

FILED
May 16, 2023
Haekyoung Suh, J.S.C.
Chambers

PREPARED BY THE COURT

A.F. and M.D.,

Plaintiffs,

v.

**STATE OF NEW JERSEY
DEPARTMENT OF
CORRECTIONS, et al.,**

Defendants.

**TAMASA NOBLES, TAWANA
MURPHY, LINDA
DOUGHERTY,**

Plaintiffs,

v.

WILLIAM ANDERSON, et al.,

Defendants.

MARIANNE BROWN, et al.,

Plaintiffs,

v.

**STATE OF NEW JERSEY
DEPARTMENT OF
CORRECTIONS, et al.,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
HUNTERDON COUNTY

DOCKET NO. HNT-L-359-17

DOCKET NO. HNT-L-145-19

DOCKET NO. HNT-L-76-19

CIVIL ACTION

ORDER

THIS MATTER having been opened to the court on a motion to enforce class settlement filed by Chiesa Shahinian & Giantomasi PC (Mauro G. Tucci Jr.,

Esq. appearing), attorneys for defendants, New Jersey Department of Corrections and related defendants (collectively “NJDOC”), which was opposed by Barry Corrado & Grassi, P.C. (Shauna Friedman, Esq. appearing), attorney for plaintiffs, A.F. and M.D.; and the court having considered the pleadings, supporting papers, oral argument, and for good cause shown;

IT IS on the 16th day of May 2023, ORDERED as follows:

1. Defendant’s motion to enforce class settlement is granted.
 - a. Paragraph 1(d) of the March 7, 2023 Order is stayed until July 15, 2023 with respect to individual Tier 1 awards in excess of \$2,000 provided that the following conditions are satisfied:
 - i. The claim is subject to an ongoing child support judgment search or is awaiting an audited report of financial obligations from NJDOC’s Central Office Revenue Unit; and
 - ii. NJDOC timely transmits the minimum \$2,000 payment to the Settlement Administrator with instructions to release the \$2,000 to the Tier 1 claimants affected by Paragraph (1)(a)(i) of this Order within thirty (30) days of receipt from NJDOC pursuant to Paragraph 1(c) of the March 7, 2023 Order.

2. On or before July 15, 2023, NJDOC shall cause the Settlement Administrator to pay the balance of any Tier 1 award subject to the foregoing paragraph of this Order.

3. Service of this order shall be deemed effectuated upon all parties upon its upload to eCourts and shall be posted on the class website at www.EMCFWsettlement.com.

/s/ Haekyoung Suh
HON. HAEKYOUNG SUH, J.S.C.

Unopposed

Opposed

The reasons underlying this decision are attached hereto and incorporated herein.

A.F. AND M.D. V. STATE OF NEW JERSEY DEPARTMENT OF CORRECTIONS, et al.

HNT-L-359-17

DEFENDANTS' MOTION TO ENFORCE THE SETTLEMENT

Parties

A.F. and M.D.: Plaintiffs

Barry Corrado & Grassi, P.C.

Shauna Friedman, Esq.

State of New Jersey Department of Corrections, et al.: Defendants

Chiesa Shahinian & Giantomasi PC

Mauro G. Tucci Jr., Esq.

This consolidated matter arises out of two class actions, HNT-L-76-19, Brown v. State of New Jersey Department of Corrections, and HNT-L-145-19, Nobles v. Anderson et al., consolidated under major case HNT-L-359-17, A.F. v. New Jersey Department of Corrections. The complaints were brought by women incarcerated at the Edna Mahan Correctional Facility for Women (“EMCFW”) who alleged EMCFW staff perpetrated a pattern and practice of sexual abuse and harassment and that New Jersey Department of Corrections (“NJDOC”) staff failed to prevent, halt, or remedy such conduct. The parties reached a settlement agreement on March 30, 2021, which was approved by the court on November 19, 2021. The court incorporated the Master Settlement Agreement and Amendment to the Master Settlement Agreement (collectively the “Settlement”), which delineated the settlement terms and deadlines.

Under the Settlement, class members were to be compensated according to one of three tier options based upon the length of the claimant's incarceration at EMCFW during the class period. Claimants seeking compensation under Tier 1 were not required to submit proofs and were to be compensated by the later of (i) 90 days after the Claims Deadline; (ii) 30 days after the Final Approval Order; or (iii) 30 days after calculation of Tier 1 Compensation is provided to Defendants by the Settlement Administrator, with the latest deadline falling on April 10, 2022.

Claimants with longer periods of incarceration were authorized to seek compensation under Tiers 2 and 3 by submitting proofs to an appointed Special Master for increased compensation. The Settlement provided that all higher tier claimants were to be compensated "by the later of (i) 90 days after the Special Master issues awards to all Tier 2 Claimants and Tier 3 Claimants OR (ii) July 15, 2022." The Special Master issued Tier 2 and Tier 3 claimant awards on October 14, 2022.

Plaintiffs sought court intervention to enforce the settlement after defendants missed the deadline to pay attorney's fees and the deadline to pay Tier 1 claims. Finding the delays were unintentional and a result of diligent efforts to complete the required lien searches, plaintiffs' requests for court intervention were denied.

On February 14, 2023, plaintiffs filed a third motion to enforce litigants' rights under HNT-L-145-19. Plaintiffs claimed that, over one year had lapsed

since the court afforded defendants additional time to engage in “diligent efforts” to conduct the lien searches, and claimants from all three tiers still had not been fully compensated pursuant to the Settlement terms. Plaintiffs insisted defendant’s default was inexcusable as, defendants should have been aware of the significant undertaking required to perform the lien searches and made appropriate arrangements to timely perform same. Plaintiffs sought an order setting date certain deadlines by which defendants must disburse the funds to the claimants and imposing sanctions accruing at the rate of 2.25% pursuant to R. 4:42-11(a)(iii) for all outstanding payments due, which would be applied to each class claimant’s settlement award if defendants failed to meet the court-ordered deadlines.

