

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JONELLE SHEPHERD, YVETTE (GARCIA) VELEZ,
and SHAREMAH LAMOTTE,

Plaintiffs,

-against-

JOHN B. RHEA, as Chairman of the New York City
Housing Authority, and the NEW YORK CITY
HOUSING AUTHORITY,

Defendants.

**STIPULATION OF
SETTLEMENT**

2012 Civ. 7220

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WHEREAS, Plaintiffs filed the complaint in this action on September 25, 2012 seeking declaratory and injunctive relief, and alleged that the New York City Housing Authority (“the Housing Authority”) delayed the issuance of emergency transfer vouchers to participants in the Section 8 program (“Tenants”), sought irrelevant documentation from Tenants seeking emergency transfer vouchers, refused to give hearings to Tenants whose transfer requests were denied and delayed inspecting or approving new apartments once tenants had received their transfer vouchers. Plaintiffs claimed that these actions violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the United States Housing Act, 42 U.S.C. § 1437 et seq., and its implementing regulations, as well as the Housing Authority’s own policies.

WHEREAS, Plaintiffs brought this proceeding as a putative class action seeking to represent all participants in the Housing Authority’s Section 8 program who have requested emergency transfer vouchers and are facing holdovers due to the expiration of their lease, who have housing quality standards (“HQS”) violations that entitle them to an emergency transfer under LHD-06-8 or whose subsidies have been suspended due to any unremedied HQS violation

for at least six months.

WHEREAS, the Housing Authority denies plaintiffs' allegations and maintains that its policies and practices have at all times been lawful; and

WHEREAS, the Housing Authority has instituted a new policy where it will mail transfer vouchers to all Tenants whose subsidies have been suspended for sixty (60) days or more due to a failed HQS inspection; and

WHEREAS the Plaintiffs have all received their transfer vouchers; and

WHEREAS the parties wish to resolve this dispute amicably; and

WHEREAS the parties have agreed to the entry of this Stipulation without any admission of liability and without an adjudication on the merits;

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

1. The plaintiff class shall consist of all the Tenants who request or have requested emergency transfers due to either an un-remedied life-threatening or designated hazardous HQS violation or a holdover proceeding in Housing Court based on a landlord's choice not to renew a lease.
2. The Housing Authority will affirmatively adopt and implement in writing the following policies and procedures with respect to emergency transfer requests due either to an un-remedied life threatening hazardous housing quality standards (HQS) violation, or to a holdover proceeding in Housing Court based on a landlord's choice not to renew a lease. The Housing Authority shall provide copies of the written procedures to Plaintiffs' counsel 30 days prior to their promulgation.

A. For a tenant seeking an emergency transfer voucher based on a holdover action a notice of petition and petition or 30-day termination notice, along with the written transfer request form, shall be sufficient to demonstrate eligibility for an emergency transfer voucher.

B. Within three weeks of receipt of the tenant's request for an emergency transfer voucher necessitated by an un-remedied life threatening or designated hazardous (HQS) violation or to a Housing Court holdover action based on a landlord's choice not to renew a lease, the Housing Authority will issue a written letter either (1) scheduling an appointment for the tenant to receive the transfer voucher, (2) denying the Tenant's request for a transfer voucher, or (3) requesting additional information.

C. The Housing Authority will not require a Tenant to establish, or to provide documentation for the purposes of determining, the Tenant is current in rent, has been current in rent, or in any other way is a tenant in good standing, as a condition of granting a transfer voucher.

D. A Tenant's request for a transfer voucher will not be denied or delayed for failure to complete annual recertification unless that tenant's subsidy has been terminated.

E. If a Tenant's written request for a transfer lists the name and date of birth of a person or persons other than those in the currently authorized household composition, and the person or persons pass a criminal background check, the housing authority will issue a transfer voucher with the person or persons included in the household composition. At or prior to the time of issuance of the voucher, the Tenant will be informed of the documentation necessary to complete the process of adding someone to the household composition. If the Tenant seeks to remove a person from the household composition at the time the Tenant requests the transfer

voucher, the housing authority will approve the issuance of a transfer voucher without that person included in the household composition. At the time of the issuance of the voucher, the Tenant will be informed of the documentation necessary to remove the household member. The Housing Authority shall alter its forms for requesting transfer vouchers to include birth dates for all members of the household.

F. i. If the Tenant's request for a transfer voucher is denied, the written denial shall include the basis for denying the Tenant's request. Such denial shall not be a basis for denial of a new emergency transfer request supported by proper documentation.

ii. If the Housing Authority has grounds for termination of the subsidy of a tenant seeking an emergency transfer, it will process the transfer request unless and until the tenant's subsidy is terminated. The fact that the Housing Authority has granted a transfer voucher, or approved a new rental, shall not be considered evidence the tenant's subsidy should not be terminated.

