

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

2016 FEB -4 PM 3: 14

NICOLE ANDREA SMITH,
individually and on behalf of
all others similarly situated, *et al.*,
CLERK'S OFFICE
AT BALTIMORE

Plaintiffs

BY _____ DEPUTY

Case #GLR-15-2921

v.

THE CITY OF BALTIMORE, *et al.*

Defendants

SETTLEMENT AGREEMENT AND CONSENT ORDER JOINTLY AGREED AND REQUESTED BY THE PLAINTIFFS/CLASS REPRESENTATIVES AND DEFENDANTS THE HOUSING AUTHORITY OF BALTIMORE CITY AND PAUL T. GRAZIANO

Comes now the plaintiffs in *Smith, et al. v. The City of Baltimore, et al.*, No. GLR-15-2921, individually and as representatives of the proposed class defined below (Class Members) and the Housing Authority of Baltimore City (HABC) and its Executive Director Paul Graziano (Graziano), and hereby agree to the following terms settling all differences between them and move the United States District Court for the District of Maryland to approve this Settlement Agreement and Consent Order (the Agreement) and enter it as an order in the above-referenced case, as follows:

1) The parties consent and agree, and the Court finds that, pursuant to Federal Rule of Civil Procedure 23(e), the resolution reflected herein is "fair, adequate and reasonable," within the meaning of Rule 23 and all applicable case law interpreting the rule.

2) Upon entry of this order and approval by the United States Department of Housing and Urban Development, HABC will take out one-day, half-page advertisements, with agreed-upon language, in the Afro-American, the City Paper and the Baltimore Sun, as well as send a letter, with agreed-upon language, to every current HABC resident and every past resident who moved out since September 28, 2012 and who provided a forwarding address, to notify each of the pending class settlement and the

procedures for participation. The costs incurred in complying with this paragraph shall be paid from and/or set off against the settlement fund as detailed in Exhibit 2.

3) There will be a class enrollment period of 60 (SIXTY) days after the class notice requirements are met. During this period, residents must apply in writing using the notice form attached as Exhibit 1 to be signed under oath and be interviewed, either in person or by telephone, by a "Class Administrator," whose decision regarding whether the applicant is in the class, and, if so, in what subclass, will be final.

4) As an appointee of the court for this task, the Class Administrator will share in the judicial immunity of the Court except as to any claims for payment by the named plaintiffs/Class Representatives. A third-party class administrator acceptable to all parties, which approval shall not be unreasonably withheld, shall be chosen for this task. The costs incurred in complying with this paragraph shall be paid from and/or set off against the settlement fund.

5) HABC will, upon request, promptly provide the Class Administrator with any information reasonably necessary to adjudicate the claims of potential class members, this may include, but is not limited to: 1) verification of the names and dates of employment of HABC employees; 2) verification of the names and dates of residence of HABC residents as well as the location to which the employee(s) were assigned; and 3) such other and further information as is reasonably required to resolve class claims or place class members in a subclass as described below. Such information will allow the Class Administrator to weigh the claims of any applicants properly against HABC records. To the extent the Class Administrator learns of wrongful behavior regarding any HABC employee, the Administrator will provide that information and supporting evidence to HABC so proper action may be taken by HABC to address the problem, including but not limited to taking action against the offending employee.

6) The public notices will advise HABC residents and former residents who were the victims of sexual harassment by HABC employees while HABC residents that they may be entitled to compensation and that they should apply, but the precise definitions of the subclasses will not be included

in the notices in order to mitigate any gamesmanship by applicants. The dates covered by the class (September 28, 2012 through the date of class certification) will also not be included in the notices for the same reasons.

7) Once application is made using a court-approved form signed under oath and personal interviews are conducted by the Class Administrator for the purpose of verifying claims, HABC residents or former residents who have experienced harassment during the period from September 28, 2012 through the date of class certification, or who experienced harassment before those dates, but whose repairs went unaddressed during any part of that time period as a result of their refusal to acquiesce to sexual demands, shall be placed, by the Class Administrator, into one of five sub-classes:

CLASS A: All persons who were/are residents of HABC public housing, were sexually harassed, through words, deeds *or* physical assault, by employee(s) of HABC, were at least initially refused repairs and/or services to their homes, and who acquiesced to the sexual demands of the employee(s), by deeds including, but not limited to: performing sexual acts and/or providing pictures of themselves for the sexual gratification of the employee(s).

CLASS B: All persons who were/are residents of HABC public housing, and who were sexually harassed, through words or deeds, *and* physically assaulted by employee(s) of HABC and were at least initially refused repairs and/or services to their homes, but did not acquiesce to any sexual demands.

CLASS C: All persons who were/are residents of HABC public housing, and who were sexually harassed, through words or deeds, *and* physically assaulted by employee(s) of HABC and who were not refused repairs and/or services to their homes and did not acquiesce to any sexual demands.

CLASS D: All persons who were/are residents of HABC public housing, were sexually harassed through words and/or deeds, but not physically assaulted by employee(s) of HABC, and who were refused repairs and/or services to their homes, but did not acquiesce to any sexual demands.

CLASS E: All persons who were/are residents of HABC public housing, were sexually harassed through words and/or deeds, but not physically assaulted by employee(s) of HABC and who were not refused repairs and/or services to their homes and did not acquiesce to any sexual demands.

Any class applicant appearing to fit into more than one category will be listed only once and in the category with the earliest letter in the alphabet. By way of example only, an applicant appearing to qualify for membership in both Class C and Class D will be assigned to Class C. Class applicants shall be entitled to counsel during the application process. Any fee to be paid to counsel assisting a class applicant in gaining admission to the class (other than the Class Counsel fee addressed below) shall be negotiated

and paid between the class applicant and his or her counsel. No such fees shall be due or owing from the Settlement Fund.

8) It shall not be necessary for the Plaintiffs/Class Representatives to apply for class membership. They are deemed members of the class and of the subclass reflected below:

CLASS A REPRESENTATIVES

NICOLE ANDREA SMITH
TAKIRA CARTER
MYRTLE GILBERT

CLASS B REPRESENTATIVES

CELESTE ENGLISH
AMY TOWSON
ONNADAY MCINTOSH-GRIGGS
TOWANDA PARKER
TRACEY HOLDEN
LYNETTE COOPER
LASONIA GILBERT
KHRYSTYNA KELLEY
SIERRIA WARREN

CLASS C REPRESENTATIVES

None

CLASS D REPRESENTATIVES

SARA GARRET
STEPHANIE HARRIS
SHANAE BARNES
DETRIA ADAMS
ROSENA PRINCE

CLASS E REPRESENTATIVES

JACQUELINE KIANA MORANT
SHANAE BOLES

9) After all successful class applicants are placed into one of the five classes above, a Rule 23 Fairness Hearing will be held by the Court, during which any objections to the settlement may be heard and a final fairness determination will be made. The Court will be authorized by the parties to exclude any objecting class members or applicants from the class settlement if such objections seriously threaten the viability of the class in the Court's determination.

10) If and when a final fairness determination as to the class settlement is made by the Court and subject to the approval of the United States Department of Housing and Urban Development (HUD), the defense will make a "Class Settlement Payment," in the amount reflected in Exhibit 2. The Class Settlement Payment will be the defendants' only obligation. The Class Settlement Payment will be a sum certain in order to allow the defense finality and certainty.

11) The Class Settlement Payment will be paid by or on behalf of HABC and Graziano into a trust account in exchange for the settlement terms reflected in Exhibit 3.

12) As a material term of this Settlement Agreement and Consent Order, plaintiffs' current counsel, Cary J. Hansel of Hansel Law, PC and Annie Hirsch of Hirsch and Cosca, PC, with the consent of all parties and counsel, are hereby appointed Class Counsel. Costs expended by class counsel and attorneys' fees to Class Counsel in the amount of 33.33%¹ of the total Class Settlement Payment before any other set-offs or deductions will be paid from the Class Settlement Payment to be divided equally between Hansel Law, PC and Hirsch and Cosca, PC. Said fee and costs in the total amount of 33.33% shall be paid within 14 (FOURTEEN) business days of the payment of the Class Settlement Payment into trust as reflected in Paragraph 11 above.

