

SUPREME COURT OF THE STATE OF NEW YORK
COUNTRY OF NEW YORK: IAS PART 8

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In the Matter of the Application of

Index No. 102198/15

Letitia James as the Public Advocate
for the City of New York; Constance Taylor;
Odalis Polanco; and Arlene Riley

**STIPULATION OF
SETTLEMENT AND
DISMISSAL WITH
PREJUDICE**

Petitioners,

For Judgment Pursuant to Article 78
of the Civil Practice Law & Rules and
Declaratory Judgment

-against-

New York City Housing Authority;
and Shola Olatoye, CEO, in her official capacity,

Respondents.
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MAR 28 2016
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IN
PART 8
JOAN M. KENNEY
J.S.C.

WHEREAS, the Verified Petition and Action for Declaratory Judgment of Petitioners Letitia James, as the Public Advocate for the City of New York, Constance Taylor ("Taylor"), Odalis Polanco ("Polanco"), and Arlene Riley ("Riley") (Taylor, Polanco, and Riley referred to collectively as "the tenant Petitioners"), dated December 14, 2015, in this matter alleged that the heating policies and practices of the New York City Housing Authority ("NYCHA") violated Administrative Code section 27-2029 and New York City Health Code section 131.07 ("the Codes"); and requested a declaration that NYCHA had failed to perform duties enjoined upon it by the Codes, and injunctive relief; and

WHEREAS, in its Verified Answer and Affidavit of Luis Ponce, dated January 25, 2016, NYCHA denied Petitioners' allegations and stated that its heating policy at all times has complied with applicable law, and its procedures and practices for implementing the policy maintain or exceed the minimum apartment temperatures the law requires;

WHEREAS, NYCHA's Answer and Affidavit also alleged that between January 2014, before Petitioners commenced this matter, and mid-December 2015, heat control panels at all or nearly all of NYCHA's residential buildings have been set to supply heat whenever during heating season from October 1st through May 31st outdoor temperatures fall below 60° Fahrenheit between the hours of 6:00 a.m. and 10:00 p.m. and below 40° Fahrenheit between the hours of 10:00 p.m. and 6:00 a.m.; and

WHEREAS, NYCHA's Answer and Affidavit further alleged that the heating complaints of the tenant Petitioners are either unfounded or arise from transitory conditions such as equipment malfunctions that have since been corrected; and

WHEREAS, the parties wish to resolve this dispute amicably and without further litigation or involvement of the Court; and

WHEREAS, the parties have agreed to enter into this Stipulation without any admission of liability or damages and without an adjudication of any issue of fact or law;

NOW, THEREFORE, IT IS AGREED by counsel for the undersigned parties that:

1. As stated in its Standard Procedure 060:63 I (Space Heating and Domestic Hot Water) (June 2010 Rev.), NYCHA's policy on heating apartments is to comply with applicable law requiring that during heating season from October 1st through May 31st:

(a) a minimum temperature of 68° Fahrenheit be maintained indoors between 6 a.m. and 10 p.m. when outdoor temperatures fall below 55° Fahrenheit during those hours; and

(b) a minimum temperature of 55° Fahrenheit be maintained indoors between 10:00 p.m. and 6 a.m. when outdoor temperatures fall below 40° Fahrenheit during those hours.

2. NYCHA will continue its current practice of supplying heat whenever during heating season from October 1st through May 31st the outside temperature falls below 60° Fahrenheit between the hours of 6:00 a.m. and 10:00 p.m. and below 40° Fahrenheit between the hours of 10:00 p.m. and 6:00 a.m., except where NYCHA has installed devices that monitor temperature and automatically stop the supply of heat when the recorded temperature exceeds the temperature required by law. Within 60 days after this Stipulation is fully executed, NYCHA will provide to Petitioners' counsel updated portions of its Standard Procedure memorializing this practice.

3. Within 90 days after this Stipulation is fully executed, NYCHA will train appropriate employees concerning its policy and practice on heating apartments as described in paragraphs 1 and 2 above.

