

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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No. 06-cv-6473 (SAS)

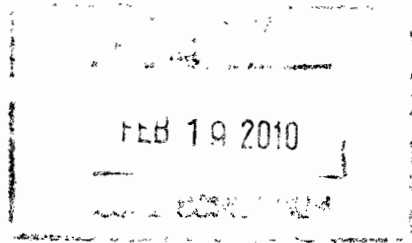
DANIEL FLORIO, individually and on behalf of all
others similarly situated,

**STIPULATION OF
SETTLEMENT**

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK and JEANETTE
SADIK-KAHN, Commissioner of the New York City
Department of Transportation,



Defendants.

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THIS STIPULATION OF SETTLEMENT (“Stipulation”), dated this 19th day of February 2010, is entered into between the parties to the above-captioned action: Plaintiff, DANIEL FLORIO (“Florio”), and Defendant, THE CITY OF NEW YORK (“the City”), and Defendant JEANETTE SADIK-KAHN, current Commissioner of the New York City Department of Transportation (“DOT”) (collectively “Defendants”) (collectively with Florio referred to herein as “the Parties”).

WHEREAS, the City is a municipal corporation organized under the laws of the State of New York; and

WHEREAS, the Defendant Jeanette Sadik-Kahn, is the current Commissioner of the DOT; and

WHEREAS, Section 1642(a) of the New York State Vehicle and Traffic Law provides that the City of New York, may by local law, ordinance, order, rule or regulation, prohibit, restrict or regulate traffic including the regulation of parking, standing, stopping or backing of vehicles; and

WHEREAS, since prior to 1972, the City has been issuing permits that provide special parking privileges to any City residents with a disability that seriously impairs mobility; and

WHEREAS, Section 2903(a)(15)(a) of the New York City Charter currently provides, in relevant part, that the DOT is authorized to issue a special vehicle parking permit (“Special Vehicle Permit”) to a New York city resident who requires the use of a private automobile for transportation and to a non-resident who requires the use of a private automobile for transportation to a school in which such applicant is enrolled full-time or to a place of full-time employment, when such person has been certified by the department of health and mental hygiene [. . .] in accordance with standards and guidelines prescribed by [DOT] or the department of health and mental hygiene, as having a permanent disability seriously impairing mobility; and

WHEREAS, on or about August 25, 2006, an action was instituted against the City in the United States District Court, Southern District of New York, docketed as 06 CV 6473 (SAS) (“the Action”); and

WHEREAS, on or about December 7, 2007, in an Amended Complaint, Plaintiff Florio was substituted as Plaintiff in the Action, and on or about April 2, 2008 a Second Amended Complaint (“the Complaint”) was filed by Florio in the Action; and

WHEREAS, in the Complaint Florio alleges that he has a permanent disability seriously impairing mobility that is encompassed within the standards and guidelines for a qualifying disability seriously impairing mobility under Section 2903(a)(15)(a) of the New York City Charter and Title 24, Chapter 16 of the Rules of the City of New York; and

WHEREAS, in the Complaint Florio alleges that he is a resident of New Jersey, and that he is an individual who is disabled within the meaning of the Americans with Disabilities Act, 42 U.S.C. § 12132, et seq. (the “ADA”), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (the “Rehabilitation Act”), and the laws of the State of New York; that he does not work in or attend school in New York City; and that he previously has applied for and received New Jersey disability parking plates; and

WHEREAS, in the Complaint Florio alleges that the sole reason that he is not eligible for the City disability Special Vehicle Permit for parking is because he does not live in, or work or attend school full-time in the City; and

WHEREAS, in the Complaint Florio alleges that as a result of his disability he seeks an accommodation from the City to permit him accessibility to the City’s professional, cultural, educational, commercial and health care offerings, among other things; and

WHEREAS, by way of the Action, Florio seeks declaratory and injunctive relief and damages against Defendants for, *inter alia*, alleged violations of Title II of the ADA and certain of its implementing regulations, and the Rehabilitation Act related to the City’s parking rules and practices for persons who have qualifying disabilities; and

