

UNITED STATES EASTERN DISTRICT COURT
Eastern District of New York

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ISIDORO RIVERA, JOSE ALVARADO,
JUAN BUSTILLO, NOBERTO ALVAREZ,
ELSA MEJIA VILLALOBO, BRIAN FREDERICKS,
ELY CHAVEZ, ANA MARIA MORA GOMEZ,
AND MARTA VILLATORO,

Plaintiffs

**STIPULATION AND
AGREED ORDER**
Docket No. CV 06-2613
(PKC)(ARL)

-v-

THE INCORPORATED VILLAGE OF FARMINGDALE,
SECATOGUE REALTY LLC, JOHN TOSINI,
AND MICHELLE TOSINI,

Defendants.

-----X
INTRODUCTION

Plaintiffs commenced this action on May 25, 2006 under the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.* In their Amended Complaint, Plaintiffs, former tenants of 150 Secatogue, Farmingdale, New York ("150 Secatogue"), allege that the Defendant, the Incorporated Village of Farmingdale ("Village"), intentionally discriminated against them on the basis of race or national origin in violation of the Fair Housing Act by implementing the Secatogue Avenue Redevelopment Plan ("SARP") which targeted 150 Secatogue, where a majority of the tenants were Hispanic, for redevelopment. Plaintiffs also allege that the SARP had a disparate impact on Hispanics in the Village. Plaintiffs allege in their Amended Complaint that the Village's conduct made housing unavailable and denied dwellings to persons because of

race or color in violation of 42 U.S.C. § 3604(a). Plaintiffs believe that the allegations in the Amended Complaint justify the remedies agreed to by the parties and set forth below.

The Village denies any wrongdoing and has denied and continues to deny any racial motivation or improper motives. The Village contends that the SARP was never formally implemented, and development was done for legitimate/non-discriminatory reasons and that it did not have a disparate impact on Hispanics. While the Village is prepared to continue to defend this action through litigation, the Village realizes that the continuation of such litigation would be expensive, time consuming and not the best use of the Village's resources. The Village prefers to use its resources in more productive endeavors.

Therefore, Plaintiffs and the Village have agreed to resolve this matter as set forth below. Plaintiffs and the Village desire to avoid costly and protracted litigation and agree that this action should be compromised, settled and resolved without further litigation. Nothing in this agreement is or will be construed as an admission of any wrongdoing by the Village. Accordingly, Plaintiffs and the Village have agreed to the entry of this Stipulation and Agreed Order ("Stipulation and Order") regarding Plaintiffs' non-monetary claims against the Village.

IT IS HEREBY AGREED AND ORDERED AS FOLLOWS:

I.

DEFINITIONS

1. The following terms when used in this Stipulation and Order, in addition to terms defined elsewhere in the Stipulation and Order, shall have the following meaning:

- a. "Affordable Housing" means housing where the monthly rent does not exceed one-twelfth of 30 percent of the Qualified Median Income Level minus the utility allowance based on a household size of:
 - i. Studio: 1 household member
 - ii. 1BR: 1.5 household members
 - iii. 2BR: 3 household members
 - iv. 3BR: 4.5 household members
 - v. 4BR: 6 household members;
- b. "Effective Date of the Stipulation and Order" means the date the Court enters the Stipulation and Agreed Order;
- c. "Former Lessees" means persons whose names appeared on a lease for a unit at 150 Secatogue during the year 2005 and whose name appears in Appendix 1 of this agreement;
- d. "Market-Rate Unit" means a housing unit that is not subject to any affordable housing restrictions;
- e. "Qualified Tenant" means a tenant whose household income is less than or equal to 50 percent of Qualified Median Income;
- f. "Qualified Median Income" means 50 percent of the Nassau County Area Median Income as defined by the United States Department of Housing and Urban Development;
- g. "the Village" means the Incorporated Village of Farmingdale, its employees, elected or appointed officials, officers, agents, and any and all persons or entities acting in concert or participation with the Village;

II.

JURISDICTION AND SCOPE

2. The Parties stipulate, and this Court finds that this Court has personal jurisdiction over the Village for purposes of this civil action, and subject matter jurisdiction over the claims in the civil action pursuant to 28 U.S.C. §§ 1331 and 42 U.S.C. § 3613(a). The provisions of this Stipulation and Order apply to the Plaintiffs, the Village, its employees, elected or appointed officials, officers, agents, and any and all persons or entities acting in concert or participation with the Village.
3. This Stipulation and Order shall remain in effect until (whichever occurs earlier):
 - a. Upon the lapse of ten years from the effective date of this Stipulation and Order, or
 - b. The provisions of Section IV of the Agreement and Order have been fully implemented, and fifty-four units covered by this Stipulation and Order have been placed in service with a certificate of occupancy issued for all fifty-four units.
4. The Court retains jurisdiction over the action for the duration of this Stipulation and Order for the purpose of enforcing any of its provisions and terms.
5. The parties agree to work cooperatively with one another and in good faith and agree to use their best efforts to effectuate the purposes of the Stipulation and Order and to resolve informally any differences regarding interpretation of and compliance with the Stipulation and Order prior to bringing such matters to the Court for resolution. Throughout this Stipulation and Order, where there are references to an objection by Plaintiffs, any such objection shall be resolved in accordance with this paragraph.
6. The parties shall have the right to seek from the Court relevant modifications of the Stipulation and Order to ensure that its purposes are fully satisfied, provided that any request

for a modification has been preceded by good faith negotiations between the parties. The parties may agree in writing to modify the deadlines established by this Stipulation and Order without Court approval.

III.

GENERAL NONDISCRIMINATION PROVISIONS

7. In accordance with the laws of the United States, the State of New York, and Nassau County, the Village agrees to comply with all provisions of the Fair Housing Act including those that prohibit:
 - a. Making a dwelling unavailable because of race, color, or national origin;
 - b. Interfering with the funding, development, or construction of any housing because of race, color, or national origin; or
 - c. Discriminating on the basis of race, color, or national origin in any aspect of the administration of its zoning process relating to residential property.

IV.

DEVELOPMENT OF FIFTY-FOUR UNITS OF AFFORDABLE HOUSING

8. The Village shall use its best efforts to ensure the development of fifty-four units of Affordable Housing for Qualified Tenants while this Stipulation and Order is in effect.
9. These Affordable Housing units shall possess the following characteristics:
 - a. They shall be built at the same time as or before the Market-Rate units in the same project;

- b. They shall be constructed to the same quality standards as Market-Rate units in the same project. The exterior appearance of these units shall not be distinguishable from Market-Rate units. A developer may, however, substitute different appliances and interior hardware where such substitutions would not adversely impact the livability of the unit. These units shall be comparable in size to Market-Rate units for the same number of bedrooms; and
- c. The Village shall mandate that the fifty-four Affordable Housing units created as a result of this Stipulation and Order remain Affordable Housing units for at least twenty years.

10. As part of its best efforts, the Village agrees to work with Long Island Housing Partnership ("LIHP") or another not-for-profit affordable housing organization ("Technical Assistance Organization") under which LIHP or that organization agrees to provide technical assistance to the Village in implementing this Section for the duration of this Stipulation and Order. Neither LIHP nor other Technical Assistance Organization is a party to this Stipulation and Order.

11. The Village shall use its best efforts to actively recruit developers for the development of Affordable Housing. As part of its commitment to actively recruit developers, the Village agrees to:
- a. Hold an annual meeting to promote Affordable Housing development opportunities in the Village. The meeting will occur annually for the duration of this Stipulation and Order. The Village shall invite those for-profit and not-for-profit developers, which are identified by the LIHP or other Technical Assistance Organization, as well as representatives from New York State Homes and Community Renewal and LIHP or

other Technical Assistance Organization. At the meeting, the Village will provide all relevant information on parcels of land that the Village has learned are viable for multi-family development. The Village shall also provide information on the development and financial incentives that the Village offers for the development of Affordable Housing units, including the incentives listed in paragraph 12;

- b. Notify LIHP or other Technical Assistance Organization within ninety days upon learning of a viable site for development and discuss with that organization strategies for Affordable Housing development on that site; and
- c. Identify in any future comprehensive rezoning or land use study such as the study of and/or amendment to the Master Plan, areas in the Village that are well situated for multifamily residential developments, to assess in that process the land-use barriers, if any, that hinder their development and to propose ways to reduce these barriers.

12. As part of its best efforts, the Village will:

- a. Expedite the review process (“fast track”) for projects in which at least fifty percent of the affordable units, as defined in §105-99 of the Code of the Village of Farmingdale, are set aside as Affordable Housing units as defined in this Stipulation and Order;
- b. Cooperate with developers in regard to infrastructure and transportation enhancements for projects with Affordable Housing units;
- c. In any case following the Effective Date of this Stipulation and Order where development incentive bonuses are granted pursuant to §105-99 of the Code of the Village of Farmingdale, the Village shall require that at least fifty percent of the affordable housing units required pursuant §105-99 be set aside as Affordable

Housing Units as described in this Stipulation and Order. Nothing in this order will have an effect on applications granted prior to the Effective Date of this of the Stipulation and Order

- d. Endorse those projects recommended by LIHP or other Technical Assistance Organization which include Affordable Housing units and work with and cooperate with developers and LIHP or other Technical Assistance Organization to maximize the point score for developers' applications under financing programs of New York Homes and Community Renewal for projects which include Affordable Housing units. The Village shall provide the endorsement to the selected applicants in time to be included in that year's application cycle. The Village shall, in its endorsement, clearly express its support for the proposed development as opposed to expressing neutrality and shall clearly indicate that it understands the nature of the proposed development by identifying, at a minimum, the type of project, the number of anticipated units, and the specific project location;
- e. Waive permitting and incentive application fees for projects in which at least fifty percent of the units set aside as affordable units pursuant to §105-99, are set aside as Affordable Housing units as described in this Stipulation and Order. The Village shall only be required to waive those fees related to the Affordable Housing units in the developments that are created pursuant to this agreement. The Village shall collect those permitting and incentive application fees unrelated to the Affordable Housing Units such as those fees related to the Market Rate Units or other affordable units in the developments that are created as a consequence of this agreement;

- f. Pay the developers' fees for housing tax credit applications for development proposals where 50% of the affordable housing units are Affordable as described in this Stipulation and Order, up to a maximum of \$6,000 per project per competition year. Nothing herein shall require the village to waive or pay for any other fees for market rate housing, or affordable housing units in developments created as a consequence of this agreement; and
 - g. Work with the LIHP or other Technical Assistance Organization to encourage developers to apply for Community Development Block Grant, HOME funds from Nassau County, and any other funding source, and, when available, issue prompt endorsements of grant applications for federal, state or local financing in order to assist private developers of projects with units set aside for Affordable Housing.
13. The Village shall work with LIHP or other Technical Assistance Organization to explore opportunities for the development of owner-occupied Affordable Housing. Such owner-occupied units shall be counted as part of the development of fifty-four units of Affordable Housing provided that those units meet the requirements for the non-owner occupied units set forth in this Stipulation and Order.
14. The Village shall maintain a list of all Affordable Housing created and shall, on an annual basis, require the verification that the units are being maintained as Affordable.

V.

PLAINTIFFS' REMEDIAL RELIEF

15. The Village shall condition the granting of the development incentives enumerated in Section IV on a developer's agreement to comply with this Section.

16. At the time of initial sale, occupancy or rental of the Affordable Housing units in a development, a lottery shall be held by LIHP or other Technical Assistance Organization for the Affordable Housing units to rank all interested applicants. A separate lottery shall be held with each new development approved.
17. Initial priority for the Affordable Housing Units at the time of the lottery shall be given to applicants in the following order:
 - a. Plaintiffs
 - b. Former Lessees
 - c. All others.
18. The lottery shall rank the applicants pursuant to the preceding priority list.
19. Ranked lottery applicants, regardless of priority, shall be required to meet all program and eligibility requirements for an Affordable Housing unit as set forth herein.
20. Upon full occupancy of the Affordable Housing units in a development, all remaining applicants shall be placed on a waiting list in the order of their ranking and all other applicants who submit an application after the lottery deadline shall be added to the waiting list on a first come/first serve basis for future vacancies/availability of Affordable Housing units in the development.
21. Nothing herein shall prohibit the Village, with the assistance of LIHP or other Technical Assistance Organization, to hold a lottery for other affordable housing units in any project. The lottery for the Affordable Housing units shall be held before or at the same time as the lottery for the other affordable housing units required pursuant to §105-99.
22. Within ninety days of this Stipulation and Order the Village shall post on its website a notice to Former Lessees of their rights under this section which shall direct them to contact the

LIHP or other Technical Assistance Organization to be placed on a list to be informed when Affordable Housing opportunities become available. LIHP or other Technical Assistance Organization shall forward such information to the Plaintiffs and the Village.

VI.

FAIR HOUSING TRAINING

23. The Village shall have a fair housing training program for all officials and Village employees who have duties related to the planning, zoning, permitting, construction, or occupancy of residential housing. The primary purpose of this training program is to educate those persons with respect to the requirements of this Stipulation and Order and the Fair Housing Act.
24. The Village shall work with LIHP or other Technical Assistance Organization within ninety days of the Effective Date of the Stipulation and Order to provide fair housing training to conduct the training described in the preceding paragraph.
25. LIHP or other Technical Assistance Organization shall determine the frequency of the in-person training, which unless good cause is shown, shall not be more than once a year. All appointed officials and employees covered by paragraph 23 of this Stipulation and Order shall be required to attend the in-person training within the first year after the Effective Date of this Stipulation and Order. All newly hired appointed officials and employees covered by paragraph 23 of this Stipulation and Order shall be required to attend the in-person training within one year. The Village shall make in-person training available to officials elected after the Effective Date of this Stipulation and Order. Nothing in this section requires anyone to attend more than one in-person training as required by this paragraph.
26. Each person who attends an in-person training session shall sign a form attesting to the fact that he or she completed the training and the date on which it was completed.

27. In the interim period between the in-person training sessions conducted pursuant to this Stipulation, the Village shall distribute to each person newly hired, appointed, or elected to a position covered by paragraph 23 of the Stipulation and Order, within ninety days of each such person's commencement date, written materials explaining the requirements of the Fair Housing Act and this Stipulation and Order.
28. Pursuant to Section VII of this Stipulation and Order, all training certification forms referenced in this Section shall be maintained by the Village for the duration of this Stipulation and Order. Plaintiffs shall have the opportunity to inspect these certification forms upon reasonable notice.

VII.

COMPLIANCE


29. For purposes of compliance with this Stipulation and Order, Plaintiffs, where an objection is permitted, may do so only to advance the remedial goals of this Stipulation and Order and the Fair Housing Act
30. The Village shall work with LIHP or other Technical Assistance Organization to prepare biannual reports for the first year of the Stipulation and Order, and annual reports thereafter, that detail the actions it has taken to fulfill the terms of the Stipulation and Order. For the first year, the Village shall submit its annual report to Plaintiffs no later than June 15, 2014 and December 15, 2014. The Village shall submit subsequent reports on October 15 of every year thereafter for the remaining term of the Stipulation and Order. The Village shall include the following information in the reports:

- a. Any efforts that the Village has taken in support of the requirements of this Stipulation and Order;
 - b. Any multi-family housing that has been newly created or proposed in the Village during the preceding reporting period, and whether such housing includes any Affordable Housing units. Plaintiff shall have the opportunity to inspect all or part of any Village file related to such newly created or proposed multi-family development upon reasonable notice to the Village. The Village shall maintain all records relating to these proposals for at least the duration of this Stipulation and Order; and
 - c. Any written complaint alleging discrimination by the Village related to residential land use and zoning. The Plaintiffs shall have the opportunity to inspect the Village file related to such complaint or any portion thereof upon reasonable notice.
31. Within three months after the Effective Date of the Stipulation and Order, the parties, as well as LIHP or other Technical Assistance Organization, shall meet to discuss the steps taken to achieve the goals of this Stipulation and Order. Thereafter, the parties shall hold such meetings annually for the duration of the Stipulation and Order.
32. For the duration of this Stipulation and Order, the Village shall maintain all records identified herein relating to implementation of and its actions taken in furtherance of this Stipulation and Order. Plaintiffs shall have the opportunity to inspect and copy any records maintained as required by this Stipulation and Order after giving reasonable notice to the Village.
33. If this Court finds that the Village has failed to comply with the provisions of this Stipulation and Order, it has the authority to increase the duration of the agreement beyond the time limits set forth in Section II.

THE PARTIES CONSENT TO THE ENTRY OF THIS STIPULATION AND AGREED
ORDER AS INDICATED BY THE SIGNATURES OF COUNSEL BELOW:

FOR PLAINTIFFS:

The plaintiffs have collectively agreed to grant plaintiff Isidoro Rivera the authority to sign this stipulation and order on behalf of all plaintiffs in this action. This document has been translated into Spanish for Mr. Rivera to review prior to signing.

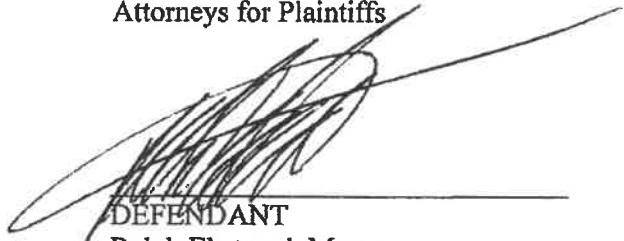


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SO ORDERED



Honorable Pamela K. Chen
United States District Judge

Entered 05/02/14