IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

QUEEN KING, ET. AL. Plaintiffs, v. CITY OF BLAKELY HOUSING AUTHORITY, ET. AL., Defendants.	1:00-CV-109-1(WLS)
UNITED STATES OF AMERICA, Plaintiff, v. CITY OF BLAKELY HOUSING AUTHORITY, ET. AL. Defendants,	1:02-CV-87-3 (WLS)

ORDER

Presently pending before this Court is the parties' proposed settlement agreement and consent order ("Settlement agreement") and stipulation thereto (Tabs 184, 185) of which the Court had previously granted the Plaintiffs' request for preliminary approval. (Tab 186). Before the Court is the decision for final approval of the parties' proposed settlement of all African-American persons residing in public housing owned and maintained by Defendant City of Blakely Housing Authority who were discriminated against concerning housing accommodations, based on their race from 1994 until at least 1998. Having conducted a fairness hearing and heard from the parties and objectors, the Court approves the proposed Consent Decree and certifies the settlement-only class for the reasons discussed below.

I. PROCEDURAL HISTORY

This case originally was filed on June 26, 2000, as a Fed.R.Civ.P. 23(b)(2) class action against Defendants City of Blakely Housing Authority ("BHA") and its executive director Dan Cooper. Plaintiffs' alleged that Defendants: (1) established, maintained, and perpetuated a racially-segregated and unequal system of low-income housing; (2) subjected African-American tenants of BHA to more onerous terms and conditions in the rental of housing because of their race; and, (3) retaliated against individual Plaintiffs for organizing and protesting the alleged discriminatory conduct. Plaintiffs' filed suit pursuant to the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988, 42 U.S.C. §§ 3601, *et. seq.*; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; the Georgia Fair Housing Law, O.C.G.A. §§ 8-3-200, *et. seq.*; the Thirteenth and Fourteenth Amendments to the United States Constitution; Article I, § 1, Part V of the Georgia Constitution; and 42 U.S.C. §§ 1982 and 1983.

On September 17, 2003, the Court certified the class pursuant to Fed.R.Civ.Pro. 23(b)(2) consisting of all past, present, and future African-American tenants and applicants of BHA, who were, are, or will be subjected to racial discrimination. Plaintiffs Queen King, Sharon Johnson and Evelyn Reed are the class representatives.

On June 10, 2002, the United States filed it complaint against Defendants to enforce the provisions of the Fair Housing Act ("FHA"), and Title VIII of the Civil Rights Act. Specifically, the United States alleged that Defendants: (1) refused to rent, refused to negotiate for the rental of, or otherwise make available apartments because of the race of the individuals; made statements with respect to the rental of apartments that indicated a preference for the race of the renter; and, (3) coerced, intimidated, threatened or interfered with renters in violation of their rights under the FHA.

Upon consolidation of the two cases for discovery and for trial, extensive discovery and resolution of certain dispositive motions the case was scheduled for a bench trial for the May

2004 Albany Trial Term. On May 6, 2004, the parties requested a continuance in order to pursue settlement of the case. (Tab 176). The case was continued from the May Term, and subsequent terms for the terms of the settlement to be reached and approved by the various parties. (Tab 176, 177, 180, 182). On September 17, 2004, the parties filed a motion for preliminary approval of the settlement agreement and a stipulation relating thereto. (Tabs 184, 185). The motion for preliminary approval also contained the actual settlement agreement. (Tab 184).

The Court granted preliminary approval of the proposed settlement agreement on September 30, 2004. In its order, the Court scheduled a "fairness hearing" and ordered parties to disseminate, according to the terms of the consent agreement, two forms of notice to the Class informing members of the proposed settlement agreement, the fairness hearing, and the private attorneys request for fees and costs incurred in litigating this action and obtaining the settlement agreement. None of the class members filed objections to the settlement or the request for fees and costs.

On January 26, 2005, a fairness hearing was held to afford parties, objectors and non-class members the opportunity to present evidence and be heard. At the hearing, no one appeared to object to the settlement. Further, the parties submitted evidence that the notices were properly disseminated to the class members and the public.

II. SETTLEMENT AGREEMENT TERMS

The proposed settlement agreement includes the following non-monetary relief, monetary relief and a sunset provision to the named Plaintiffs and perspective class members.

A. Non-Monetary Relief

With respect to non-monetary relief, BHA will implement certain policies, practices and procedures in a nondiscriminatory manner. First, BHA will be enjoined from refusing to rent a dwelling, or provide information related thereto, to persons based on their race. Second, BHA will be enjoined from discriminating against any person in the terms, conditions, privileges in

the rental or sale of a dwelling or in the provision of services related thereto, including harassment or intimidation, because of race. Third, BHA shall be enjoined from placing any notice, statement or advertisement with respect to rental or sale of a dwelling that discriminates on the basis of race. Fourth, BHA will be enjoined from threatening, coercing or intimidating individuals exercising any rights protected by the FHA.

In addition, the agreement calls on BHA to perform certain other affirmative acts. BHA shall comply with Paragraphs 6 through 14 with respect to renting dwellings to ensure compliance with the non-discrimination provisions of the FHA. Within one hundred and twenty (120) days of the entry of this order, BHA shall create and submit for approval to the United States and HUD written Uniform and Nondiscriminatory Procedures for renting apartments, handling inquiries, assigning units and transferring individuals to different units. Within fourteen (14) days of approval of the procedures by the United States and HUD, BHA shall implement the procedures. As further set out in detail in the settlement agreement, BHA shall maintain current and accurate lists of available apartments, a visitor's log, preference indicator, waiting list for each size apartment, a placement log, rental applications, and shall provide certain information to prospective applicants. BHA shall implement a training program, as set out in further detail in the agreement, for its employees. BHA shall provide employees and board members with copies of rules and procedures and a copy of this order and agreement. BHA shall also provide tenants with the same, along with certain other notices and other documentation. BHA shall also post in a conspicuous place certain HUD posters and forms within 30 days of this order. The settlement agreement also provides for additional testing, reporting requirements, inspections and other matters.

As a condition of settlement, Dan Cooper, BHA's Executive Director, shall resign within thirty (30) days of this order and have no contact with the operation of BHA. Within seven (7) days of Cooper's resignation, Plaintiffs shall, at their own costs, publish a notice in the Early County News informing the public of his resignation and the terms of the settlement

agreement between the parties.

B. Monetary Relief

BHA will pay to attorneys for Private Plaintiffs a sum of $190,000.00 within fourteen (14) days of this order or upon disbursement of the 2004 Capital Fund Program, whichever is later. (Para. 30).[1] This fund, along with the $12,500.00 received from Defendant Dan Cooper, will be dispersed to the individual plaintiffs and class members as set forth in Paragraph 30 of the settlement agreement.[2] All payments are contingent upon class representatives, individually and in their representative capacities, as set out in Paragraph 30(e) of the settlement agreement, signing a release of claims attached to the settlement agreement as Attachment C. Pursuant to the settlement between the Plaintiffs and Dan Cooper, Cooper shall pay, within ten (10) working days of this order, $12,500.00 to Private Plaintiffs' attorneys. The amount shall be added to the amount paid by BHA.

C. Agreement Between Private Plaintiffs And BHA

There is also a separate provision of terms between the Private Plaintiffs and BHA. Specifically, the agreement sets up a procedure BHA shall follow in selecting and hiring a new executive director for BHA. Further, the agreement provides that BHA shall conduct at least three seminars for tenants to explain their rights under the FHA. In addition, BHA shall forgive past due balances of former tenants who want to move back into BHA and, to the extent allowed by law, BHA shall expunge any negative information that might otherwise prevent the former tenants from being denied an apartment at BHA. The agreement provides the terms for BHA to handle late fees, application fees, maintenance fees, maintenance of the

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[1]. Though not discussed in Paragraph 30 of the agreement, BHA will pay Private Plaintiff's attorneys $50,000.00 as attorneys fees from the same Capital Fund Program as attorneys fees. (See, Para. 34(m). The total amount paid by Defendants to Private Plaintiffs and their attorneys is $252,500.00.

[2]. Essentially, the $252,000 settlement amount will be dispersed as follows: $197,500 to be dispersed to the various Plaintiffs as damage compensation; $5,000 to be paid as reimbursement for late fees; and $50,000.00 as attorneys fees.

facilities, security and tenant representation and meetings with the BHA Board of Commissioners. Lastly, the agreement provides for a sum of $50,000, in addition to the $190,000, to be paid by BHA to Private Plaintiffs' attorneys.[3]

D. Sunset Provision

The proposed settlement also has a sunset provision. The Court will retain jurisdiction for four years from the date of final approval to monitor parties' compliance with the settlement. At the end of the four years, the Court's jurisdiction will then automatically terminate without further proceedings.