WHEREAS, the Parties are interested in expeditiously resolving the Action, thereby avoiding further costs and litigation; and

WHEREAS, Florio and Defendants each agree that settlement of this action under the terms and conditions set forth herein is in the Parties’ respective best interests, and in the best interests of the residents of the City, and non-residents of and visitors to the City, whose interests Defendants and Florio, respectively, have considered in connection with settlement; and

WHEREAS, counsel for Florio has advised counsel for Defendants that he has conducted an investigation of the ethical right of Florio and his counsel to agree to an individual settlement under the terms described herein, and has further advised Defendants' counsel based on the results of his investigation, including the informal airing of the relevant facts with the Ethics Hotline of the New York City Bar Association, that Florio's counsel has concluded that he and Florio can recommend approval of the settlement on an individual basis under the terms described herein, and in particular (i) the fact that a class has not yet been certified, and that a settlement under the terms described herein achieves the most substantial part of the relief sought in the action; (ii) the fact that no releases will be issued by or on behalf of any putative class members; (iii) the fact that notice will be disseminated by the Parties describing the change in the Special Vehicle Permit program and the rights of all newly eligible mobility-disabled individuals under the terms of the settlement; and (iv) the fact that the settlement will be subject to the entry of a judgment after approval by the District Court and the continuing jurisdiction of that court under the terms described herein.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys of record for the respective Parties herein, that this Action is settled as follows:

STATEMENT OF PURPOSE

1. The Federal government, in enacting the ADA provided, in part, that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity." 42 U.S.C. § 12132.

2. Defendants are committed to providing appropriate accommodations to persons with disabilities in the City in a manner that comports with the ADA and other federal and state laws, and regulations, and which does not result in an undue burden to the City, its residents or its visitors.

3. The DOT is committed to implementing its parking regulations in a manner consistent with the current interpretations of the ADA and other federal and state laws, and regulations pertaining to persons with disabilities.

DEFINITIONS

For the purposes of this Stipulation, the following definitions shall apply:

4. New York City ***“Special Vehicle Permit.”*** A permit issued by the New York City Department of Transportation which allows a vehicle bearing such a permit to be parked in such a manner that it is deemed not in violation of any of the provisions of the rules and regulations governing parking in the city except as provided in the laws and rules of the City. These laws and rules are currently found in New York City Charter Section 2903, and 34 RCNY § 4-08(o).

5. New York City ***“Special Vehicle Permit for Persons with Disabilities”***. A Special Vehicle Permit for parking issued for a person with a permanent disability that seriously impairs mobility as defined in Section 2903(a)(15)(a) of the New York City Charter and Title 24, Chapter 16 of the Rules of the City of New York .

6. **“Effective Date”** of Stipulation of Settlement. After the Parties have fully executed this Stipulation, the Parties shall present the Stipulation to the Court. This Stipulation shall become effective thirty (30) days after the Court has “So-Ordered” the Stipulation.

SPECIAL VEHICLE PARKING PERMITS FOR PERSONS WITH DISABILITIES

7. Within thirty (30) days of the Effective Date of the Stipulation, Defendants shall commence and continue to issue Special Vehicle Permits for Persons with Disabilities to all qualified applicants, without regard to the residency, or the employment or school attendance of the applicant in the City, in a manner consistent with New York City Charter §2903(a)(15)(a), and the regulations promulgated thereunder. All other requirements for eligibility for Special Vehicle Permits for Persons with Disabilities shall be the same as are required for residents of the City or those employed or attending school full-time in the City, including all requirements for medical examinations. (The eligibility requirements currently include the New York City Department of Health and Mental Hygiene (“DOHMH”) standards that are currently set forth in Title 24, Chapter 16 of the Rules of the City of New York.)

8. Within ninety (90) days of the Effective Date of the Stipulation, DOT shall modify the information contained in its official website and any printed materials within its control concerning eligibility for Special Vehicle Permits for Persons with Disabilities, to conform with the changes to the residency requirements for such permits contained in this Stipulation. Additionally, the Defendants agree to notify the New York State Department of Motor Vehicles (“DMV”) and request that the DMV modify the information contained in its official website and any printed materials concerning eligibility for Special Vehicle Permits for Persons with Disabilities, to conform with the changes to the residency requirements for such permits contained in this Stipulation. In the event that DOT distributes written materials issued by the State of New York which incorrectly describe the residency requirements for the *Special Vehicle Permit for Persons with Disabilities*, DOT shall include a written insert or addenda along

with those materials which informs the recipient of the current residency eligibility for the program.

9. Within ninety (90) days of the Effective Date of the Stipulation, Defendants shall issue a press release in order to notify the public of the changes concerning the revised requirements for eligibility for *Special Vehicle Permits for Persons with Disabilities*, which are contained in this Stipulation. Defendants shall provide the terms of the press release to Florio's counsel in advance of release, and Florio may reject those portions of the press release which he believes do not accurately reflect the terms of the Stipulation. Nothing contained herein shall prevent any party from additionally accurately publicly disclosing or discussing the changes contained in this Stipulation and its terms.

10. Nothing contained in this Stipulation is intended to place an Undue Burden upon Defendants.

RECOURSE UNDER THE STIPULATION

11. The Court shall retain jurisdiction over this matter solely for purposes of modification and enforcement of this Stipulation until three (3) years after its Effective Date, at which time the Court's continuing jurisdiction over Defendants shall end.

12. Defendants may modify the revised eligibility requirements, or limit the number of Special Vehicle Permits for Persons with Disabilities to be issued to non-City residents, in whole or in part, should the changes implemented as a result of this Stipulation have an excessive impact on DOT staff, or if the issuance of Permits, either alone or in combination with other factors, creates a negative impact on traffic flow or parking in the City.

13. Should Defendants intend to modify the eligibility requirements or limit the number of Special Vehicle Permits for Persons with Disabilities to be issued to non-City

residents within (3) years of the Effective Date of this Stipulation, Defendants shall first notify Florio's counsel in writing of the intended modification and the reason(s) for the modification. Within thirty (30) days of such notice, counsel for the Parties shall confer in good faith in an attempt to reach agreement concerning the proposed modification to the requirements of this Stipulation. At any time after the end of the thirty (30) day period for conferral among the Parties, Defendants may, if necessary, seek judicial approval for the modification of this Stipulation.

14. During the time period in which the Court retains jurisdiction over this matter, prior to taking any action against Defendants based on alleged non-compliance with the provisions of this Stipulation, Florio's counsel shall notify Defendants' counsel in writing of the specific basis and evidence for the claim of non-compliance. Within thirty (30) days of such notice, counsel for the Parties shall confer in good faith in an attempt to resolve any differences or disputes arising from or out of the Stipulation. At the end of the thirty (30) day period, Florio may, if necessary, take steps to enforce and/or modify this Stipulation, including seeking appropriate judicial action by the Court, which Defendants may oppose.

15. With the exception of matters of the type described under paragraph 18 of the Stipulation, during the time period in which the Court retains jurisdiction over this matter, any dispute asserted by any non-party arising out of or related to this Stipulation, including, but not limited to, any asserted failure by the City to comply with any provision of this Stipulation, will be submitted to this Court. This Court may adjudicate any such dispute and grant all appropriate relief. Any non-party raising a dispute arising out of or related to this Stipulation will provide the Parties with thirty (30) days written notice before submitting the dispute to this Court, unless the party raising the dispute can demonstrate to the Court that a

shorter notice period is justified in the circumstances. In the event of a dispute arising out of or related to this Stipulation, the Parties reserve the right to raise, and may raise, any legal or factual position before this Court.

16. If at any time during the three (3) years following the Effective Date of this Stipulation, Defendants become aware of any change in state or federal law (including regulations, interpretations of law and regulations by authorized governmental agencies, and/or interpretations by the Courts) that Defendants believe changes their legal obligations, responsibilities or needs with respect to the provision of parking for persons with disabilities in some manner, and/or Defendants' obligations under this Stipulation, Defendants shall so notify Florio's counsel and the Parties shall attempt to come to an agreement as to any proposed modifications of the Stipulation that are warranted by the change in federal or state law, interpretations of law and regulations by authorized governmental agencies, and/or interpretations by the Courts. If after thirty (30) days, the Parties have not been able to reach an agreement, the dispute may be submitted to this Court. If Defendants seek to so modify their responsibilities under this Stipulation based upon a change in law or legal interpretation, in order to stay the proposed modification Florio shall seek relief from this Court. Any application to the Court with respect to alleged changes in law shall be made pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The filing by Florio of an appeal of an adverse decision by the Court shall not operate as a stay of the Defendants' right to implement the proposed modification without further order of the District Court or the Court of Appeals.

17. Beyond the three (3) year period immediately following the Effective Date of this Stipulation, Defendants may likewise act in a manner which they believe is consistent with the law notwithstanding the fact that their actions may not be consistent with

the terms of this Stipulation, should Defendants believe in good faith any of the following circumstances have occurred: (1) that there is a change in state or federal law (including through regulations and interpretations of law by the governmental agencies, and interpretations by the Courts); and/or (2) that the impact on the City from implementation of the changes to the residency requirements prescribed in this Stipulation changes their obligations, responsibilities or needs with respect to the provision of parking for persons with disabilities and/or Defendants' obligations under this Stipulation, such as the impact described in paragraph 12 above, and/or (3) that other comparable legal or factual circumstances warranting a change in the non-residency requirements have arisen that were not foreseen at the time the Stipulation was entered into. Defendants' actions may be instituted without requiring an application to the Court, and without any other notice, except as described in this paragraph. Should Defendants seek to implement such changes to the non-residency requirements within the two years immediately following the date when the Court no longer retains jurisdiction over this action, Defendants will provide notice of the change to the non-resident holders of the *Special Vehicle Permit for Persons with Disabilities* and to new non-resident applicants for *Special Vehicle Permit for Persons with Disabilities* upon the non-renewal, termination or denial of such permit during the aforesaid two year period. Said notice shall state the reason for the change and that the change modifies the non-residency eligibility provided under the terms of the Stipulation entered into in settlement of the case entitled *Florio v. NYC*, No. 06-CV-6473 (S.D.N.Y.). In such circumstances, if such changes are made to the non-residency requirements for the permits during said same two year period immediately following the date when the Court no longer retains jurisdiction over this action, Defendants will also provide written notice of the change(s) to counsel for Florio within thirty (30) days after implementation. Nothing in this Stipulation,

however, shall prevent Florio or any other person from filing an action or making an application to a court to challenge a change not consistent with the terms of this Stipulation. If such action or application is filed, Defendants need not conform their conduct to the terms of this Stipulation unless directed to do so by the court where the challenge is filed.

18. The remedies with respect to specific individuals for alleged improper denials of *Special Vehicle Permits for Persons with Disabilities*, which do not suggest a systematic pattern of non-compliance with the terms of this Stipulation, shall lie exclusively in the available City administrative remedies, subject to review under the procedures governed by city and state laws.

ATTORNEYS' FEES AND COSTS

19. The City agrees to pay the reasonable attorneys' fees and costs expended in connection with the prosecution of this Action, either pursuant to supplemental stipulation or, if a stipulation is not entered into, pursuant to an Order of the Court. The Parties agree that, if a stipulation to pay the reasonable attorneys' fees and costs is not executed within thirty (30) days after entry of an Order "so ordering" this Stipulation, then the deadline set forth for filing a motion for attorneys fees and related non-taxable expenses under Rule 54(d)(2)(B) of the Federal Rules of Civil Procedure will be extended by four (4) months under this Stipulation, and may be further extended by subsequent agreement of the Parties or as the Court permits.

