

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HOUSING HELP, INC.,

Plaintiff,

97 CV 3430
(ERK) (VVP)

-against-

THE TOWN OF HUNTINGTON, NEW YORK, THE PLANNING
BOARD OF THE TOWN OF HUNTINGTON, THE COMMUNITY
DEVELOPMENT AGENCY OF THE TOWN OF HUNTINGTON,
NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY
RENEWAL, NEW YORK STATE HOUSING TRUST FUND
CORPORATION AND JOSEPH LYNCH,

Defendants.
-----X

SETTLEMENT AGREEMENT

The Settlement Agreement is entered into by and between
HOUSING HELP, INC. ("HHI" or "the plaintiff") and the NEW YORK
STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL ("DHCR"), NEW
YORK STATE HOUSING TRUST FUND CORPORATION ("HTF") and JOSEPH
LYNCH (jointly referred to as "the State defendants"), by their
respective attorneys.

This Settlement Agreement does not and shall not
pertain to or affect in any manner the liability of the remaining
defendants in the litigation: THE TOWN OF HUNTINGTON, NEW YORK,
THE PLANNING BOARD OF THE TOWN OF HUNTINGTON, and THE COMMUNITY
DEVELOPMENT AGENCY OF THE TOWN OF HUNTINGTON.

WHEREAS, Plaintiff commenced and is maintaining a
lawsuit entitled Housing Help Inc. v. The Town of Huntington, et
al, CV 97-3430 (ERK) ("the Litigation"), in the United States
District Court for the Eastern District of New York, seeking

declaratory and injunctive relief for the alleged deprivation by the State Defendants of Plaintiff's rights under provisions of the Fair Housing Law, 42 U.S.C. §§ 3601 et seq. and 42 U.S.C. §§1981, 1982, 1983 and 2000(d) et seq. ;

WHEREAS, the District Court, in an order dated September 3, 1998, granted, in part, State defendants' motion to dismiss certain of plaintiff's claims and denied the motion with respect to other of plaintiff's claims;

WHEREAS, the State defendants deny any wrongdoing or any liability to Plaintiffs in the litigation;

WHEREAS, Plaintiff and the State defendants, and each of them, desire to avoid incurring any further time, costs and expenses and the uncertainty of litigation and seek to resolve all matters embraced in the litigation as between the Plaintiffs and the State defendants in an amicable fashion;

WHEREAS, the DPCR and HTP have the authority and responsibility to determine how grants of funds under certain state and federal programs for the development of affordable housing in the State of New York are distributed;

NOW THEREFORE, in consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, Plaintiff and the State defendant, and each of them, agree to the terms and conditions set forth herein:

I. Funding of the Project

1. In accordance with the terms of this Settlement Agreement, DHCR and RTF will contribute to the development of an integrated subsidized housing project consisting of no more than 155 residential units for families at the Matinecock Court site being developed by HHI with the assistance of Long Island Housing Partnership ("LIHP"). Seventy-seven of said units shall be rental units, 77 home ownership units and one additional rental unit reserved for the superintendent. The development may include a community center and an on-site sewage treatment facility.

2. In order to develop Matinecock Court, HHI will establish a subsidiary housing development fund company ("HDFC") formed pursuant to Article 11 of the Private Housing Finance Law which will be the recipient of the funds to be provided by DHCR and RTF for the project.

3. In furtherance of the Matinecock Court development DHCR and RTF shall provide funding for the rental portion of the development as follows: (a) RTF shall provide a \$2,000,000 New York State Housing Trust Fund loan to the HDFC at zero percent interest during construction which will be converted at completion of construction as a permanent loan at one percent interest for a 30 year term, and (b) DHCR shall provide Low Income Housing Tax Credit allocations to the HDFC up to \$1,540,000 annually for

10 years based on eligible costs.

4. The HTF shall provide funding for the home ownership portion of the development as follows: (a) a \$2,000,000 Housing Trust Fund grant to the HDPC, and (b) a \$45,000 grant in Housing Trust Fund funds which has already been provided to HHI and of which HHI has acknowledged receipt.

5. The HTF will establish and finance a down payment and closing cost assistance program for eligible persons purchasing homes in the Town of Huntington to be administered by LIHP. The HTF will fund this program with approximately \$600,000.

6. In addition, within 30 days of the effective date of this Settlement Agreement and receipt of a request from LIHP, DHCR shall authorize LIHP to lend to HDPC from its DHCR Housing Development Fund ("HDF") loan program up to \$300,000 for pre-development expenses.

7. a) It is recognized and understood that in addition to the funding provided by the DHCR and HTF, the sources of projected funding for the ownership portion of the Matinecock Court development include a grant from the New York State Affordable Housing Corporation ("AHC") in the amount of \$1,925,000. HHI has applied to AHC for said grant and that application is pending approval. The DHCR and HTF shall use their best efforts and good offices in support of and in an effort to secure said grant.

b) In the event that HHI is unable to secure this AHC

grant by the start of construction. DHCR will provide HDPC with \$1,925,000 in a zero interest HDF loan during construction repayable upon completion of construction. Upon completion of the units, if HHI has still not secured the \$1,925,000 AHC grant, DHCR shall renegotiate the repayment terms of the HDF loan. The renegotiated terms shall provide that upon sale of a unit, DHCR will provide a release of mortgage for that unit from the HDF loan. The purchaser will execute a promissory note and mortgage in favor of DHCR ("DHCR Mortgage") in an amount equal to its proportionate share of the HDF loan with a repayment rate of zero interest and the repayment term extended to the date of the award of the AHC funding. The DHCR mortgage will be subordinated to the primary bank mortgage loan secured by the purchaser and to other liens required by other possible public and/or private home ownership subsidies.

8. Until such time as it receives the \$1,925,000 AHC grant, HHI will use its best effort to obtain the AHC grant and shall actively and in good faith pursue the AHC grant including by promptly filing all necessary applications, documents or other required submissions.

9. The actual allocation and distribution by DHCR and HTF to HDPC of the funds provided for in this Settlement Agreement will be in accordance with the provisions of the Capital Programs Manual of DHCR and HTF.

10. DHCR and RTF shall provide technical assistance to Plaintiff to facilitate its efforts to obtain funding from outside sources including AHC and SONYMA during the duration of this Settlement Agreement.

11. HHI will not be required to submit an application to DHCR for funding of Matinecock Court and the development will not be subject to the DHCR application scoring process. In connection with the Federal Tax Credit grant program, HHI's application will not have to go through the competitive process. HHI will submit to DHCR Exhibits 1 and 2 from the DHCR application form, the project pro-forma and other submissions required by statute.

II. Selection of Buyers and Tenants

12. HHI shall select the buyers and tenants for Matinecock Court in compliance with general selection requirements maintained by DHCR and RTF and subject to the federal and state fair housing laws.

13. The rental units at Matinecock court will be available to families with incomes of 50% and under of the Department of Housing and Urban Development's ("HUD") median income for the Metropolitan Statistical Area for Nassau/Suffolk County. Eighteen (18) of the ownership units will be available to families with incomes between 60% and 80% of HUD's median income and the remainder of the ownership units will be available to families with incomes 60% and under HUD's median income as defined above.

III. Consultation between the Parties to resolve disputes

14. In the event a party believes a breach of the Agreement has occurred, prior to taking any action arising out of an alleged breach of this Settlement Agreement, that party shall provide reasonable notice to counsel for the other party (as provided for herein) of the area(s) of alleged non-compliance. Twenty (20) days after receipt of a said notice, such party shall provide to the other party information sufficient to establish their reasonable good faith efforts toward compliance with the term(s) of the Settlement Agreement for which non-compliance is alleged. Within ten (10) business days after a party's response, the parties shall meet and make a good faith effort to resolve any differences or disputes arising from this Settlement Agreement.

IV. Dismissal of the Action

15. Upon the execution of this Settlement Agreement by the parties, the parties shall submit to the Court an Order of Dismissal for entry dismissing with prejudice all claims raised in the Third Amended and Supplemental Complaint against the State defendants. By execution of this Settlement Agreement, NEI hereby releases each and all of the State defendants from any and all claims which were or could have been raised against State defendants as set forth in the Third Amended and Supplemental Complaint. Said Order of Dismissal shall specifically provide

that the Court shall retain jurisdiction for the purpose of enforcing any specific terms and conditions of this Settlement Agreement against a party for alleged non-compliance where the parties have been unable to resolve their compliance dispute as provided for in paragraph 13 above. The terms and conditions of the Settlement Agreement shall not take effect until the Court enters the Order of Dismissal dismissing the State defendants.

