

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x
KELVIN BLATCH, et al.,

Plaintiffs,

-against-

TINO HERNANDEZ, et al.,

Defendants.
----- -x

97 Civ. 3918 (LTS) (RBP)

STIPULATION **AND ORDER**
OF SETTLEMENT

WHEREAS, an amended complaint in this action dated January 28, 2000 sought declaratory and injunctive relief, and alleged that the New York City Housing Authority (the "Housing Authority") has policies that fail to take reasonable remedial measures to resolve underlying problems of tenants with mental disabilities prior to instituting termination of tenancy proceedings, fail to provide adequate procedural safeguards and fail to reasonably accommodate the needs of tenants and occupants with mental disabilities at each stage of tenancy termination from the project level to the Housing Authority's administrative hearings and in court proceedings;

WHEREAS, by decision dated December 1, 1999, the Court (Chin, U.S.D.J.) certified a plaintiff class comprised of "present, past and future tenants and/or occupants with mental disabilities who reside, resided or seek to reside in housing owned and operated by NYCHA and are, were or may be the subject

of administrative grievances and/or tenancy termination proceedings and/or eviction proceedings in housing court or appeals from NYCHA's administrative determinations in State Supreme Court. In the case of past tenants and occupants with mental disabilities, they are members of the class only if the proceedings against them were pending at some point within the three-year period prior to the filing of this action"; and

WHEREAS, by decision dated March 30, 2005, reported at 360 F. Supp. 2d 595 (Swain, U.S.D.J.), the Court granted partial summary judgment to plaintiffs and defendants, and determined that material issues of fact exist precluding summary judgment on other claims, and directed the parties to work with each other and with Magistrate Judge Henry Pitman to negotiate and submit a proposed permanent injunction order; and

WHEREAS the parties wish to resolve the remaining issues amicably and without further litigation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the plaintiffs and the Housing Authority:

PROCEDURES

1. The Housing Authority has established procedures, annexed as Exhibit A and incorporated herein by reference (the "Procedures"), that it will follow with respect to class members who are, have been, or will be subject to Housing Authority tenancy termination proceedings, remaining family member grievance hearings, or Housing Court proceedings, and who are or may be incompetent, as defined in paragraph 2.

DEFINITION OF INCOMPETENT

2. A tenant or grievant is incompetent if, as a result of mental disease or defect, the tenant or grievant is unable to (1) understand the nature of the proceedings or (2) adequately protect and assert his/her rights and interests in the tenancy.

TRAINING

3. The Housing Authority will inform and train its hearing officers, relevant attorneys, development management staff, Social Services Department, and other appropriate personnel with respect to the Procedures and their responsibilities thereunder. The Housing Authority will provide plaintiffs' counsel with copies of training materials, if any.

STIPULATION PERIOD AND AMENDMENTS TO PROCEDURES

4. For four (4) years from the date this stipulation is approved by the Court pursuant to Fed. R. Civ. P. 23(e) (the "Stipulation Period"), the Housing Authority may amend the

Procedures, so long as the amendments conform with applicable law, rules, and regulations, 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 (14) days of the receipt of such notice, plaintiffs' counsel will give written notice to the Housing Authority's counsel 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 implement the change.

5. With the exception of paragraphs 6 and 7, any and all rights, duties, and obligations created by this Stipulation will expire at the end of the Stipulation Period.

INJUNCTIVE RELIEF

6. The Housing Authority is permanently enjoined as follows:

(a) The Housing Authority will not proceed with a termination of tenancy hearing or remaining family member grievance hearing with a resident who, as a result of mental disease or defect, is incompetent as defined in paragraph 2, unless such person is represented by a guardian appointed under

Article 81 of the New York Mental Hygiene Law or by an appropriate person acting as a guardian ad litem.

(b) In proceedings against residential tenants in Housing Court, when the Housing Authority appears before a housing court judge or requests a warrant of eviction in cases where there has been no prior appearance before a judge, the Housing Authority will advise the court of information in its possession indicating that the tenant may be incompetent, as defined in paragraph 2.

7. For proceedings that were commenced in Housing Court prior to the effective date of this stipulation and are still pending or are restored to the Housing Court calendar, the Housing Authority, if it has not already done so, will advise the court of information in its possession indicating that the tenant may be incompetent as defined in paragraph 2 when the Housing Authority next appears before a housing court judge or requests a warrant of eviction.

MONITORING

8. During the Stipulation Period, the Housing Authority will provide to plaintiffs' counsel every three (3) months: (1) all notices of appointments of guardians ad litem which were issued during that quarter; (2) all Mental Competence Evaluation Requests and the accompanying reports and evaluations from the Social Services Department or its successor department issued during the prior quarter; and (3) all Mental Competence Court

Notices issued during the prior quarter.

INDIVIDUAL RELIEF

9. Violations of the terms of the stipulation or of the procedures will not invalidate any action taken by the Housing Authority, nor give rise to any rights, claims, or causes of action for individual class members, except as follows:

(a) individual class members may make applications to set aside determinations based on hearings, defaults, or settlements pursuant to paragraphs III.F.2 and III.F.4 of the procedures and paragraph IV(b) of the procedures to the extent paragraph IV(b) incorporates paragraphs III.F.2 and III.F.4 by reference, and may bring judicial proceedings pursuant to Article 78 of the New York Civil Practice Law and Rules to challenge:

(i) determinations denying such applications on the ground that the tenant or remaining family member claimant was not competent and not represented by an appropriate guardian at the time of the hearing, the default, or the settlement and/or

(ii) determinations adopting a settlement approved by the hearing officer in a case in which a guardian ad litem appointed by the Housing Authority represented the class member on the ground that the settlement was not reasonable.

(b) In bringing applications or proceedings permitted by subparagraph (a), class members may argue in addition to any other argument they may have, that:

(i) the hearing officer did not consider evidence of mental impairment or take into account potential limitations arising from the class member's mental impairment, or

(ii) the Law Department did not provide the hearing officer with information in the Housing Authority's possession bearing on whether or not the class member was competent; or

(c) individual class members may raise claims of non-compliance with paragraph 6(a) of the stipulation in any court of competent jurisdiction, only if the procedures outlined in paragraphs III.F.2, III.F.3, or III.F.4 of the procedures have been materially altered so as to no longer provide a forum for review of these claims;

(d) individual class members may raise in any housing court action or proceeding or any proceeding pursuant to Article 78 or Article 81 of the CPLR a pending application pursuant to paragraphs III.F.2, III.F.3, paragraph IV(b) to the extent paragraph IV(b) incorporates those provisions by reference, and paragraph V of the procedures as a basis for seeking a stay of eviction;

(e) individual class members may argue in eviction actions or proceedings, and any appeals of such eviction actions or proceedings, that the Housing Authority violated paragraph V of the procedures, or paragraphs 6(b) and (7) of this stipulation.

The Housing Authority's failure to comply with this

stipulation with respect to non-individual class member claims shall be enforceable pursuant to paragraph 13 of the stipulation. In any motion on behalf of the class to enforce the obligations created under this stipulation, plaintiffs may cite facts relating to individual class members.

10. The Housing Authority will pay plaintiff Olga Alsaa \$2000 in full satisfaction of all individual claims which she raised, or could have raised, in this action.

ATTORNEY'S FEES

11. The Housing Authority will pay attorney's fees to plaintiffs' counsel in an amount to be determined by the parties, or, if no resolution is reached by the parties, by the Court.

NOTICES

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

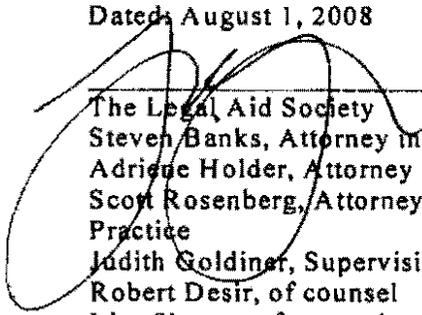
Judith Goldiner, Esq.
The Legal Aid Society
199 Water Street, 3d floor
New York, New York 10038

ACTION DISCONTINUED

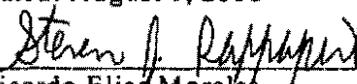
13. This action is discontinued with prejudice, except that (1) plaintiffs withdraw without prejudice their third cause of action insofar as it is unresolved by Judge Swain's decision with respect to summary judgment and by this Stipulation and (2) the

Court retains jurisdiction to enforce the obligations created under this Stipulation.

Dated: August 1, 2008


The Legal Aid Society
Steven Banks, Attorney in Charge
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Dated: August 1, 2008


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SO ORDERED:

 10/10/2008
Laura Taylor Swain
U.S.D.J.