

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDWARD KALWASINSKI,

Plaintiff,

-against-

TERRI MAXYMILLIAN, Director of Sex Offender
Treatment Program for New York State; MICHAEL
HOGAN, New York State Office of Mental Health
Commissioner & DONALD SAWYER, Executive Director of
CNYPC,

Defendants.

**STIPULATION AND
ORDER OF
DISCONTINUANCE
PURSUANT TO RULE
41(A)**

09-CV-0214

DNH/GHL

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys for plaintiff and Defendants Terri Maxymillian, Michael Hogan, and Donald Sawyer, parties to the above entitled-action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties:

1. Plaintiff discontinues this action with prejudice and without damages, costs, interest or attorneys fees, and discharges and releases Defendants Terri Maxymillian, Michael Hogan, and Donald Sawyer and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown,

now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action, and further agrees to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation or claims against the defendants and others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents.

2. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

3. The parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

4. This settlement does not constitute a determination of, or admission by any party to any underlying allegations, facts or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any precedent for, or an agreement by the parties to any generally applicable policy or procedure in the future.

5. Following the execution of this stipulation, and its being ordered by the Court, Defendants Terri Maxymillian, Michael Hogan, and Donald Sawyer shall pay to plaintiff the sum of Fifteen Thousand dollars (\$15,000.00) in full settlement of any and all claims. Payment by Defendants Terri Maxymillian, Michael Hogan, and Donald Sawyer of this amount shall be made payable to plaintiff in the amount of Fifteen Thousand dollars (\$15,000.00). This amount includes all sums to which plaintiff is entitled, including but not limited to damages, costs, and attorney's fees. Plaintiff's check will be mailed to his attorney's office at Morningside Legal Services, Inc., 435 W.

116th St., New York, New York 10027. Payment by Defendants Terri Maxymillian, Michael Hogan, and Donald Sawyer of the amount specified in paragraph 6 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law.

6. Payment of the amounts referenced in paragraph 5 will be made within one hundred and twenty (120) days after the approval of this stipulation by the Court and receipt by Defendants Terri Maxymillian, Michael Hogan, and Donald Sawyer counsel of a copy of the so-ordered stipulation.

7. In the event that the terms of paragraph 5 are satisfied, but payment is not made within the 120 day period set forth in paragraph 6, interest shall begin to accrue on the outstanding principal balance at the statutory rate on the one hundred and twenty-first day after court approval.

8. Defendants have a Halal menu in place and agree that they will continue to offer Halal foods. Muslim residents may request and will be allowed to follow a Halal diet.


9. The parties agree that CNYPC will retain the services of an Imam for the purposes of leading the Al Jumu'ah services on Fridays. An Imam has been visiting the facility to provide classes to Muslim residents. The following steps will be undertaken by CNYPC with respect to entering into a contract with an Imam to lead and conduct the Al Jumu'ah service on Fridays: (a) an advertisement will be posted in the Contract Reporter for 3 weeks. The preparation of the advertisement will begin upon the filing of the Stipulation. It is expected that it will take 6 weeks from the filing of the stipulation to have the advertisement published; (b) Defendants will, upon notification of filing of the stipulation, request input from the local Imam and from the Seminary in Connecticut in identifying possible qualified individuals to serve as Imam for the Al Jumu'ah

services; (c) within 3 weeks from the submission of the advertisement to the Contract Reporter a bid process will be developed with involvement of the Office Of Mental Health consolidated business office for the purpose of securing the services of an Imam as described above; (d) approval of the contract will be obtained through normal procedures required by the Office of the New York State Comptroller. Although every effort will be made to expedite the process, the final approval of the contract could take between 4 and 6 months; (e) CNYPC will continue, in the future, to provide an Imam to lead Al Jumu'ah services on Fridays.

10. The foregoing constitutes the entire agreement of the parties.

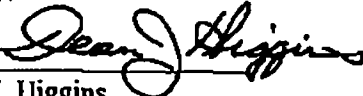
Dated: New York, New York
February 7, 2012

Brett Dignam
Columbia University Law School
Morningside Heights Legal Services, Inc.
435 W. 116th St.
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Attorney for Plaintiff Edward Kalwasinski

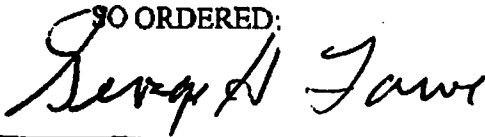

By: Brett Dignam
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Dated: Albany, New York
February 7, 2012

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The Capitol
Albany, New York 12224-0341

By: 
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Telephone: (518) 473-8047

Dated: Syracuse, New York
February 8, 2012

SO ORDERED:


HON. GEORGE H. LOWE
UNITED STATES DISTRICT MAGISTRATE JUDGE