

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SHAUNA NOEL and EMMANUELLA SENAT,

Plaintiffs,

-against-

15-CV-5236 (LTS) (KHP)

CITY OF NEW YORK,

Defendant,

-----X

STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

WHEREAS, this action, commenced by summons and complaint dated July 7, 2015, and subsequently amended by the first and second amended complaints, filed September 1, 2015 and June 22, 2018, respectively, alleges that the City’s policy to provide preference to 50% of affordable housing units subject to its Housing Lottery to residents of the community district within which the affordable housing is located (“Community Preference Policy”) causes a disparate impact against African American and Hispanic New Yorkers, perpetuates segregation and constitutes intentional discrimination in violation of the Fair Housing Act, and New York City Human Rights Law; and

WHEREAS, the parties engaged in extensive and intense fact and expert discovery and summary judgment motion practice over the course of several years; and

WHEREAS, the parties have concluded that it is in their mutual interests to resolve this action without further litigation and without any admissions of liability;

IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES AND SO ORDERED BY THE COURT:

A. Effective Date

1. This Stipulation and Order of Settlement and Dismissal (“S&O”) shall come into effect when it is So Ordered by the Court (the “Effective Date”).

B. Scope

2. This S&O is applicable to any and all housing developments financed or otherwise subsidized by Defendant or the New York City Housing Development Corporation (“HDC”) which contain units that, for application-eligibility purposes, are both income-restricted and subject to the City’s housing lottery, which is the mechanism by which the City and HDC allocate most affordable housing units in New York City, and to any other housing developments where the allocation of income-restricted affordable housing units is overseen or implemented by the New York City Department of Housing Preservation and Development (“HPD”) or HDC.

C. Local Geographic Preference Restricted

3. The term “Local Geographic Preference” means any policy, however denominated and related to whatever geography within New York City (including but not limited to community district, council district, borough, neighborhood tabulation area, etc.), that provides a set-aside, preference, priority, or other advantage to any applicant for an affordable housing unit subject to the City’s Housing Lottery based on, in whole or in part, the current or former residence of the applicant, a member of the applicant’s household, or a forebear of the applicant, including but not limited to the Community Preference Policy.

4. To the extent the City maintains a Local Geographic Preference for affordable housing units in developments first advertised on Housing Connect, the City’s website and

database that implements the Housing Lottery (or any successor system) in the period from three months from the Effective Date through April 30, 2029, any Local Geographic Preference shall not exceed 20 percent of the affordable housing units being offered by any lottery. To the extent the City maintains a Local Geographic Preference for affordable housing units in developments first advertised on Housing Connect (or any successor system) after April 30, 2029, any Local Geographic Preference shall not exceed 15 percent of the units being offered by any lottery. Nothing herein shall prevent the application of a 50% Local Geographic Preference as set forth in the so-ordered Stipulation and Order resolving *Broadway Triangle v. Bloomberg*, Index No. 11279/2009 (Sup. Ct. New York Co. Dec. 5, 2017).

5. For affordable housing developments that have multiple phases, each phase of an affordable housing development will be treated independently for the purposes of this S&O, such that later phases of a development cannot get a higher Local Geographic Preference based upon when an earlier phase of the development was advertised on Housing Connect.

6. Nothing in this S&O is intended to limit or to endorse preferences applied in the Housing Lottery other than the Local Geographic Preference, nor is anything intended to limit or endorse the general preference for current New York City residents over non- New York City residents (which although based upon geography shall not be considered a Local Geographic Preference).

D. “Nesting” of Preferences and Homeless Referrals and Set-Asides

7. In the event that an applicant for an affordable housing unit subject to the Housing Lottery is eligible for any current or future preferences or disability set-asides for affordable units leased through the Housing Lottery, and also eligible for a Local Geographic Preference, and that applicant leases a unit in the housing development, then that applicant shall count toward the Local

Geographic Preference percentage, as well as any other eligible preference or set-aside percentages. This is commonly referred to by HPD and HDC as “nesting.”