¹ The fee to Class Counsel represents a reduction in the 40% fees reflected in the retainer agreements each class representative signed. Class Counsel have further agreed to recover all costs advanced by Class Counsel from the 33.33% payment reflected above.

13) After payment of attorneys' fees and cost reimbursements as reflected above, each class representative² will receive an "Incentive Payment" of \$5,000 each from the Class Settlement Payment as compensation for their service as a class representative.³

14) After attorneys' fees, cost reimbursements, class administration costs as reflected herein, and the Incentive Payments are deducted from the Class Settlement Payment, the remainder will constitute the "Class Fund."

15) The Incentive Payment shall be in addition to, and shall not count against, the class representatives' share of the Class Fund as calculated pursuant to the procedure outlined below.

16) Within 30 (THIRTY) days after the later of the final fairness determination by the Court and HUD approval, the entire Class Fund will be distributed as follows: Class A members will each receive five times the amount received by Class E members; Class B members will each receive four times the amount received by Class E members; Class C members will each receive three times the

² In this case, the class representatives took great personal risk. Furthermore, these women had to publicly bare the intimate details of the sexual harassment and assaults they suffered for all, including significant others and family members. As such, they are well deserving of reasonable compensation and the other class members are very much in their debt. Further, allowing for Incentive Payments to class representatives serves the just social purpose of encouraging those who were wronged to come forward, even when it is painful and dangerous to do so.

³ Judges of the United States District Court for the District of Maryland have approved \$5,000 incentive payments for the named plaintiffs in a number of cases, including *McDaniels v. Westlake Services, LLC*, Civil Action No. ELH-11-1837 (settled 2014), *Gray v. Fountainhead Title*, Civil Action No. WMN 03-cv-01675 (D. Md.) (settled 2004), *Naughton v. Millennium Escrow and Title*, Civil Action No. WMN 02-cv-3238 (D. Md.) (settled 2003), and *Clark v. Amerix Mortgage*, Civil Action No. WMN 02-cv-2078 (D. Md.) (settled 2003), which were all common fund settlements like this one. This Court has also approved incentive payments similar to the one requested here for the Class Representatives in *Crowder v. Americredit Financial Services, Inc.*, Civil Action No. 1:06-cv-707-JFM (D. Md.) (settled July 2010) (approving \$5,000.00 incentive award to class representative); *Vega v. SunTrust Bank*, Civil Action No. 1:09-cv-2815-PWG (D. Md.) (settled February 2011) (approving \$6,000.00 incentive award to each class representative); *Muga v. Branch Banking and Trust Company*, Civil Action No. 1:10-cv-890-PWG (D. Md.) (settled August 2011) (approving \$7,500.00 incentive award to class representative); *Watts v. Capital One Auto Finance, Inc.*, Civil Action No. 1:07-cv-3477-CCB (D. Md.) (settled January 2010) (approving \$5,000.00 incentive award to class representative); and *Miller v. Prestige Financial Services, Inc.*, Civil Action No. 1:09-cv-1671-BEL (D. Md.) (settled November 2010) (approving \$6,000.00 incentive award to class representative).

amount received by Class E members; Class D members will each received two times the amount received by Class E members. In order to receive the applicable payment from the Class Fund, each class member will execute a release in the form of Exhibit 3, which shall release, acquit, and forever discharge the Housing Authority of Baltimore City and its affiliates, parent or subsidiary agencies, assigns, agents, servants, employees, officers, successors, insurers, underwriters, administrators, attorneys, Paul Graziano, Charles Coleman (aka Clinton Coleman), Michael Robertson *aka* Michael Robinson, Doug Hussey, (herein collectively referred to as "HABC" and/or "Defendants"), Housing Authority Insurance, Housing Authority Risk Retention Group, Inc., The City of Baltimore, Mayor and City Counsel of Baltimore and all other persons, firms, corporations, associations, or partnerships of and from any and all suits, claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, and compensation whatsoever of any kind, known or unknown, that the Class Member ever had, now has, or hereafter can, shall or may have against HABC and Defendants generally, arising out of, as a consequence of, resulting from, for, upon or by reason of, or relating in any way, to the facts, circumstances, claims, and occurrences alleged in the pleadings and papers filed in the above-referenced lawsuit entitled *Nicole Andrea Smith, et al. v. The City of Baltimore et al.*, or to the damages alleged to have resulted from the events referred to in the Complaint and Amended Complaints in that case. 17) By way of example only, if the Class Fund consisted of \$5,200,000 after fees and costs were deducted, and there were 80 class members, the following chart illustrates its proper distribution, assuming the number of class members reflected below for each class:

Class A	15 Members	\$100,000 per Member
Class B	25 Members	\$80,000 per Member
Class C	10 Members	\$60,000 per Member
Class D	25 Members	\$40,000 per Member
Class E	5	\$20,000 per Member

18) After full distribution of the entire Class Fund, the Class Administrator shall file with the court and serve on the parties a report reflecting: 1) a statement that the requirements and duties above have been discharged; 2) the number of applicants; 3) the number of class members accepted; 4) the

number in each class; 5) the total amount distributed in each class; and 6) the amount distributed to each member of each class. All other information shall be kept confidential by the Class Administrator to protect the privacy of applicants and class members. Upon submission of the final report, all records kept or maintained by the Class Administrator in fulfilling the duties related to the administration of the class shall be destroyed after a period of three months to protect the privacy of the parties and the confidentiality of any HABC information shared for verification purposes.

19) Except as to the parties, and required by law, rule of court or in order to comply with any provision herein, and to the greatest extent possible, all documents related to this settlement shall be kept confidential and, where applicable, sealed by the Court.

20) The defense affirmatively consents to all relief outlined herein, including the Incentive Payments, the appointment of plaintiffs' counsel as Class Counsel and attorneys' fees sought.

21) Exhibits 1, 2 and 3 are incorporated herein by reference as material terms of this Settlement Agreement and Consent Order.

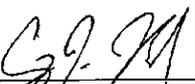
22) The Court orders that no payment received hereunder shall be considered in accessing a Class Member's eligibility for housing benefits including, but not limited to, eligibility for HABC's public housing and/or HABC's voucher administered (aka "Section 8") housing programs. No such payment shall be considered income or an asset for purposes of eligibility for housing benefits. Under no circumstances may such payments be considered for determining a Class Member's eligibility for housing benefits. Nevertheless, while the principal settlement sum received hereunder (be it an Incentive Payment or distribution from the Class Fund) shall not be included as income for purposes of accessing a Class Member's eligibility for housing benefits, any income earned from the investment of payments received hereunder which exceeds \$5,000.00 (FIVE THOUSAND DOLLARS), any capital gains returned on such funds which exceeds \$5,000.00 (FIVE THOUSAND DOLLARS) and any accumulated interest earned on such funds which exceeds \$5,000.00 (FIVE THOUSAND DOLLARS) may be considered in accessing a Class Member's eligibility for housing benefits to whatever extent existing law or regulations require it.

WHEREFORE, the above-named parties jointly agree to and respectfully move this Honorable Court to enter the terms above as a consent order.

AGREED AND RESPECTFULLY SUBMITTED,

FOR PLAINTIFFS:

HANSEL LAW, PC

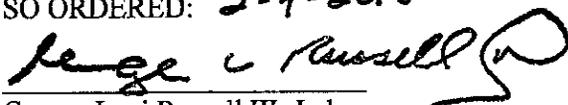

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FOR DEFENDANTS HABC AND GRAZIANO:

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SO ORDERED: 2-4-2016


George Levi Russell III, Judge,
United States District Court for
the District of Maryland