16. In the event that a party seek judicial enforcement of the term(s) of this Settlement Agreement, the party will in the first instance seek an order directing compliance with this Settlement Agreement and thereafter, may, if necessary, seek further judicial remedies to enforce the terms and conditions of this Settlement Agreement in dispute. Plaintiff and State defendants waive any right or claim they may have to challenge the enforcement of the terms and conditions of this Settlement Agreement or in any way limit the effect of this paragraph or the power of the Court to enforce the terms and conditions of this Settlement Agreement. The State defendants do not waive claims or defenses to matters outside the provisions of this Settlement Agreement or defenses based on claims that they are in compliance with the provisions of this Settlement Agreement.

17. The State defendants shall pay to Plaintiff's counsel reasonable attorneys fees in an amount that shall not exceed \$70,000 for work they do with respect to implementation and

enforcement of this Settlement Agreement pursuant to paragraphs 14 and 16 of this Settlement Agreement.

V. Duration of the Settlement Agreement

18. All terms and provisions in this Settlement Agreement shall take effect upon the entry of an Order of Dismissal as referred to in paragraph 15, above. This Settlement Agreement shall expire and terminate upon completion of the Matinecock Court development and/or all payments of funds to which the State defendants are committed by this Settlement Agreement, which ever is later.

VI. Use of this Settlement Agreement

19. Neither this Settlement Agreement nor any of its terms may be offered or used in any way whatsoever in any future action or proceeding in any court or other tribunal except for the purpose of seeking enforcement of its terms or any subsequent orders entered pursuant thereto.

VII. Other Provisions

20. The purpose of this Settlement Agreement is to commit the State defendants to contribute to, support and fund the development of the Matinecock Court project as described herein. This Settlement Agreement, however, shall not effect the authority of the State of New York, its agencies, or instrumentalities, or any of the State defendants to administer their various programs. The various programs to be utilized under this Settle-

ment Agreement are subject to certain rules, regulations, requirements of general application and statutes which shall apply in the implementation of this Settlement Agreement except as expressly modified herein.

21. The parties shall not engage in any retaliatory activity or action against each other as a result of this litigation.

22. In the event that HHI applies to DHCR in the future for funds to support affordable or subsidized housing in the Town of Huntington and the applications are not funded, then upon request, DHCR will provide to HHI 1) copies of the final scoring and ranking evaluation forms, 2) a copy of the guidelines used by the reviewers to rate HHI's applications and 3) a written summary which sets forth the rationale for determining the final score for HHI's applications.

23. Nothing contained in this Settlement Agreement shall be deemed to be an admission by the State defendants that they have in any manner violated Plaintiffs' rights as contained in the Constitution, statutes, ordinances, and regulations of the United States or the State of New York.

24. Notice, when due to Plaintiff or Defendants, shall be given by delivering it in person or by United States certified first-class mail, to their counsel in the Litigation as follows:

To the Plaintiff:

STEEL BELLMAN RITZ & CLARK, P.C.
225 Broadway, Suite 2501
New York, New York 10007

To the State defendants:

OFFICE OF THE ATTORNEY GENERAL
Attn: JUDITH T. KRAMER
CONSTANTINE A. SPERES
Assistant Attorney General
New York State Department of Law
120 Broadway - 24th Floor
New York, New York 10271

If counsel relocate their office or if there is a substitution of counsel the other party will be so notified by certified mail.

25. This Settlement Agreement shall constitute the full and complete understanding of Plaintiff and the State defendants and upon execution, supersedes and renders null and void any and all prior undertakings or agreements, written or oral, between Plaintiffs and State defendants.

26. All of the terms of this Agreement are contractual and not merely recitals, and none may be modified or changed except by a writing signed by Plaintiff and State defendants or their respective legal counsel.

27. If any of the provisions, terms or clauses of this Settlement Agreement are declared illegal, unenforceable or ineffective in a legal forum, those provisions, terms and clauses shall be deemed severable, such that all other provisions/terms and clauses of this Settlement Agreement shall remain valid and

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binding on the Plaintiff and the State defendants.

28. This Settlement Agreement shall inure to the benefit of and be binding upon the legal representatives and any successors of Plaintiffs and the State defendants and each of them.

IN WITNESS WHEREOF, the Plaintiff and the State defendants hereto, intending to be legally bound hereby, have executed the Settlement Agreement on the 6 day of August, 2002.

Dated: New York, New York
August 6, 2002

STEEL BELLMAN RITZ & CLARK, P.C.

By: Richard Bellman
RICHARD F. BELLMAN (RB 0049)
Attorneys for Plaintiff
225 Broadway
New York, New York 10007

OFFICE OF THE ATTORNEY GENERAL

By: Judith T. Kramer
JUDITH T. KRAMER (JK 4548)
CONSTANTINE A. SPERES (CS 9100)
Assistant Attorney General
Attorneys for State Defendants
New York State Department of Law
120 Broadway
New York, New York 10271

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HJ-15-2002 12:18

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
HOUSING HELP, INC.,

Plaintiff,

-against-

97 CV 3430
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THE TOWN OF HUNTINGTON, NEW YORK, THE PLANNING
BOARD OF THE TOWN OF HUNTINGTON, THE COMMUNITY
DEVELOPMENT AGENCY OF THE TOWN OF HUNTINGTON,
NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY
RENEWAL, NEW YORK STATE HOUSING TRUST FUND
CORPORATION AND JOSEPH LYNCH,

STIPULATION
AND ORDER

Defendants.
-----X

WHEREAS, this action was commenced in or about June 1997;
and

WHEREAS, on or about October 10, 2000 plaintiff HHI and
defendants Town of Huntington, New York (the "Town"), the Plan-
ning Board of the Town of Huntington, New York (the "Planning
Board"), and the Community Development Agency of the Town of
Huntington (the "CDA") (hereinafter collectively referred to as
the "Town Defendants"), entered into a Stipulation of Settlement
and Consent Decree (the "Stipulation and Consent Decree"), which
fully and finally resolves all of HHI's claims in this action
against the Town Defendants and no other claims; and

WHEREAS, the Stipulation and Consent Decree was "So Ordered"
by Edward R. Korman, U.S.D.J., on October 11, 2000; and

WHEREAS, the Stipulation and Consent Decree recites, at
Section "VIII" thereof, HHI's and the Town Defendants' acknowl-
edgment that HHI's counsel, Steel, Bellman, Ritz & Clark, P.C.

("SBRC") is entitled to recover reasonable attorney's fees, costs, and disbursements, in connection with this action, and further provides that HHI and the Town Defendants will endeavor to negotiate and agree upon the amount of such fees, costs, and disbursements; and

WHEREAS, by Settlement Agreement executed simultaneously with this instant Stipulation and Order, plaintiff HHI and defendants New York State Division Of Housing & Community Renewal ("NYSDHCR"), New York State Housing Trust Fund Corporation ("NYSHTFC") and Joseph Lynch ("Lynch") (hereinafter collectively referred to as the "State Defendants") have fully and finally resolved and settled all of HHI's claims in this action against the State Defendants; and

WHEREAS, an order of dismissal of all of the claims filed against the State Defendants is being simultaneously "So Ordered" by this Court; and

WHEREAS, it is the mutual intention and desire of all parties to this action, to reach agreement upon the respective amounts of attorney's fees, costs, and disbursements which SBRC will receive from the Town Defendants and the State Defendants by reason of its efforts in this action, pertaining to HHI's claims against the Town Defendants, on the one hand, and the State Defendants, on the other; and

NOW THEREFORE, it is hereby agreed and consented to by all

parties to this action, as follows:

1. With regard to HHI's claims in this action against the Town Defendants, and on behalf of all Town Defendants, defendant Town will pay to SBRC the sum of Three Hundred Twenty-Five Thousand (\$325,000.00) Dollars, for attorney's fees, costs, and disbursements incurred in connection with this action. The amount shall be remitted as provided at following paragraph "7" hereof.