III. LEGAL STANDARD FOR APPROVAL OF A CONSENT DECREE

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of consent decrees/settlement orders. The court must approve any settlement of the claims and issues of a certified class and it must further give reasonable notice to all class members who would be bound by the consent decree. Fed. R. Civ.P. 23(e)(1)(A),(B). However, Fed. R. Civ. P. 23(e) does not set forth standards for determining fairness of the settlement. Rather, the Court is guided by the established principle in this Circuit that voluntary settlement is the preferred means of resolving class-action discrimination actions. *See* Holmes v. Continental Can Co., 706 F.2d 1144, 1147 (11th Cir. 1983). In order to approve the proposed settlement agreement the Court has an independent duty to insure that the decree is "fair, adequate and reasonable." Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984)(*citing* Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977)).[4] As part of determining fairness, adequacy, and reasonableness, the Court must also insure that the proposed settlement agreement is not the product of collusion between the parties. *Id.* at 986 (*citing* Cotton v. Hinton, 559 F.2d at 1330).

a. The Settlement Agreement Is Fair, Adequate and Reasonable

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[3]. See, footnote 2, *supra*.

[4]. In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

This Court in deciding whether the settlement agreement is fair, adequate and reasonable will consider certain factors. Those factors are as follows: (1) the likelihood of success at trial and range of potential recovery; (2) the complexity, expense and duration of litigation; (3) the views of named Plaintiffs and class members; (4) the views of counsel for the parties; (5) the substance and amount of opposition to the consent decree; and (6) the stage of the proceedings at which the consent decree was achieved. Meyer v. Citizens and Southern Nat'l Bank, 677 F.Supp. 1196, 1201 (M.D. Ga. 1988).

i. The Likelihood of Success at Trial and Range of Potential Recovery

The benefit of the settlement agreement to the named Plaintiffs and class members should be compared with the likelihood of success at trial and potential recovery. At this stage of litigation, it can be fairly said, based on the evidence before the Court, that Plaintiffs had a very good likelihood of success on the merits. While the named Plaintiffs and class members faced many risks affecting the likelihood of a substantial monetary recover, the hurdles facing injunctive relief were less formidable. Even so, this settlement provides Plaintiffs with a substantial monetary settlement and nearly all of their requested injunctive relief. With respect to the recovery under the settlement agreement, named Plaintiffs and class members obtained a majority of the requests for relief specified in their complaint.

ii. The Complexity, Expense and Duration of Litigation

The class action itself would have taken substantially more time and money to litigate because of the complexity of the claims as alleged, statistical evidence and confrontational expert reports provided by both sides. A trial on the merits and any subsequent hearing as to recovery would involve contested evaluation of the evidence ultimately determined by the factfinder. The Court therefore concludes that a settlement is in the best interests of named Plaintiffs and class members since further litigation would be protracted, burdensome and costly, without the certainty of recovery.

iii. The Views of Named Plaintiffs and Class Members

In determining whether a settlement agreement is fair, adequate and reasonable, the Court must listen to and consider the views of the named Plaintiffs and class members. The silence of named Plaintiffs and class members may be, but is not always, indicative of class-wide support. Reynolds v. King, 790 F.Supp. 1101, 1109 (M.D. Ala. 1990). A court can properly interpret the absence of objections as support where most of the class is easily identifiable and has consistently expressed interest in the litigation. *Id.* The Court has not received any objections from the named Plaintiffs or class members. Moreover, the Court has no reason to believe that the proposed settlement agreement treats any named Plaintiff or class member unfairly and there appears to be no overt conflict between any named Plaintiff or class member. The great weight accorded majority opinion in this instance favors approving the settlement agreement.

iv. The Views of Counsel for the Parties

In class actions, Courts accord great weight to the recommendations of experienced counsel. Cotton v. Hinton, 559 F.2d at 1330. The Court "absent fraud, collusion, or the like, should hesitate to substitute its own judgment for that of counsel." *Id.* In the instant action, counsel for both parties recommend that the Court approve the propose settlement agreement. Counsel for both parties include exceptional attorneys experienced in class actions, discrimination cases and complex litigation. In deciding whether this proposed settlement agreement should be approved, the Court has given due consideration to the representations of counsel for both parties that the proposed settlement agreement is fair, adequate and reasonable.

v. The Substance and Amount of Opposition to the Consent Decree

In reviewing the fairness, adequacy and reasonableness of the consent decree, "the number of objectors is a factor to be considered but is not controlling." Cotton v. Hinton, 559 F.2d at 1331. None of the named Plaintiffs, class members or the public made objections at the fairness hearing. This factor does not militate against settlement.

vi. The Stage of Proceedings at Which the Settlement Was Achieved

The proposed settlement agreement was not achieved until both parties had engaged in comprehensive discovery, pursued dispositive motions and been scheduled for trial. All necessary parties were deposed and discovery was completed. The cases had been consolidated and the class certified. The Court therefore concludes that there has been a sufficient exchange of information between the parties to grant final approval of the proposed settlement agreement.

b. The Settlement Agreement Is Not A Product of Collusion

The Court must consider whether there is any evidence the proposed settlement agreement was the product of collusion to determine whether it was the result of arms-length bargaining between the parties. From the onset, this case has been highly adversarial and counsel for both parties have zealously advanced the interests of their respective parties. The parties engaged in genuine and extensive discovery. The settlement negotiations necessitated multiple extensions before all parties finally, and unanimously, agreed upon the terms of the proposed settlement agreement. At the fairness hearing, there were no objections to the settlement agreement. The Court finds that there is no evidence that there has been anything but good faith bargaining by all involved and concludes that the proposed settlement agreement was achieved as the result of intense, arms' length negotiation and without collusion.