INDIVIDUAL RELEASE

20. Upon the Effective Date of this Stipulation, and subject to Paragraph 19 above, Florio, solely in his individual capacity and solely on behalf of his individual heirs, executors, administrators, personal representatives, successors, and assigns (the "Releasers"), hereby releases and discharges the New York City Department of Transportation, Jeanette

Sadik-Kahn, current Commissioner of the New York City Department of Transportation, and the City, including without limitation its past and present officials, employees, departments, agencies, representatives, directors and agents, their successors and assigns and their respective heirs, executors, administrators, personal representatives, and transferees (collectively, “the Releasees”) from any and all claims, actions, costs, expenses and attorneys’ fees whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, that Florio ever had, now has, or may have had against the Releasees or any of them, either alone or in any combination with others, from the beginning of time through the Effective Date of this Stipulation for, by reason of, involving, concerning, arising from or in any way relating to any individual claim which has been raised, or any claim fairly encompassed in Florio’s individual claims based upon the facts, acts or omissions alleged against the Releasees in the Complaint filed in this action.

NO ADMISSIONS BY DEFENDANTS

21. Nothing contained herein shall be deemed to be an admission by any Defendant of any liability or the truth of any allegations set forth in the Complaint, or that they have violated Florio’s rights, or the rights of any person or entity, as defined in the constitutions, statues, ordinances, rules or regulations of the United States, the State of New York, the City of New York, or any other rules, regulations or bylaws of any department or subdivision of the City of New York or the State of New York.

DISMISSAL OF THE ACTION

22. Upon the execution and “so ordering” of this Stipulation, the Action will be dismissed. This Court will retain jurisdiction to hear and resolve disputes arising under or related to this Stipulation and to otherwise enforce the terms of this Stipulation only as

specified in this Stipulation.

ACKNOWLEDGEMENTS OF THE PARTIES

23. Each of the undersigned represents that he or she has been duly authorized to enter into this Stipulation.

24. This Stipulation contains all of the terms and conditions agreed upon by the Parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the Stipulation shall be deemed to exist, or to bind the parties or to vary the terms and conditions contained herein.

CONSTRUCTION

25. The Parties hereto agree that the terms and language of this Stipulation were the result of negotiations between the Parties and, as a result, there shall be no assumption that any ambiguities in the Stipulation shall be resolved against any party. Any controversy over the construction of this Stipulation shall be decided without regard to the events of authorship or negotiation.

HEADINGS

26. The headings in this Stipulation are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof.

COUNTERPARTS

27. This Stipulation and any amendments hereto may be executed in any number of counterparts, all of which together shall constitute a single, original instrument. Signatures by facsimile or .pdf are deemed to be and shall operate as original signatures.

COMMUNICATIONS

28. Communications concerning this Stipulation, and the matters referred to herein, shall be transmitted by personal delivery or email or by any other method as specifically consented to by counsel to the Parties, as set forth below, or to such other persons as may hereafter be designated by providing notice to opposing counsel:

TO PLAINTIFF:

William R. Weinstein, Esq.
LAW OFFICES OF
WILLIAM R. WEINSTEIN
Attorney for Plaintiff
500 Fifth Avenue, Suite 1610
New York, New York 10110
Tel: (212) 575-2205
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wrw@wweinsteinlaw.com

TO DEFENDANT:

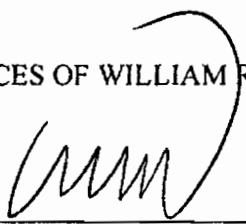
Sherrill Kurland, Esq., Senior Counsel
MICHAEL A. CARDOZO,
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Attorneys for Defendants
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skurland@law.nyc.gov

MODIFICATION OF THE AGREEMENT

29. The non-substantive (*i.e.*, ministerial) terms of this Stipulation may be modified by the Parties upon a written agreement signed by the attorneys for the Parties, but any substantive terms may be modified only upon a written agreement signed by the attorneys for the Parties and “So-Ordered” by the Court.

Dated: New York, New York
February 19, 2010

LAW OFFICES OF WILLIAM R. WEINSTEIN

By: 
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SO ORDERED:


U.S.D.J.

Dated: Feb 22, 2010