2. With regard to HHI's claims in this action against the State Defendants, and on behalf of all State Defendants, the State will pay to SBRC the sum of Three Hundred Seventy Thousand (\$370,000.00) Dollars, for attorney's fees, costs, and disbursements incurred in connection with this action. The amount shall be remitted as provided at following paragraph "7" hereof.

3. The State defendants' agreement to pay the amounts specified in paragraph "2" above to settle the matter of the attorney's fees and costs to be paid to plaintiff's counsel for their efforts pertaining to the claims against the State defendants is subject to approval of all appropriate State officials, including the Comptroller of the State of New York, in accordance with the provisions for indemnification under New York Public Officer's Law, Section 17, subdivision 3(a).

4. The payments provided for in paragraphs "1" and "2" above will be made not later than 90 days after the receipt by

counsel for the Town Defendants and State Defendants, respectively, of a copy of this fully executed Stipulation and Order, bearing the signature of Edward R. Korman, U.S.D.J or other District Court Judge.

5. If the payments provided for herein shall not have been paid within the period provided by foregoing paragraph "4," such payment shall bear lawful interest until paid. Interest shall accrue on the amount of the payment at the rate set forth in 28 U.S.C. § 1961, beginning on the ninety-first day after receipt by counsel of a copy of the fully executed ("So Ordered") Stipulation.

6. In the event the New York State Comptroller does not approve the payment of fees and costs as set forth in paragraph "2", then the plaintiff shall have the right to make application to the Court for an appropriate award of attorneys' fees, costs, and disbursements from the State defendants. If such application to the Court is made, the parties agree that HHI is entitled to reasonable attorneys' fees, costs and disbursements with respect to its claims against the State defendants.

7. The payments provided for in paragraphs "1" and "2" above, if paid by check, shall be made payable to "Steel Bellman Ritz & Clark, P.C." and delivered to the offices of SBRC, at 225 Broadway, New York, New York 10007. If the payments are paid by wire transfer, they shall be wired to:

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J.P Morgan Chase Bank
280 Broadway
New York, N.Y.
Routing Number 021000021
Account No. 904575780

8. Upon counsel for HHI's receipt of the payments required under paragraphs "1" and "2" hereof, all claims for counsel fees, costs, and disbursements, in connection with SBRC's efforts in this action shall be deemed fully satisfied and discharged, as against the defendants upon whose behalf the payment has been remitted. For example, if the Town remits the sum of \$325,000.00 to SBRC, as provided for herein, then the liability of each and all of the Town Defendants for attorney's fees, costs, and disbursements in this action shall have been fully and finally resolved, discharged, and satisfied, regardless of whether and/or when the State Defendants remit the payment required by foregoing paragraph "2" hereof. Similarly, if the State remits the sum of \$370,000.00 to SBRC, as provided for herein, then the liability of each and all of the State Defendants for attorney's fees, costs, and disbursements in this action shall have been fully and finally resolved, discharged, and satisfied, regardless of whether and/or when the Town Defendants remit the payment required by foregoing paragraph "1" hereof.


IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed the Stipulation on the ___ day of _____, 2002.

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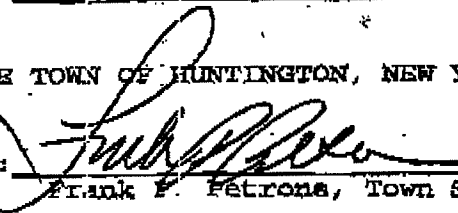
STEEL BELLMAN RITZ & CLARK, P.C.

By: 
~~RICHARD F. BELLMAN (JD 0047)~~ ~~WILLIAM F. CLARK (MC 2660)~~
Attorneys for Plaintiff

OFFICE OF THE ATTORNEY GENERAL

By: 
JUDITH T. KRAMER (JK 4548)
CONSTANTINE A. SPERES (CS 9100)
Assistant Attorney General
Attorneys for State Defendants

THE TOWN OF HUNTINGTON, NEW YORK

By: 
Frank F. Petrona, Town Supervisor

SO ORDERED:

U.S.D.J.