G. If the Housing Authority approves a Tenant's request for a transfer voucher, it will schedule the Tenant to attend any briefing required to receive the voucher and transfer package within three weeks of the Housing Authority's letter scheduling the briefing.

H. Once a Tenant with a transfer voucher identifies a new apartment, the tenant must submit a rental package, including required documentation regarding members in the household. If the Tenant fails to provide documentation regarding a person whom the Tenant wishes to be added to the household, the Tenant will be issued a voucher with a payment standard appropriate for the Tenant's authorized household size.

I. i. The Housing Authority will inspect the new apartment within four weeks of receiving a request for inspection from the landlord. Upon request of the landlord or the tenant to its Customer Contact Center, the Housing Authority shall provide the result of the inspection.

ii. If the apartment passes inspection, the Housing Authority will issue a move-in letter within three weeks of the inspection.

Monitoring and Compliance

3. For the stipulation period defined in paragraph 5, Defendants shall retain an independent auditor who shall be jointly chosen by the parties and who shall produce a report once per three month period, as set forth herein:

A. Defendants will provide the independent auditor quarterly with all documents and notes received and created since the emergency transfer for a randomly selected sample of Tenants in the plaintiff class who requested an emergency transfer voucher, received an emergency transfer voucher, submitted a rental package, or whose prospective apartments passed inspection in the previous quarter sufficient to allow the auditor to make the conclusions in Section 3.B with a 95% confidence interval and a margin of error/sampling error of plus or minus 3%.

B. Based on the information provided in paragraph A, the independent auditor will issue a report each quarter to counsel for plaintiffs and defendants as to the degree to which the Housing Authority complied with each of the requirements established in paragraph 2.

Specifically, the auditor shall state:

i. the extent to which the Housing Authority has complied with the

documentation requirements of Section 2.A;

ii. the percentage of the Tenants in the Plaintiff Class who receive a written letter either (1) scheduling an appointment for the tenant to receive the transfer voucher, (2) denying the Tenant's request for a transfer voucher, or (3) requesting additional information within three weeks as required by Section 2.B;

iii. the percentage of Tenants whose transfer requests have been approved who were scheduled to attend a briefing within three weeks of the issuance of the letter approving the transfer request as required in Section 2G;

iv. the number of Tenants in the Plaintiff Class whose transfer requests were denied and the percentage of those denials that stated the reason for the denial as required by Section 2.F.i;

v. the percentage of Tenants in the Plaintiff Class who submitted rental packages whose prospective apartments were inspected within 4 weeks of the submission of the rental package as required by Section 2.I.i;

vi. the percentage of Tenants in the Plaintiff Class whose prospective apartments passed inspection who received move-in letters within 3 weeks of their apartment passing inspection as required by Section 2.I.ii;

4. This Stipulation does not create any individual right to obtain judicial relief. However, during the Stipulation Period defined in paragraph 4, Plaintiffs' counsel may bring to Defendants' attention individual and isolated instances in which Plaintiffs counsel believes the time frames in Paragraph 1 have not been followed and Defendants shall respond and endeavor to rectify the situations, if required. Nothing in this Stipulation bars individual members of the

plaintiff class from bringing an Article 78 proceeding challenging a delay in the processing of their transfer voucher or rental package.

5. If Plaintiffs' counsel have evidence that NYCHA is systemically failing to comply with this Stipulation, Plaintiffs' counsel may notify NYCHA's counsel in writing of the specific basis and evidence of the claim of systemic non-compliance. The parties will thereafter attempt in good faith to resolve the claim. Thirty days after Plaintiffs' counsels' notification of the alleged systemic violation, Plaintiffs' counsel may seek relief from the Court.

Jurisdiction of the Court

6. The Court shall retain jurisdiction over this Stipulation and Order, for a period of 30-months or 42 months (the Stipulation Period) as outlined below.

A. If the Housing Authority complies with the obligations set forth in paragraph 1 for 90% percent of the members of the Plaintiff class for the 30 month period after the Effective Date, or for 85% of such tenants for the first nine months and 90% of such tenants for the ensuing 21 months following the effective date of this stipulation, the jurisdiction of the Court will terminate and the Court shall dismiss the Complaint. Thirty months after the effective date of this stipulation, the independent auditor shall issue a report regarding whether the Housing Authority has met these requirements.

B. The stipulation period shall automatically be extended to 42 months in the event that the Housing Authority is unable to comply with the obligations set forth in paragraph 1 for 90% of the members of the plaintiff class for the 30 months after the effective date of the stipulation, or for 85% of such tenants for the first nine months and 90% of such tenants for the ensuing 21 months following the effective date of this stipulation.

