

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAREN BENNETT and DEBORAH PAULIN,
individually and on behalf of all others similarly
situated,

Plaintiffs,

05 Civ. 5286 (RWS)

-against-

NEW YORK CITY HOUSING AUTHORITY and
TINO HERNANDEZ, in his capacity as Chairperson
of the New York City Housing Authority,

Defendants.

MICHAEL HEYER, et al.,

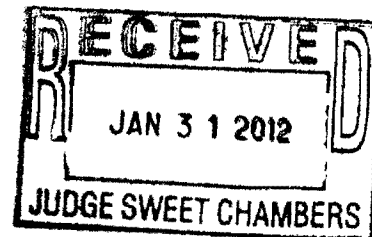
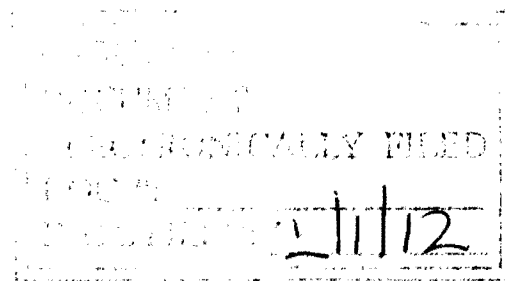
Plaintiffs,

80 Civ. 1196 (RWS)

-against-

NEW YORK CITY HOUSING AUTHORITY, et al.,

Defendants.



STIPULATION AND ORDER OF SETTLEMENT

WHEREAS, a complaint in Heyer et al. v. New York City Housing Authority et al., 80 Civ. 1196 (RWS) (the "Heyer action") dated February 29, 1980 alleged that the New York City Housing Authority (the "Housing Authority") failed to provide individuals with mobility impairments who have been, are, or will be qualified for the Section 8 program with effective assistance in finding accessible housing, and seeking declaratory and injunctive relief; and

WHEREAS, the Court certified a plaintiff class in the Heyer action on May 22, 1980; and

WHEREAS, the Court approved a Stipulation of Settlement and Order in the Heyer action on September 13, 1982 (the “1982 Stipulation”), and the Court retained jurisdiction as set forth in paragraph 14 of the 1982 Stipulation; and

WHEREAS, an action was commenced in the United States District Court for the Eastern District of New York, entitled Karen Bennett et al. v. New York City Housing Authority et al., 02 Civ. 3499 (CPS), on or about June 17, 2002 (the “Bennett action”), asserting similar allegations to those in the Heyer action and asserting claims under the Americans with Disabilities Act and the Fair Housing Act and seeking class certification for a similar class, as well as injunctive and declaratory relief; and

WHEREAS, the Housing Authority denied the allegations in the Bennett action, but the parties wished to resolve their disputes amicably without any admission of liability and without an adjudication on the merits, by replacing the 1982 Stipulation with a new Stipulation; and

WHEREAS, this Court approved a Stipulation and Order of Settlement on April 27, 2006 (the “2006 Stipulation”), dissolving the 1982 Stipulation and substituting therefore a new Stipulation imposing certain obligations, including a reporting requirement, on the Housing Authority for a three year Stipulation period, beginning April 27, 2006; and

WHEREAS, plaintiffs subsequently identified significant deficiencies in the Housing Authority’s reporting during the Stipulation period and requested that the Stipulation Period be extended and the deficiencies cured; and

WHEREAS, the parties again wished to resolve their disputes amicably without any admission of liability, the parties proposed an extension of the Stipulation Period; and

WHEREAS, on April 16, 2009, this Court approved a Stipulation Extending the Stipulation (the "2009 Stipulation"), which extended all the terms of the 2006 Stipulation from April 27, 2009 to November 30, 2010, with all rights and obligations continuing in full throughout the period; and

WHEREAS, plaintiffs have alleged additional significant deficiencies in the Housing Authority's compliance with requirements of the 2006 and 2009 Stipulations, and

WHEREAS, the Housing Authority denies plaintiffs' allegations of additional deficiencies, and

WHEREAS, the parties once again wish to resolve their differences amicably;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the plaintiffs in the Heyer action and in the Bennett action and the Housing Authority, that:

