

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FAIR HOUSING JUSTICE CENTER, INC.,
WESTCHESTER RESIDENTIAL
OPPORTUNITIES, INC.,

Plaintiffs,

v.

TOWN OF BEDFORD, BLUE MOUNTAIN
HOUSING DEVELOPMENT CORP.,

Defendants.

No. 17 Civ. 05664 (KMK)(PED)

**SO ORDERED STIPULATION OF
SETTLEMENT**

WHEREAS, on July 26, 2017, plaintiffs Fair Housing Justice Center, Inc. (“FHJC”) and Westchester Residential Opportunities, Inc. (“WRO”) (collectively “Plaintiffs”) filed a complaint which alleged claims against defendants Town of Bedford (“Town”) and Blue Mountain Housing Development Corporation, Inc. (“Blue Mountain”) (collectively “Defendants”) (all together, the “Parties”) for discrimination on the basis of race in the administration of the Town’s “middle-income” affordable housing program in violation of the Fair Housing Act, 42 U.S.C. § 3604 (“Complaint”);

WHEREAS, Defendants deny the allegations in the Complaint and deny any wrongdoing and takes the position that this So Order Stipulation of Settlement, nor anything contained therein, shall constitute or be construed to constitute an admission of liability by the Defendants with respect to any of the Plaintiffs’ claims or allegations, or an acknowledgement that there is any merit to such claims or allegations, or an acknowledgement that there is any merit to such claims or allegations, or any admission that the Defendants have not complied with any applicable statute, all of which the

Defendants continue to dispute;

WHEREAS, Defendants further assert that they have taken actions to comply with the requirements of the Fair Housing Act and promote fair and affordable housing in the Town of Bedford;

WHEREAS, the Parties have a mutual desire to settle the case and avoid protracted litigation and unnecessary expenses;

NOW, THEREFORE, the Parties stipulate and agree that all claims shall be settled, released, and dismissed with prejudice subject to the terms and conditions of this So Ordered Stipulation of Settlement Agreement (the “Agreement”), as follows:

A. TERM AND SCOPE OF AGREEMENT

1. The effective date of this Agreement shall be the date the Court so-orders this Agreement (“Effective Date”).

2. This Agreement shall remain in effect for three (3) years after the Town amends the Town Code, as provided for in Paragraph 5, unless stated otherwise.

3. This Agreement shall be binding on Defendants and all their elected, appointed, and/or volunteer officials, employees, and agents.

4. The United States District Court for the Southern District of New York will retain jurisdiction to enforce the Agreement upon the filing of an appropriate motion. Upon a finding of good cause shown, the Court may grant such relief as it deems just and proper, including but not limited to: extending the length of the terms of the Agreement, modifying the Agreement (*e.g.* to require additional training or monitoring), and/or imposing other legal remedies.

B. AMENDMENTS TO THE TOWN CODE

5. Within one hundred and eighty (180) days of the Effective Date, the Town will amend Chapter 125 of the Town Code, in the form substantially similar to that contained in Exhibit “A”, to:

- a. Repeal and remove the residency and work preferences currently a part of § 125-56(E). Defendants shall not use work or residency preferences in the middle-income housing program or in any other housing program for fifteen (15) years from the Effective Date.
- b. Establish a neutral, non-discriminatory system to sell and rent all middle-income housing units going forward (*e.g.* a lottery, based on income, or some other procedure acceptable to Plaintiffs).
- c. Revise the definition of “Middle-Income Family” currently a part of § 125-3 to provide that a middle-income family is a household whose aggregate annual income does not exceed 80% of the Westchester County Area Median Income (“AMI”) to be eligible to rent a middle-income housing unit or 110% of the Westchester County AMI to be eligible to purchase a middle-income housing unit.
- d. Notwithstanding the foregoing requirement in Section 5(c) above, rental of any middle-income housing units existing in the Town of Bedford as of the Effective Date of this Agreement shall be grandfathered at 100% of Town of Bedford median income based on the average of the last three years.
- e. Add a section that provides the following incentives for the creation of middle-income housing units:

- i. Planning Board Assistance: When a proposed residential subdivision contains 20% or more middle-income housing units, the Planning Board may:
 1. Consider such other forms of financial or other assistance which may be under the control of the Town or Blue Mountain;
 2. Actively assist in obtaining financial or other assistance from federal, state or other public agencies in support of affordable housing development;
 3. Allow the reduction of dimensional requirements by not more than 25% and an allowance for shared parking so as to reduce infrastructure costs.
- ii. Expedited Project Review Process:
 1. Pre-application meeting. The applicant for a development including middle-income units shall be entitled to attend at least one pre-application meeting at which representatives will be in attendance from each Town agency and staff member expected to play a role in the review and approval of the development application and construction. The purpose of the pre-application meeting will be to expedite the development application review process through:
 - a. The early identification of issues, concerns, code compliance, and coordination matters that may arise during the review and approval process.