4. Nothing in this Stipulation shall prevent NYCHA from amending its heating policy and practice described in paragraphs 1 and 2 above so long as they remain in compliance with applicable law. NYCHA will notify Petitioners' counsel of any amendment of this policy and practice during the Stipulation Period as defined in paragraph 10 below, at least 10 days before such an amendment is made effective, unless a change in law or circumstances requiring immediate attention makes this advance notice infeasible, in which case NYCHA will provide notice to Petitioners' counsel as soon as practicable. Nothing in this Stipulation shall bar Petitioners from challenging any such amendments as inconsistent with applicable law, except Petitioners may not challenge an amendment whereby NYCHA supplies heat whenever during heating season the outside temperature falls below 55° Fahrenheit (as opposed to 60° Fahrenheit under its current practice) between the hours of 6:00 a.m. and 10:00 p.m.

5. Within 15 days after this Stipulation is fully executed, NYCHA will install temporary ambient temperature monitors known as data loggers inside the apartments of the tenant Petitioners in this proceeding and the apartments of NYCHA tenants Charles Cordrey (5210 Broadway, Apt 13E, New York, NY), Aurelia Cruz (528 Knickerbocker Ave, Apt 1Q, Brooklyn, NY), and Annette Cummings (1196 East New York Ave, Apt 2D, Brooklyn, NY), who are also represented by counsel for the tenant Petitioners. NYCHA will remove the data loggers from these apartments after the end of this heating season on May 31, 2016 and reinstall them for the 2016-2017 heating season. NYCHA will provide data recorded by the data loggers to Petitioners' counsel on a monthly basis. If a tenant referred to in this paragraph prevents NYCHA from accessing his or her apartment, disturbs the data loggers, or otherwise fails to cooperate with the monitoring process, then NYCHA will have no obligation to install and maintain data loggers or provide data to Petitioners' counsel with respect to that tenant.

6. During the Stipulation Period as defined in paragraph 10 below, Petitioners' counsel may bring to the attention of NYCHA's counsel listed below any heating complaints made by tenants to NYCHA's Customer Contact Center or their developments in the normal course that have not, after a reasonable time, been addressed to the tenants' satisfaction. Any such complaint shall state in detail its basis and shall be accompanied by any ambient apartment temperature readings relating to the tenant's apartment. NYCHA will investigate each complaint and make all reasonable efforts to ensure that its treatment of the tenant is in compliance with the policies and practices set forth in paragraphs 1 and 2 above.

7. Nothing in this Stipulation shall diminish or expand Petitioners' rights to (i) request information from NYCHA pursuant to the Freedom of Information Law or, in the case of Petitioner James, pursuant to the New York City Charter section 24; or (ii) pursue legal, equitable,

or administrative remedies for alleged future failures to provide heat by NYCHA resulting from events or conditions other than NYCHA's heat provision policies.

8. During the Stipulation Period as defined in paragraph 10 below, Petitioners shall not institute any other proceeding or action against NYCHA alleging its heating policy and/or practice violates applicable law, except to the extent that Petitioners may challenge subsequent amendments to NYCHA's heating policy and practice except as provided in paragraph 4 above.

9. This Stipulation does not create any right to obtain individual judicial relief other than as specified in paragraphs 5 and 6 above with respect to Petitioners. Nothing in this Stipulation precludes any individual other than Petitioners from pursuing any other proceeding or action against NYCHA which may otherwise exist relating to the issues covered by this Stipulation.

10. The Court retains jurisdiction to enforce this Stipulation from its approval until the end of the 2016-2017 heating season on May 31, 2017 ("Stipulation Period"), at which point all obligations under the Stipulation expire.

11. This Stipulation represents a full settlement of all of Petitioners' claims in the Verified Petition and Action for Declaratory Judgment. Those claims are withdrawn and this matter is dismissed with prejudice except that the Court retains jurisdiction during the Stipulation Period to enforce this Stipulation.

12. All parties shall bear their own costs and expenses of litigation including attorney's fees.

13. This Stipulation may be executed in counterparts.

Dated: New York, New York
March 28, 2016

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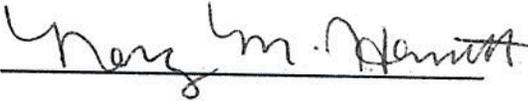
Dated: New York, New York
March 24, 2016

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March 2, 2016

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By: 

SO ORDERED: _____
J. Kenney, J.S.C.

Dated: