

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 47

-----X
BRAD H., *et al.*,

Plaintiffs,

-against-

Index # 117882/99

DECISION

The CITY OF NEW YORK, *et al.*,
Defendants.

Present:
Hon. Geoffrey D. Wright

-----X Acting Justice Supreme Court

RECITATION, AS REQUIRED BY CPLR 2219(A), of the papers considered in the review of this Motion/Order for enforcement of a stipulation of settlement .

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed	1 _____
Answering Affidavits.....	2 _____
Replying Affidavits.....	3 _____
Other.....Memoranda.....	4,5 _____
Report of Compliance Monitors.....	6-14 _____

Upon the foregoing cited papers, the Decision/Order on this Motion to enforce the stipulation of settlement is as follows:

The Plaintiffs, class members with mental illness incarcerated in New York City jails (Class Members) move for an Order to Enforce the Stipulation of Settlement (Settlement), dated August 12, 2011. The Settlement directed Defendants, the New York City Department of Mental Health and Hygiene, Department of Correction, Human Resources Administration, Department of Homeless Services and Health and Hospitals Corporation (City) to comply with their obligations under the Settlement. The Settlement which was the result of extensive court proceedings contains provisions that, inter alia, require that The City to offer the Class Members services during incarceration and specific discharge planning. In essence, the Class Members

presently seek an Order extending the term of the Settlement, as well as enforcement of certain presently less than compliant aspects of the Settlement.

This action is brought by inmates *Brad H.*, Class Members, with mental illness in the custody of New York City Jails, certified as a class on August 8, 2000. Individuals receiving mental health treatment while incarcerated in New York City jails are entitled to discharge planning pursuant to a preliminary injunction issued in this matter on July 9, 2000, and the court-approved (Stipulation of) Settlement dated January 8, 2003. Amongst other provisions, the Settlement requires the City first to properly assess each Class Member's needs for post-discharge mental health treatment and other services, and then to provide each Class Member with an individualized, appropriate discharge plan that takes into account the nature and severity of the Class Member's mental health diagnosis; the Class Member's treatment, public benefits, housing and case management needs; and other factors that may affect the likelihood that the Class Member will receive continuing treatment after his or her release from jail. The City's compliance with the terms of the Settlement is monitored by Class Members' legal Counsel and two court appointed Compliance Monitors, who report to the Court on a regular basis. The Class Members argue that from the date the Settlement went into effect in 2003 the City has failed to achieve compliance per the Settlement obligations.

Specifically, the Class Members argue that at the time the Settlement was due to expire in late 2009, the City was still failing to meet the two most fundamental obligations under the Settlement: (1) to properly assess Class Member's discharge needs, including their Serious and Persistent Mental Illness ("SPMI") status; and (2) to provide Class Members with appropriate individualized discharge plans, including individualized referrals to and appointments with

community care providers, appropriate case management referrals, and appropriate assistance in obtaining supportive housing. The Class Members also argue there were significant flaws in the data the City used to report on their compliance with the Settlement.

As a result of these claims, the Class Members moved by order to show cause for a temporary restraining order and a preliminary injunction requiring the City to continue to abide by the Settlement's terms pending resolution of the Class Members' motion for enforcement pursuant to paragraph 193 of the Settlement. The City argued that the Settlement had expired before the Class Members filed their motion and that the Settlement's expiration deprived the Court of jurisdiction to entertain the motion. The issue was eventually heard by the Court of Appeals, which on June 28, 2011, concluded that the Class Members' motion was timely and the trial court did not lack jurisdiction.

Following the Court of Appeal's decision, the Class Members filed a motion reinstating their 2009 enforcement motion in which they renewed their prior claims that the City was in non-compliance with the Settlement. Additionally, the Class Members requested a two-year extension of the Settlement on the basis of the City's non-compliance with their obligations under the Settlement, and in particular, directing the City to change those policies and practices that, in light of experience, were contributing to their failure to comply.

The motion that is now before this Court seeks to enforce the provisions in the Settlement that was the result of extensive litigation and negotiations. The Class Members argue that not only has the City not been in compliance, its compliance has actually decreased during the time the motion was pending. The Class Members cite several performance indicators and performance thresholds established through the Settlement.

In response, the City's opposition consists of a less than forceful dispute as to the facts, as well as legal argument as to the limitation of Judicial authority to insert itself into issues concerning Executive decisions (i.e., distribution of executive, legislative and judiciary powers). However, I am restricting my authority in that I am merely seeking to enforce the Settlement. I am not directing either party as to the decisions to be made to make it so.

The City further argues that the Class Members' requested relief is barred by New York City's (NYC) Outsourcing Accountability Act and Memorandum of Economic Agreement with District Counsel 37. The Act requires all city agencies to conduct comparative cost-benefit analysis and comply with certain procedures prior to privatizing NYC services provided for by NYC employees. Similarly, the NYC's Memorandum of Economic Agreement requires NYC to engage the Union in discussion about a proposed privatization, gives the Union the opportunity to submit its own proposal, and requires the formation of a study committee with respect to the proposed action. Once, I again I am only interjecting the ends, not the means of compliance.

The vast majority of the Settlement imposed obligations can be performed only while the Class Member is incarcerated. Rather than have clinicians complete certain non-medical, clerical tasks, the City has implemented a system whereby the most appropriate use of its resources and, seemingly, best means of delivering clinical and non-clinical discharge planning services to inmates is to separate these functions. Once again I want things to change. The how remains within the City's province.

Consequently, this Court finds itself in a quandary. The City agreed and entered into a binding Stipulation with the Class Members which by their own admission it has been less than fully successful at satisfying the terms and conditions set forth in the Settlement. Usually, when

it ain't broke don't fix it, but when, as here, it appears in need of repair, a little fixing won't hurt. Despite presumed best efforts by the City, some assistance/guidance is in order at this juncture. Given the nature of the problem, the quality of life afforded the unfortunate needy, time is of the essence, and the best interests of those in need is at the forefront. Though fiscal, temporal and personnel realities have at times a somewhat stifling effect on satisfying those needs, such should not be sanctioned by inactivity and abjection. Nothing in the relief I am granting obligates the Court to embroil itself in the administrative details of the City's mental health care and discharge planning systems. Rather, the City will continue to have the managerial discretion to determine the means of complying with the Settlement. I am merely setting forth the ends. Now that we know the problems, the question remains what do we do about it? I am granting the instant motion to the extent of : (1) extending, without opposition, the Stipulation for another two years; (2) directing the implementation of changes necessary so as to fully staff the clinical and non-clinical positions; (3) directing the implementation of changes necessary to eliminate the dichotomy between clinical mental health providers and discharge planning service providers; and (4) directing the implementation of a more useful assurance system. The motion is denied in all other respects.

Accordingly, it is hereby ORDERED,
that as of, and from, the date of this Order, the Stipulation is prospectively extended for an additional two years;

it is further ORDERED,
that the Defendants make the necessary administrative changes to fully staff all clinical and non-clinical discharge positions;

it is further ORDERED,
that the Defendants implement an improved, transparent quality assurance system more capable
of identifying, reporting on, and ultimately reducing the complained of error rate of Defendants'
data reporting;

it is further ORDERED,
that the Defendants comply with each of the performance goals set by the Compliance Monitors ;

it is further ORDERED,
that the Defendants comply with each and every one of their obligations under the Settlement,
including; and

it is further ORDERED,
that the Defendants reorganize the provision of discharge planning services to eliminate the
fragmented dichotomy between clinical and discharge planning positions.

This constitutes the decision and order of the court.

Dated:


GEOFFREY D. WRIGHT
A ISC

JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court