- b. The establishment of a comprehensive review process outline, proposed meeting schedule, and conceptual timeline.
 2. Meeting schedule and timeline. Town agencies and staff shall endeavor to honor the proposed meeting schedule and conceptual timeline established as an outcome of the pre-application meeting to the greatest extent possible during the review and approval process, subject to the demonstrated cooperation of the applicant to adhere to same. Should the approval process extend beyond one year, an applicant for a development including middle-income housing units shall be entitled to at least one additional meeting per year with the same departments, agencies, authorities, boards, commissions, councils, or committees to review any and all items discussed at previous pre-application meetings.
 3. Calendar/agenda priority. Town agencies with review or approval authority over applications for developments including middle-income housing units shall give priority to such applications by placing applications for all developments including middle-income housing units first on all meeting and work session calendars and agendas and, when feasible based on the ability to conduct required reviews and public notice, with the intent of shortening minimum advance submission deadlines to the extent practicable.
- iii. Reductions in Development Fees: The Town will waive, for developers proposing to create middle-income or affordable housing in

the Town, thirty (30%) of the following categories of fees incurred or payments received by the Town that would otherwise be charged to such developers:

1. Building Permit application fees;
2. Planning Department application fees;
3. Recreation Fees based on percentage of middle-income housing units to be developed;
4. Advertising expenses;
5. Legal Fees; and
6. Engineering Fees.

C. CHANGES TO THE MIDDLE-INCOME HOUSING PROGRAM

6. Within thirty (30) days of the Effective Date, Defendants will retain Housing Action Council to act in conjunction with the Town of Bedford Town Housing Agency, to administer the middle-income housing program during the term of this Agreement. Administration shall include development and implementation of the fair housing marketing plan for middle-income housing and reviewing applications for sales of middle-income housing to determine whether applicants meet the requirements for middle-income housing in the Town of Bedford.

7. In the event Housing Action Council is no longer willing or able to participate in the administration of the middle-income housing program in conjunction with the Town of Bedford Town Housing Agency, Defendants shall promptly retain a new entity with experience in the marketing, sale, and rental of affordable/middle-income

housing that is acceptable to Plaintiffs to perform such duties.

8. Within one hundred and twenty (120) days of the Effective Date, Defendants, either directly or through Housing Action Council, will:
 - a. Eliminate the existing waitlists for middle-income housing.
 - b. Mail a letter to all persons on the existing waitlists advising them that the waitlist is being eliminated, describing the neutral, non-discriminatory system that will be used to sell and rent all middle-income housing units going forward, and offering the opportunity to such persons to provide their names and addresses to be notified of future opportunities to apply for middle-income housing. No preference will be given to future applications submitted by persons who are on existing waiting lists.
 - c. Revise the Town's application form(s) for affordable and middle-income housing to remove any reference to residency or work preferences and to include the phrase "Equal Housing Opportunity" and the HUD fair housing logo. The Town may use a short initial application and longer full application form. The Town may make its application forms available online to be completed on-line, as long as the Town also provides an opportunity for applicants to obtain and complete a paper copy.
 - d. Modify all restrictive covenants for existing middle-income housing units and similarly restricted units at Woodcrest Condominiums to eliminate residency and work preferences.

9. Within one hundred and twenty (120) days of the Effective Date, Defendants will

develop and implement an affirmative marketing plan for the sale and rental of existing middle-income housing. The plan shall include how the marketing and rental of apartments at Garden Homes and Bedford Lakes Apartments will be conducted in a manner consistent with the requirements and goals of this Agreement. The plan must be designed to reach income-qualified Westchester County and New York City residents in a manner that targets those least likely to apply, including but not limited to the employees of the Bedford Hills Correctional Facility. The plan must include the elements listed in Exhibit "B" attached hereto.