1. The 2006 Stipulation and the 2009 Stipulation are hereby dissolved and extinguished; all rights, duties, and obligations of the parties created thereunder shall cease to exist; and this Stipulation and Order of Settlement (the "Stipulation") is substituted therefor.
2. The class, consisting of all individuals with mobility impairments who are or will be holders of Section 8 Housing Choice Voucher Program vouchers through the Housing Authority, remains certified.
3. It is and shall be the policy of the Housing Authority that its policies and practices regarding individuals with mobility impairments who apply to or participate in the Section 8 program conform to the requirements of applicable federal law and regulations.
4. The Housing Authority shall inform mobility-impaired applicants for the Section 8 program that they may also apply for admission to public housing. For those mobility-impaired

applicants who apply to both programs, the Housing Authority will process both applications in accordance with applicable federal law and regulations.

5. The Housing Authority shall provide accommodations to individuals with mobility impairments applying to or participating in the Section 8 program, provided that the Housing Authority determines, in its discretion and on a case-by-case basis, that the accommodation requested is reasonable, and provided that the accommodation requested does not create an undue financial and administrative burden or fundamentally alter the Section 8 program.

6. In scheduling and conducting briefings and Housing Authority presentations, in application packets, transfer packets, and recertification packets, and as appropriate during oral interactions including telephone contacts, the Housing Authority shall inform Section 8 applicants and participants that they may request an accommodation.

7. In scheduling and conducting briefings, in transfer packets and recertification packets, and as appropriate during other interactions, the Housing Authority shall provide Section 8 applicants and participants with a form that (a) asks the applicant or participant to report whether he or she or any member of his or her family is a person with a disability; (b) asks the applicant or participant to report whether he or she or any member of his or her family requests a reasonable accommodation; (c) provides examples of accommodations that may be requested; and (d) notifies applicants and participants that additional accommodations not specifically listed may be available if necessary to allow their full participation in the Section 8 program.

8. The reasonable accommodations provided by the Housing Authority will include, but will not be limited to: (a) conducting eligibility interviews by telephone; (b) conducting briefings and issuing vouchers and packets at the applicant's or participant's home; (c) allowing an authorized representative to attend the briefing and pick up a voucher in lieu of the disabled applicant or participant; (d) sending an applicant or participant lists of available accessible apartments by mail; (e) granting an extension of time during which an applicant or participant may use a voucher; (f) requesting an increased payment standard from the Department of Housing and Urban Development (HUD); (g) paying the fees charged by a participating real estate broker; (h) granting a participant's request for a transfer voucher for reasons based on mobility impairment, e.g. need for an accessible apartment, a larger apartment, an apartment on a lower floor; and (i) conducting termination hearings at the voucher holder's home.

9. The Housing Authority will conduct individualized assessments of all requests for accommodation by mobility-impaired Section 8 applicants and participants. Before the Housing Authority denies an applicant or participant's reasonable accommodation request, a Housing Authority supervisor or manager will review the request and any supporting documentation.

10. The Housing Authority will provide each Section 8 applicant or participant whose reasonable accommodation request based on mobility impairment is denied with a written notice stating the determination, the basis for that determination, and information regarding the process for requesting a grievance hearing if the applicant or participant disagrees with the determination.

11. If the Housing Authority grants a participant's request for a transfer voucher as a reasonable accommodation of a mobility impairment on an expedited or "emergency" basis, the Housing Authority will notify the participant that (a) his/her transfer request has been approved;

(b) he/she will be contacted to schedule a briefing at which he/she will receive his/her transfer voucher; and (c) if, after four weeks, he/she has not received a date for a briefing, he/she may contact the Customer Contact Center to obtain the date for the briefing.

12. The Housing Authority shall provide listings of available apartments to Section 8 applicants and participants at briefings and during their apartment searches, at their request, which include information regarding the accessibility of the apartments listed. In appropriate circumstances, and where requested as a reasonable accommodation, the Housing Authority will mail listings of available apartments to mobility-impaired Section 8 applicants and participants. As described in paragraph 6, the Housing Authority shall inform Section 8 applicants and participants that they may access listings of available apartments on the internet, and that they may request these listings to be mailed as a reasonable accommodation.

13. At least every month, the Housing Authority will update its lists of available apartments.

14. If an individual with a mobility impairment requests, as a reasonable accommodation, that the payment standard used to determine the shares of rent be increased, the Housing Authority will inform the individual within fifteen (15) days of his or her request of the documentation required by the Housing Authority to substantiate the need for this accommodation. The Housing Authority will request HUD's approval for such an increase within fourteen (14) days after the individual submits all required documentation to the Housing Authority. Within seven (7) days after submitting the exception rent request to HUD, the Housing Authority will notify the individual that a request for an exception rent has been submitted to HUD on his/her behalf.

15. Whenever a Section 8 applicant or participant requests a reasonable accommodation from the Housing Authority, other than a request to mail apartment listings, through a request to any Housing Authority employee, the Housing Authority will maintain documentation of the accommodation request; the name, address, and telephone number of the person for whom an accommodation is requested; the date on which the request was made; the nature of the accommodation requested; and the stated reason for the request. When the Housing Authority determines whether to grant the accommodation request, the Housing Authority will record this determination, the date of the determination, and the date on which the Housing Authority notified the applicant or participant of the determination. When the Housing Authority denies a request for a reasonable accommodation, the Housing Authority will record the reason for the denial. When the Housing Authority approves a request, the Housing Authority will also record the date on which the accommodation is put into place.

16. On the landlord portion of its web site, NYCHA will recommend that landlords modify apartments to accommodate individuals with mobility impairments, and will advise them that tax incentives may be available for such modifications.

17. Once a year, the Housing Authority will ask all approved real estate brokers to notify the Housing Authority if they have knowledge or expertise in locating apartments that may be accessible or otherwise suitable for individuals with mobility impairments, or have apartments that may be suitable for those with mobility impairments now or in the future. The Housing Authority will modify the real estate broker list it prepares to specify, based on brokers' responses, which brokers have indicated that they have such knowledge or expertise.

18. On April 30, 2012 and every three (3) months thereafter during the Stipulation period, on the first business day of the month, the Housing Authority will provide plaintiffs' counsel with:

- a. Copies of all "Request for Reasonable Accommodations" forms submitted to the Housing Authority by individuals with mobility impairments during the previous three months, including but not limited to those submitted with initial applications and annual recertifications;
- b. Copies of all notices issued to applicants and participants with mobility impairments during the previous three months pursuant to paragraph 10 above, informing them that their reasonable accommodation requests have been denied;
- c. Copies of any decisions after grievance hearings requested in response to the notice specified in paragraph 10 that were issued to individuals with mobility impairments during the previous three months;
- d. A list of all requests made by the Housing Authority to HUD for permission to grant rents above the payment standard for individuals with mobility impairments during the previous three months, and the status of those requests; and
- e. A log or chart containing the information listed in paragraph 15 above for all requests received during the previous three months, and the current status of those requests.

19. The parties may renegotiate the monitoring requirements contained in paragraph 18 above, if NYCHA so requests, based upon the progress of the Housing Authority's currently ongoing alterations to its computer system.

20. Within 60 days of the Effective Date of this Stipulation, the Housing Authority will train all relevant personnel, including but not limited to all Customer Contact Center staff, housing assistants, and staff conducting annual recertification reviews, regarding the obligations contained in this Stipulation, and will continue to train relevant personnel as needed.

21. Within 60 days of the Effective Date of this Stipulation, the Housing Authority will issue policies or procedures as necessary to implement the requirements of this Stipulation.

22. Customer Contact Center staff responding to calls from Section 8 applicants and participants who have questions or concerns related to mobility impairments and reasonable accommodations, or state that someone in their household has a disability, will refer callers to the appropriate Housing Authority personnel. Additionally, Customer Contact Center staff will ask callers who request voucher extensions, increased payment standards, payment of broker's fees, and/or transfer vouchers, and callers who state that they are having trouble finding an apartment, whether they require a reasonable accommodation for a disability.

23. If plaintiffs have evidence that the Housing Authority is systemically failing to comply with this Stipulation, plaintiffs' counsel shall notify the Housing Authority's counsel in writing of the specific basis and evidence for the claim of systemic non-compliance. 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 to the satisfaction of plaintiffs' counsel within 30 days of plaintiffs'

counsel providing written notice consistent with the terms of this paragraph, plaintiffs may seek relief from the Court.

24. Where notices are to be provided to plaintiffs' counsel under the terms of this Stipulation, they will be sent to the address indicated below, or any updated address provided by the plaintiffs' counsel:

Jane Greengold Stevens
New York Legal Assistance Group
7 Hanover Square, 18th Floor
New York, N.Y. 10004

AND

Judith Goldiner
Legal Aid Society
199 Water Street
New York, N.Y. 10038

Plaintiffs' counsel will inform the Housing Authority of any change of address during the Stipulation Period as defined in paragraph 26.

25. The parties shall attempt to come to an agreement on the issue of attorneys' fees arising from monitoring compliance with the 2006 and 2009 Stipulations and the process of coming to agreement and obtaining approval of this Stipulation. If the parties are unable to agree, within sixty (60) days of the date this Stipulation is signed, or such additional time as agreed upon by the parties, plaintiffs may move the Court, pursuant to Rule 54 of the Federal Rules of Civil Procedure, for an Order awarding reasonable costs, fees and disbursements to plaintiffs pursuant to 29 U.S.C. § 794a(b) and 42 U.S.C. § 12205 and the Housing Authority may oppose the application.

26. Any and all rights, duties, and obligations created by this Stipulation will run from the date this Stipulation is "so ordered" by the Court until April 30, 2014 (the "Stipulation Period"), and this Stipulation will be dissolved and extinguished at the end of the Stipulation Period unless the Stipulation Period is extended by consent of the parties or order of the Court.

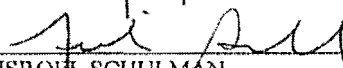
The Court retains jurisdiction during the Stipulation Period.

27. Plaintiffs will not move to extend the Stipulation Period past April 30, 2014 if (1), for four consecutive quarters, the Housing Authority provides information pursuant to paragraph 17(e) with respect to all of the requests for accommodation recorded on the forms provided pursuant to paragraph 17(a), and (2) plaintiffs have no evidence the Housing Authority is systemically improperly denying requests for reasonable accommodations of mobility impairments. Nothing herein is intended to require or authorize extension of the Stipulation period under any circumstances.

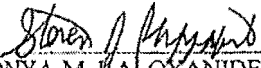
28. During the Stipulation Period, the Housing Authority will adhere to the policies and procedures enumerated in this Stipulation.

29. The Housing Authority may amend these policies and procedures during the Stipulation Period, so long as the amendments conform with applicable law, rules, and regulations, and only with the prior written consent of plaintiffs' counsel or with the prior written approval of the Court. The Housing Authority will give plaintiffs' counsel prior written notice of any proposed change. Within fourteen days of the receipt of such notice, plaintiffs' counsel will inform the Housing Authority's counsel in writing whether or not they object to the proposed change. If plaintiffs' counsel do not object to the proposed change, the Housing Authority may then promptly implement it. If plaintiffs' counsel object to the proposed change, the Housing Authority must make an application to the Court and have that application approved by the Court if it wishes to be permitted to implement the change.

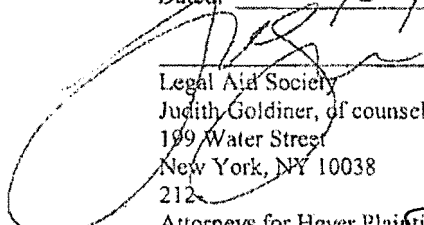
Dated: 1/30/12


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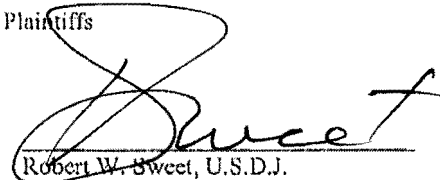
Dated: 1/30/12


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Attorneys for Defendants

Dated: 1/30/12


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New York, NY 10038
212-
Attorneys for Heyer Plaintiffs

SO ORDERED:


Robert W. Sweet, U.S.D.J.

1-31-12
Date