggest changes, which the undersigned would incorporate into the draft and reattach revised drafts for Mrs. Cecava's review.

4.

Relative to the issue of how the jail would contact the area tribal Suicide Prevention Programs, on May 5, 2010, Mrs. Cecava had agreed that COUNTY "could have local numbers for both the Pine Ridge and Rosebud tribes as by far the majority [of Native American detainees in the Sheridan County jail] are from one of those two." (*Evidence Index*, Exhibit "N.") The undersigned incorporated that change into a draft proposal which provided that "the booking desk at the jail will keep the contact information for the Suicide Prevention Program for the Pine Ridge Oglala and

Rosebud tribes” (*Evidence Index*, Exhibit “R” and attachment), and provided that to Mrs. Cecava.

5.

After reviewing the attachment to Exhibit “R” at 9:29 on the morning of May 6, Mrs. Cecava suggested changes, but no changes relative to the issue addressed in the immediately preceding paragraph – which, to the undersigned, signaled acceptance (particularly since the draft language accommodated the request Mrs. Cecava had made the day before).

6.

The only change Mrs. Cecava proposed was to remove the enforcement provision of the proposed policy. (*Evidence Index*, Exhibit “S.”) The undersigned wrote back at 9:35 that removing the enforcement provision was not acceptable. (*Evidence Index*, Exhibit “T.”

7.

At 11:37 a.m., Mrs. Cecava wrote that “the enforceability in the first part of the paragraph would remain the same [as what the undersigned had proposed earlier] with the words ‘Mrs. Eastman and her attorneys’ replaced with ‘plaintiff.’ If you really want an annual report for four years, I think it can be done. Let’s wrap this up.” (*Evidence Index*, Exhibit “T.”)

8.

The undersigned made the change of substituting “plaintiff” for “Mrs. Eastman and her attorneys” in the enforcement provision of the proposed policy and sent it to Mrs. Cecava. (*Evidence Index*, Exhibit “U.”) The undersigned then contacted her client and confirmed that her client would accept this change (the undersigned had communicated all other negotiations over the terms of the policy changes over the preceding days). At 12:05, the undersigned advised Mrs. Cecava that Mrs.

Eastman had approved the language. (*Evidence Index*, Exhibit “V.”)

9.

The undersigned heard nothing from Mrs. Cecava until approximately 4:45, when she was advised that Mrs. Cecava had called and said “there’s no settlement,” or something to that effect. At 5:15, Mrs. Cecava faxed correspondence to the undersigned that materially changed the terms of the policy-change component of the settlement. (*Evidence Index*, Exhibit “W.”)

10.

The 5:15 fax proposed to eliminate the enforcement portion that had been offered and accepted on the morning of May 6. The 5:15 fax also materially changed the procedure by which the Sheridan County Jail would contact the tribe’s Suicide Prevention Program upon ascertaining whether a suicidal inmate were a member of a Native American tribe, which had been drafted by the undersigned on May 5 as an acceptance of Mrs. Cecava’s offer and which Mrs. Cecava never proposed to change (consistent with the language being in accordance with her May 5 offer).

WHEREFORE, Plaintiff asks this Court to enforce the settlement as offered in these particulars:

- a. Changes to the Sheridan County Department of Corrections Policy & Procedure Manual as set forth in the attachment to the undersigned’s 11:45 a.m. e-mail of May 6, 2010 (*Evidence Index*, Exhibit “U”);
- b. Payment of \$100,000.00;
- c. Permission for Mrs. Eastman and a Lakota medicine man to pray in the “drunk tank” of the Sheridan County jail; and
- d. Return of any belongings retained by Sheridan County after Jay Spotted Elk’s death, to include his belt and any other personal property not yet returned to Mrs. Eastman.

ARLYN J. EASTMAN, Personal Representative of
the Estate of LINO LOWELL SPOTTED ELK, JR.,
Deceased, Plaintiff,

By: /s/ Maren Lynn Chaloupka
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served via facsimile and CM/ECF filing on the 6th day of May, 2010 to the following:

Kristine Cecava
Attorney at Law
2425 Circle Drive, Suite 100
Scottsbluff, NE 69361

/s/ Maren Lynn Chaloupka