IV. ATTORNEYS FEES, EXPENSES AND COSTS

Under Fed.R.Civ.P. 23(e), the Court must insure that the ultimate distribution of the attorneys' fees to Private Plaintiff's attorneys is reasonable to all named Plaintiffs and class members irrespective of the lack of opposition to the attorneys fee award. Typically, federal courts follow a practice of requiring a "prevailing party" to assume attorneys fees, expenses and costs in civil actions. Buckhannon Board and Care Home, Inc. v. W. Va. Dept. of Health and Human Res., 532 U.S. 598, 602 (2001). However, in civil rights cases, the Court may ordinarily award the "prevailing party" of a settlement reasonable attorneys fees as part of the

costs and expenses of the action. Hensley v. Eckerhart, 461 U.S. 424, 428 (1983).

In order to establish whether one is a "prevailing party" as required for an attorneys fees award under the civil rights statutes, the Court has to determine: (1) whether there is a change in the legal relationship between the parties; and (2) whether the actual relief in the settlement is material to legally merit an award of attorneys fees. *See* Buckhannon, 532 U.S. at 1840; Nat'l Coalition for Students with Disabilities v. Bush, 173 F.Supp.2d 1272, 1279 (N.D. Fla. 2001).

In the Eleventh Circuit, the first prong is satisfied where the Court either incorporates the terms of the parties' settlement into the final approval *or* expressly retains jurisdiction to enforce the settlement. American Disability Ass'n v. Chmielarz, 289 F.3d 1315, 1320 (11th Cir. 2002)(emphasis in original). Here, the parties' legal relationship has changed, for purposes of establishing the first prong of attaining "prevailing party" status, since the Defendant has voluntarily agreed to the terms of the settlement and the Court will retain oversight of compliance with the settlement after final approval. American Disability Ass'n v. Chmielarz, 289 F.3d at 1320-21; Nat'l Coalition for Students with Disabilities v. Bush, 173 F.Supp.2d at 1279.

The second prong is satisfied when "actual relief on the merits . . . materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." Farrar v. Hobby, 506 U.S. 103, 111-12 (1992). "'[T]he most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'" *Id.* at 114 (*quoting* Hensley v. Eckerhart, 461 U.S. at 436). The degree of success obtained in a settlement can be ascertained by comparing the relief awarded to the relief sought. Farrar v. Hobby, 506 U.S. at 114. In the instant action, the terms of the settlement between the parties grant virtually every request for relief short of Defendants' admission of liability. Specifically, named Plaintiffs and class members receive significant monetary relief as well as programmatic relief. Further litigation may not have provided the class with the successful

outcome Plaintiffs' were able to negotiate in the monetary and injunctive relief. Therefore, the Court is satisfied that the actual relief awarded the class materially alters the legal relationship between the parties to merit an award of attorneys fees.

Consequently, the Court concludes that the named Plaintiffs and class members are "prevailing parties." Private Plaintiff's attorneys are therefore entitled to attorneys fees as part of expenses and costs and the uncontested award of $50,000.00 is reasonable for the relief obtained.

VII. CONCLUSION

In sum, the Court finds that the settlement agreement which provides an aggregate total of compensation to Plaintiffs in the amount of $252,000.00 to be disbursed according to the terms of the agreement to be fair, equitable and in compliance with the relevant precedent. Further, the Court finds the injunctive and other equitable relief to be appropriate under the circumstances.

For the reasons stated above and pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, arguments of counsel, the record and the evidence presented at the fairness hearing on January 26, 2005, the Court hereby **ORDERS, ADJUDGES** and **DECREES** that the terms of the proposed settlement agreement, is fair, reasonable and adequate and is therefore finally and unconditionally **APPROVED** and **ADOPTED**. The proposed settlement order (Tab 184) by reference herein is adopted and made a part of this order. The Court **RETAINS** jurisdiction to enforce the terms of the proposed settlement agreement as herein approved and made final.

SO ORDERED, this 21st day of March, 2005.

W. LOUIS SANDS, CHIEF JUDGE
UNITED STATES DISTRICT COURT