C. Any and all rights, duties, and obligations created by this Stipulation will expire 42 months after the Effective Date. The Stipulation may not be extended beyond 42 months.

7. During the Stipulation Period, the Housing Authority may alter the procedures described herein for good cause as long as such alteration is in accordance with all applicable law, rules, and regulations. 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 in writing whether or not they object to the proposed change. If Plaintiffs' counsel does not object to the proposed change, the Housing Authority may then promptly implement it. If plaintiffs' counsel objects 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.

8. The effective date of this stipulation shall be the date on which it is approved by the Court, or four months from the date it is fully executed by the parties, whichever is later.

9. Defendants shall pay Plaintiffs' \$99,500 in actual attorneys' fees and costs associated with their prosecution of this action.

Dated: 1/22/14



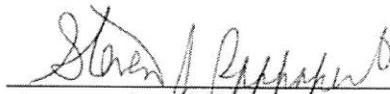
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So Ordered:

Paul A. Crotty, District Judge

Dated: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JONELLE SHEPHERD, YVETTE (GARCIA) VELEZ,
and SHAREMAH LAMOTTE,

**Order Pursuant to:
Fed. R. Civ. P. 23(e)**

Plaintiffs,

2012 Civ. 7220

-against-

JOHN B. RHEA, as Chairman of the New York City Housing Authority,
and the NEW YORK CITY HOUSING AUTHORITY,
Defendants.

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WHEREAS, this action was brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

WHEREAS, on _____, this Court certified a Class pursuant to Fed. R. Civ. P. 23 and appointed the Legal Aid Society, and Latham and Watkins, LLP, as class counsel;

WHEREAS, counsel for Plaintiffs and counsel for Defendant have entered into a Stipulation and Order of Settlement (“Settlement”) which, if approved by the Court, would dispose of the claims made in this action by plaintiffs; and

WHEREAS, counsel for the parties have jointly moved the Court, pursuant to Rule 23 (e)(1)(c) of the Federal Rules of Civil Procedure, for approval of the proposed Settlement, for a hearing thereon, and for authorization of notice of the hearing to be provided to members of the two plaintiff classes;

NOW, THEREFORE, IT IS ORDERED THAT:

A hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure shall be held before the undersigned on _____, [PLEASE INSERT A DATE NO EARLIER THAN MARCH 15, 2014, WHICH IS NEEDED TO PERMIT THE DEFENDENT TO (1) TRANSLATE THE

NOTICES FOR BOTH CLASSES INTO SPANISH AFTER THE COURT HAS APPROVED THEM; (2) SHARE THE TRANSLATED NOTICES WITH PLAINTIFFS' COUNSEL FOR THEIR REVIEW; and (3) POST THE NOTICES] for purposes of determining whether the proposed Settlement is fair, reasonable, and adequate, and should be approved by the Court. The hearing shall take place before the Honorable, Ronald L. Ellis, U.S. District Court - Southern District of New York, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street New York, New York 10007-1312, and will begin at _____. The hearing may be adjourned or continued from time to time without further notice.

1. Annexed as Exhibit A is the Notice of Proposed Settlement of Class Action Concerning the Timely Issuance of Emergency Section 8 Transfer Vouchers. The Notices are hereby approved.

2. At least twenty-five (25) days prior to the hearing, Defendant shall post the Notice, in English and Spanish, in the public client waiting areas at each Customer Contact Centers, . The Notices posted in these locations shall be 8.5" x 11" or 8.5" x 14," if necessary. Defendant shall also post the Notices, in English and Spanish, on its web site nycha.nyc.gov. Defendant shall provide plaintiffs' counsel with electronic copies of the notices in English and Spanish sent by e-mail, which Plaintiffs' counsel shall post in their waiting rooms and in the Housing Courts of each borough in locations that class members are reasonably likely to see and which Plaintiffs' counsel may distribute to other legal services providers and community based organizations that serve the Plaintiff class and request that those organizations post the Notices.

3. Additionally, at least twenty-five (25) days prior to the hearing, The Legal Aid Society, and Latham and Watkins, LLP, shall post the Notice in English and Spanish on their respective web sites, www.empirejustice.org, www.legal-aid.org, and www.nclej.org.

4. Any member of the Plaintiff class may appear at the aforesaid hearing on _____ at _____, in person or by counsel, and object to the Settlement or give reasons why the proposed settlement should not be approved as fair, reasonable, and adequate.

5. Any member of the Plaintiff classes may also object to or comment on the Settlement by submitting objections in writing. Objections or comments must be post-marked by _____ (insert 5 days before the hearing date listed in paragraph 1 above), to the Court at the address listed above.

Dated: _____
New York, New York

The Honorable Ronald L. Ellis
Magistrate Judge, SDNY