10. Following the effective date of this Agreement, the Town will require developers of future middle-income housing units to develop and implement an affirmative marketing plan, or retain the services of a qualified entity to develop and act as administrator for the affirmative marketing plan, which affirmative marketing plan shall be designed to reach income-qualified Westchester County and New York City residents in a manner that targets those least likely to apply, including but not limited to the employees of the Bedford Hills Correctional Facility. Require such developers to provide the Town with a copy of the affirmative marketing plan and, upon request, records showing how the developer implemented the plan.

11. These affirmative marketing requirements described in this Paragraph shall remain in effect for at least fifteen (15) years after the Effective Date.

12. Within thirty (30) days of the Effective Date, Defendants will modify the Blue Mountain Housing Lending Programs to include the incentives for the development of middle-income housing that are set forth in Exhibit "C". These modifications will

remain in place for at least fifteen (15) years after the Effective Date, during which time they will be featured on Defendants' websites, in Blue Mountain's annual reports, and in any other materials produced by Defendants that describe these or similar incentives for developers.

13. Within thirty (30) days of the Effective Date, Defendants will make the Bedford Housing Trust Fund available for affordable and middle-income housing developments for at least fifteen (15) years after the Effective Date, during which time this option will be featured on Defendants' websites, in Blue Mountain's annual reports, and in any other materials produced by Defendants that describe this or similar incentives for developers.

14. Defendants support, and will continue to support, qualified applications for third-party subsidies made by developers interested in building affordable or middle-income housing in the Town.

D. OUTREACH AND TRAINING

15. Within thirty (30) days after amendment of the Town Code, as described in Paragraph 5 above, Defendants will publicize the revisions to the Town Code and incentives for middle-income development required by Sections B and C of this Agreement, including to prospective middle-income housing developers, homebuyers, and renters, including employees at Bedford Hills Correctional Facility. This will include, but not be limited to, sending a letter to prospective non-profit and for-profit housing developers operating in Westchester County. The letter will also be sent to non-profit organizations who assist or work with prospective middle-income homebuyers and renters residing in Westchester County and New York City, including those who provide

first-time homebuyer seminars and programs, including but not limited to the organizations listed in Exhibit “D”.

16. Within one hundred and eighty (180) days of the Effective Date, the members of the Blue Mountain Board, members of the Town Board, Town Supervisor, Director of Planning, Town Clerk, Deputy Town Clerk, and all Housing Action Council employees and any other of Defendants’ officials and agents who are involved in the implementation of the terms of this Agreement will attend one of two fair housing training sessions provided by WRO. The costs of these training sessions are included in the monetary relief provided for in Section E of this Agreement.

17. Within one hundred and eighty (180) days of the Effective Date, Defendants will also coordinate and schedule a fair housing training session provided by WRO for the employees of the owner of the Bedford Lakes Apartments. The training will be provided for those employees involved in advertising, showing, and renting the middle-income housing units and those who review and/or approve rental applications, at Bedford Lakes Apartments. The cost of this training session is included in the monetary relief provided for in Paragraph 18 of this Agreement.

18. Defendants agree that they will retain WRO to provide fair housing training(s) for the developer(s) and/or owner(s) of any new middle-income housing for whom the Town grants site plan approval during the term of the Agreement. Defendants shall pay WRO for any such additional training session(s) at a rate of \$1,500.00 per session.

E. MONETARY RELIEF AND RELEASES

19. Within fifteen (15) days after the Effective Date, Defendants shall cause to

be delivered to the offices of Plaintiffs' counsel, at 600 Fifth Avenue, 10th Floor, New York, New York 10020, a check for the sum of one hundred and sixty-five thousand (\$165,000.00) dollars, or two (2) separate checks in the amounts of eighty-two thousand (\$82,500.00) dollars payable to "Emery Celli Brinckerhoff & Abady, LLP, as attorneys for Fair Housing Justice Center, Inc. and Westchester Residential Opportunities, Inc."

20. Contemporaneously with delivery of the check described in the preceding paragraph, Defendants shall cause to be delivered to Plaintiffs' counsel a Stipulation and Order for Dismissal signed by Defendants' counsel in the form attached as Exhibit "E".

21. Plaintiffs shall file the Stipulation and Order of Dismissal with the Court to dismiss the case within ten (10) days after Defendants have made the above payment.

22. The Parties mutually release, acquit, and forever discharge each other from any and all claims, demands, causes of action, or liabilities, at law or in equity, arising out of the allegations in the Complaint and existing as of the Effective Date of this Agreement.

23. Nothing in this section shall preclude Plaintiffs from seeking to enforce the terms of this Agreement.

F. OTHER TERMS AND CONDITIONS OF THIS AGREEMENT

24. **Record Retention and Reporting.** During the term of this Agreement, Defendants shall maintain appropriate written records of all activities and efforts they undertake in order to comply with this Agreement. No more than one time per year, WRO shall be entitled to inspect and copy such records, on reasonable written notice to Defendants and with any copying costs borne by Defendants. In addition, Defendants shall provide prompt notice to WRO, by email to WRO, of:

- a. The amendments of the Town Code required in Paragraph 5 of this Agreement;
- b. The new application form(s) for middle-income and affordable housing required in Paragraph 8(c) of this Agreement;
- c. The new affirmative marketing plan required in Paragraph 9 of this Agreement;
- d. The letter mailed to potential developers and organizations of the changes to the Town Code and incentives for middle-income development as required in Paragraph 15 of this Agreement, along with a list of the names and addresses to whom the Town mailed the letter; and
- e. Any applications received by Defendants for the development of new middle-income housing units.

25. **Jointly Drafted.** This Agreement shall be deemed to have been jointly drafted by the Parties, and no provision herein will be interpreted or construed for or against any party because such party drafted or requested such provision or this Agreement as a whole.

26. **Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of New York. Any action to enforce, challenge, or modify the provisions of this Agreement shall be filed exclusively in the Southern District of New York.

27. **Entire Agreement.** This Agreement shall constitute the entire agreement among the Parties and supersedes and replaces all prior negotiations, proposed agreements, and Agreements, whether written or unwritten. This Agreement may only be

modified in writing executed by all Parties.

28. **Binding Effect of Agreement.** The provisions, terms and conditions of this Agreement shall, when so-ordered by the Court, be binding by and between Plaintiffs and the Defendants, their successors and assigns.

29. **Enforceability.** If any provision in this Agreement is declared invalid or unenforceable by a court having competent jurisdiction, it is mutually agreed that this Agreement will endure except for the part declared invalid or unenforceable by order of such court, unless the elimination of the invalid provision will materially affect the intent of the Agreement. The Parties will consult and use their best efforts to agree upon a valid and enforceable provision that will be a reasonable substitute for such invalid or unenforceable provision in light of the intent of this Agreement.

30. **Disputes and Modifications of Agreement.** The Parties shall endeavor in good faith to informally resolve any differences regarding compliance and interpretation of this Agreement prior to filing a motion with the Court to enforce or modify the Agreement. The Parties, by written agreement, may modify the deadlines set forth above without further order of the Court.

31. **Notice.** All notices under this Agreement shall be sent to the following:

Plaintiffs

Westchester Residential Opportunities, Inc.
Attn: Marlene Zarfes
470 Mamaroneck Avenue, Suite 410
White Plains, New York 10605
mzarfes@wroinc.org

Fair Housing Justice Center, Inc.
Attn: Fred Freiberg
30-30 Northern Blvd #302
Long Island City, NY 11101
ffreiberg@fairhousingjustice.org

Defendants

Town of Bedford Supervisor
Bedford Town House
321 Bedford Road
Bedford Hills, NY 10507
supervisor@bedfordny.gov

Blue Mountain Housing.
Attn: Chairperson
321 Bedford Road
Bedford Hills, NY 10507

With A Copy To:
Keane & Beane, P.C.
Attn.: Eric L. Gordon, Esq.
445 Hamilton Avenue, 15th Floor
White Plains, NY 10601
egordon@kblaw.com

32. **Signatures.** This Agreement may be executed in any number of counterparts and each such counterpart will be deemed to be an original. A signature transmitted by email or fax will be treated as an original and have the same binding legal effect as an original signature.

AGREED TO BY THE PARTIES:

Dated: White Plains, New York
June __, 2018

Dated: New York, New York
June __, 2018

KEANE & BEANE P.C.

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: _____
Eric Gordon

445 Hamilton Avenue, Suite 1500
White Plains, NY 10601
(914) 946-4777

Attorneys for Defendants

By: _____
Diane L. Houk
Zoe Salzman

600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiffs

SO ORDERED:

Hon. Kenneth M. Karas, U.S.D.J.

Date