8. As of the Effective Date, the City typically does not take into consideration a homeless referral applicant’s most recent prior residence or the most recent place of shelter when determining where to refer a homeless referral applicant. In the event that the City applies a Local Geographic Preference to allocate affordable housing units to homeless referral applicants based upon a homeless referral applicant’s most recent prior residence or the most recent place of shelter, the homeless referral applicant that meets the Local Geographic Preference criteria and is provided an affordable housing unit shall count against the Local Geographic Preference percentage for the housing development.

E. Circumstances Where Local Geographic Preference Shall Not Apply

9. A Local Geographic Preference shall only be used or applicable to the first occupancy of a unit; that is, Local Geographic Preference shall not be used for filling units that have already been occupied at any point.

10. There shall be no Local Geographic Preference applied to developments where the sole obligation for affordable housing is the Real Property Tax Law § 421-a or successor statutes, unless otherwise required by New York State law. Nothing in this paragraph is intended to imply, and nothing in this paragraph shall be construed to imply, that plaintiffs are agreeing to any limitation on the applicability of – or that the Court is superseding, limiting, or modifying the applicability of – Section 3615 of the Fair Housing Act.

11. There shall be no Local Geographic Preference applied to developments resulting from the purchase and land-purchase-and-leaseback program announced by New York State Governor Hochul in July 2023, unless otherwise required by New York State law. Nothing in this

paragraph is intended to imply, and nothing in this paragraph shall be construed to imply, that plaintiffs are agreeing to any limitation on the applicability of – or that the Court is superseding, limiting, or modifying the applicability of – Section 3615 of the Fair Housing Act.

F. Anti-Segregation Principles

12. For a period of three years commencing on March 1, 2024, defendants shall prominently place on Housing Connect and other notifications of upcoming lotteries, on the Housing Connect registration, application, and “determine eligibility” pages (and such equivalent pages as may be created in the future), and on the HPD and HDC pages that link to Housing Connect and/or a successor system the following legend: “New York City is committed to the principle of inclusivity in all of its neighborhoods, including supporting New Yorkers to reside in neighborhoods of their choice, regardless of their neighborhood of origin and regardless of the neighborhood into which they want to move.”

13. Defendant City of New York and plaintiffs agree that, for decades, suburban counties in the New York metropolitan area, as well as many of the municipalities therein, have not produced sufficient housing to meet regional affordable housing needs, which in turn has exacerbated the City of New York’s housing affordability crisis and reduced opportunities for residential mobility. This provision is not intended to impose and shall not be construed as imposing any legal obligations on defendant City of New York. This provision is not intended to constitute and shall not be construed as constituting an admission by defendant City of New York in any action or proceeding.

G. Compliance, Enforcement, and Jurisdiction

14. Defendant shall not take any action – and shall not facilitate or encourage any person or entity (governmental or non-governmental) to take any action – inconsistent with this

S&O.

15. Defendant shall not seek to have any Local Geographic Preference beyond that permitted by this S&O.

16. Were any person or entity to seek from the City an increase to the Local Geographic Preference beyond what is limited in this S&O through any means, including but not limited to the pursuing of an action or proceeding against the City for that purpose, the City shall oppose any such request and take necessary steps to remain in compliance with this S&O.

17. The Court shall retain jurisdiction over this action to enforce its terms as necessary, including the remedying of violations, through and including April 30, 2036 (“Retention-of-Jurisdiction Date”), unless the Retention-of-Jurisdiction Date is extended by the Court for good cause pursuant to its authority under this paragraph. From the Effective Date through and including the Retention-of-Jurisdiction Date, any party seeking to extend the Retention-of-Jurisdiction Date or enforce the terms of this S&O shall first inform the other party of their intent in writing, including an explanation of the grounds for enforcement or the good cause for an extension, followed by a meet and confer where the parties shall attempt in good faith to resolve the issue. If the issue or issues are not resolved, no later than thirty (30) days after the final meet and confer has occurred, the party seeking judicial intervention shall file a letter requesting a conference with the Court and permission to file a motion to extend the Retention-of Jurisdiction Date or enforce.

18. Nothing in the preceding paragraph is intended to limit or bar any rights that exist under law or equity to bring an action or proceeding to interpret or enforce this S&O that is commenced subsequent to the Retention-of-Jurisdiction Date.

19. If prior to the expiration of the Retention-Of-Jurisdiction Date any plaintiff succeeds in a motion to enforce any obligation of Defendant due to such Defendant’s breach of

this S&O, then subject to the Comptroller's approval, and in accordance with the standards set forth in existing case law precedent as to prevailing party status and calculation of such fees and costs, Defendant shall reimburse such plaintiff for all costs and attorneys' fees reasonably incurred in connection with such motion. Plaintiff shall make a written demand for costs and attorneys' fees, including a detailed breakdown of the hours billed, within thirty (30) days of the Court's order granting their motion to enforce. If, after one hundred twenty (120) days thereafter, the Parties are unable to reach agreement regarding attorneys' fees and costs, Plaintiffs may file a motion for attorneys' fees and costs to be decided by this Court. Defendant may oppose the amount of fees and costs sought in any such motion.

H. Limitations on right to seek modification of S&O

20. Notwithstanding any right that exists or may come to exist in law or equity to seek modification of one or more terms of this S&O, defendant waives the right to seek modification of this S&O – other than a modification consented to by plaintiffs – based, in whole or in part, on: (A) changes to the demographics of income-eligible New York City residents in all or any part of New York City, of the lottery applicant pool, of any part of the lottery pool, or of the successful applicants in lotteries as a whole or in part; or (B) the existence or projected existence of actual or feared displacement or gentrification in New York City or in any part of New York City; or (C) the need or perceived need in respect to building support for (or reducing opposition to) any affordable-housing-promoting measures, including but not limited to, zoning changes and project approvals.

I. Dismissal

21. This action shall be dismissed with prejudice on the Effective Date. This S&O, and the requirements set forth herein, shall survive the dismissal of the action.

J. Payments to plaintiffs

22. Defendant City of New York shall pay Plaintiffs Shauna Noel and Emmanuella Senat the sum of one hundred thousand dollars (\$100,000) each, which payment shall satisfy all claims for damages that were raised or that could have been raised in this action. Payments shall be made payable to Shauna Noel and Emmanuella Senat, respectively, and shall be delivered to Cuti Hecker Wang LLP (“CHW”) by regular mail at 305 Broadway, Suite 607, New York, New York 10007. Payments shall be made no later than ninety (90) days after the Effective Date or delivery to counsel for Defendant (by hand or certified mail, and by email) of the following executed documents, whichever is later: (i) a General Release in the form attached hereto as Exhibit “A”; (ii) an Affidavit of Status of Lien, in the form annexed hereto as Exhibit “B”; and (iii) an executed IRS Substitute Form W-9, in the form annexed hereto as Exhibit “C.”

K. Attorneys’ Fees and Costs

23. Defendant City of New York, in full satisfaction of the plaintiffs’ claims for, expert fees, and the fees and other costs of their attorneys, shall pay to Anti-Discrimination Center, Inc. (“ADC”) the sum of \$5,150,000 and shall pay to CHW the sum of \$1,100,000. Payments shall be made no later than ninety (90) days after the Effective Date or delivery to counsel for Defendant (by hand or certified mail, and by email) of the following executed documents and information, whichever is later: (i) information necessary for wire transfer; (ii) a General Release, in the form annexed hereto as Exhibit “D”; and (iii) an executed IRS Substitute Form W-9 in the form annexed hereto as Exhibit “C.”

L. Prior Protective Order

24. The Protective Order in this matter (ECF 82) is modified so that the actions required by paragraph 16 of the Protective Order and by paragraph 5 of the Addendum to the Protective

Order are not required until one year after the Effective Date.

M. Releases

25. In consideration of the monetary payment to Plaintiffs, and in consideration of the policy changes set forth in this S&O, for and on behalf of themselves and their past, present, or future agents, heirs, executors, administrators, successors, designees and assigns, and all persons acting by, through, under or in concert with Plaintiffs, as well as all affiliates and any other persons or entities over whom Plaintiffs or their successors, designees, and assigns exercise direct or indirect control (collectively, the “**Plaintiff Releasing Parties**”), do hereby irrevocably and unconditionally release, acquit, waive and forever discharge Defendant and each of their past, present, and future officials, executives, officers, employees, departments, subdivisions, agencies, representatives, directors, agents, affiliates, related business entities, predecessors, successors, assigns, designees, divisions, directors, managers, trustees, members, representatives, insurers, reinsurers, and attorneys, in their individual and official capacities, (collectively, the “**Defendant Released Parties**”), from any and all charges, complaints, claims, liabilities, obligations, suits, demands, costs, losses, debts and expense, including, but not limited to, all claims for penalties, general damages, punitive damages, compensatory damages, special damages, equitable relief, attorneys’ fees and costs, and experts’ fees and costs, of any nature whatsoever known or unknown, suspected or unsuspected that Plaintiffs or Plaintiffs Releasing Parties had, now has, or in the future may have that were asserted or could have been asserted in the this action and that arise out of, relate to, or are based upon the allegations, transactions, facts, matters, or occurrences, representations or omissions involved, set forth, or referred to in the Complaint, Amended Complaint or Second Amended Complaint, excluding any claims to enforce Plaintiffs’ rights under this S&O.

N. Additional provisions

26. References in this S&O to the term “party,” “parties,” “Plaintiff,” “Plaintiffs,” “Defendant” are intended to encompass, bind, and benefit the party’s, plaintiff’s, or defendant’s successors, designees and assigns.

27. HDC shall be considered a designee of the Defendant for the purposes of this S&O to the extent that it implements or oversees the Housing Lottery in whole or in part. HDC’s signature below is for the sole purpose of acknowledging its obligations as a designee as provided by paragraph 26 hereof.

28. Nothing in this S&O is intended to constitute, and nothing in this S&O shall be construed as constituting an admission of liability or concession on the part of Defendant or each of their past, present, and future officials, executives, officers, employees, departments, subdivisions, agencies, representatives, directors, agents, affiliates, related business entities, predecessors, successors, assigns, designees, divisions, directors, managers, trustees, members, representatives, insurers, reinsurers, and attorneys, in their individual and official capacities, direct or indirect, express or implied, that they have violated Plaintiffs’ or any individuals’ or protected class’s rights under 42 U.S.C. § 3601 *et. seq.* (“Fair Housing Act”) or the New York City Human Rights Law, New York City Administrative Code § 8-101, *et. seq.*, (“New York City Human Rights Law”), the constitutions or any other statutes, ordinances, rules or regulations of the United States, the State of New York, or any other rules, regulations or bylaws of any department or subdivision of the City of New York.

29. If any provision of this S&O is declared invalid or unenforceable by a court having competent jurisdiction, it is mutually agreed that this S&O shall endure except for the part declared invalid or unenforceable by order of such court, unless the elimination of the invalid provision

shall materially affect the intent of this S&O. The parties to this S&O shall consult and use their best efforts to agree upon a valid and enforceable provision that shall be a reasonable substitute for such invalid or unenforceable provision in light of the intent of this S&O.

30. This S&O contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time prior to the execution of this S&O regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

31. This S&O shall not be used for any purpose, nor shall it be admissible, in any judicial or administrative proceeding of any kind, except by a party to this action in a proceeding concerning enforcement of this S&O.

32. The parties expressly represent and warrant that they have full legal capacity to enter into this S&O, that they have carefully read and fully understand this S&O, that they have had the opportunity to review this S&O with their attorneys and that they have executed this S&O voluntarily, without duress, coercion, or undue influence.

33. This S&O shall be deemed to have been jointly drafted and no provision herein shall be interpreted or construed for or against any party because such party drafted or requested such provision, or this S&O as a whole.

34. This S&O may be executed in one or more original, facsimile or PDF counterparts, each of which constitutes an original and all of which constitute one and the same agreement. For purposes of this S&O, signatures transmitted electronically shall constitute acceptable, binding signatures.

[CONTINUED ON PAGE 12 WITH SIGNATURES]