Defendants opposed plaintiffs’ motion to enforce litigants’ rights on the grounds that the failure to timely meet the deadlines was due to circumstances beyond their control, such as conducting the lien searches and Social Security Number searches for all claimants in this class action. Defendants indicated that at least 964 Tier 1 awards were paid to class members and the remaining unfulfilled payments were due to missing information.

While taking notice of the significant undertaking facing NJDOC to process the thousands of claims and to run the appropriate lien searches, this court found that the NJDOC’s failure to meet its payment deadline and failure to seek leave of the court to extend deadlines was inexcusable and court intervention was warranted

to ensure timely disbursement of the Settlement funds. But as NJDOC's noncompliance was not willful, this court found that NJDOC's conduct did not rise to the level of warranting sanctions. On March 7, 2023, this court granted plaintiff's motion to enforce litigant's rights as modified and entered an order directing all outstanding Tier 1 Settlement Funds to be paid by NJDOC to the Class Action Administrator by May 15, 2023; all outstanding Tier 2 and 3 Class Settlement Funds to be paid by NJDOC to the Class Action Administrator by June 15, 2023; and the Class Action Administrator to issue payments to all class members within thirty (30) days from receipt of funds from NJDOC.¹ While recognizing the myriad of administrative hurdles NJDOC could face in meeting these final deadlines, to ensure compliance, the order provided that "if defendants fail to abide by the proposed payment schedule **or fail to obtain a court-approved extension**, defendants shall pay interest at the rate of 2.25% pursuant to R. 4:42-11(a)(iii) for all outstanding money due and owed to class claimants." (Emphasis added).

On April 26, 2023, NJDOC filed a motion to enforce the settlement. NJDOC indicates that, despite its concerted efforts to meet the deadlines set forth in the March 7, 2023 Order, full compliance has become impossible due to

¹ At oral argument, this court elicited the parties' proposed deadlines and the parties agreed that the proposed timeline was reasonable.

circumstances beyond its control. Specifically, NJDOC explains that, as of March 27, 2023, it no longer has staff with approval to access the judiciary's AOC/TELE and CAPS systems to produce audited reports detailing the claimants' unpaid balances. (Certification of Michael Varga, NJDOC Supervising Administrative Analyst in the Bureau of Accounting, Budget and Central Office Revenue Unit ("Varga Cert.") at ¶¶ 5-6).

NJDOC further details the complexities of conducting its lien searches. Specifically, through the course of conducting its lien searches, NJDOC discovered that Superior Court's records on the claimants' child support liens were inaccurate and necessitated further investigation with the relevant social services and welfare agencies to ensure all valid child support judgments were identified. (Certification of Joseph Tierney of the New Jersey Department of Law and Public Safety, Division of Law ("Tierney Cert.") at ¶ 10). Out of approximately 195 Tier 1 claimants whose claims were subject to lien and judgment searches, 28 had Charles Jones reports that indicated judgments. Id. at ¶ 11. While the Division of Law is making diligent inquiries, Mr. Tierney certifies compliance with the May 15, 2023 deadline for certain Tier 1 claimants has been rendered impossible. Id. at ¶ 12. NJDOC seeks leave to pay the affected Tier 1 claimants the minimum \$2,000 payment by the May 15, 2023 deadline and to pay any outstanding balance due after the lien searches are complete.

In opposition, plaintiffs contend that NJDOC failed to provide any competent factual support demonstrating that NJDOC's inability to meet the revised deadline is due to anything other than its own failure to devote sufficient resources to the audit reports. Specifically, plaintiffs aver that NJDOC's assignment of one single staff member to perform all lien searches and failure to foresee the very real likelihood of inaccurate court records of child support liens fails to justify its continued noncompliance. As the lien searches and deductions were not part of the original Settlement, but rather post-settlement relief demanded by defendants, plaintiffs contend that defendants' failure to exercise due diligence to timely complete the lien searches is inexcusable and runs counter to the parties' court-approved settlement while further preventing the claimants from obtaining the promised relief. Plaintiffs insist that NJDOC is not entitled to any further leeway in its failure to comply with the court-ordered settlement obligations, for which it is already over one year delinquent and NJDOC's motion to enforce the class settlement must be denied. Plaintiffs maintain NJDOC must meet the May 15, 2023 deadline for the Tier 1 payments or pay interest at the rate of 2.25% pursuant to R. 4:42-11(a)(iii) for all outstanding money due and owed to class claimants as provided in the March 7, 2023 Order.²

² Plaintiff's opposition further raised issues, including plaintiffs' reservation of rights to seek to recover attorney's fees and costs incurred in filing the motions to enforce litigants' rights and opposition to defendants' motions as well as opposition to defendants' purported contention that claimants who did not provide their full Social Security

Defendants' Motion to Enforce the Settlement

Section III(A)(7) of the Settlement provides, in pertinent part, “[t]he Class Members acknowledge that if, upon the results of any lien search conducted by Defendants, any debt and/or lien is owed (including but not limited to liens pursuant to N.J.S.A. 2A:17-56.23(b)), such debt and/or lien shall be deducted from any payment to a recipient of compensation pursuant to this class settlement agreement prior to disbursement of compensation.” The court’s November 2, 2022 letter opinion authorized NJDOC to deduct “valid and enforceable” debts/liens from the settlement payments, regardless of the claimant’s incarceration status. While it has taken the NJDOC considerable time and effort to complete the lien searches, causing NJDOC to blow through its deadline, this court did not find NJDOC’s noncompliance was willful but rather due to administrative barriers inherent in these types of class action settlements. While finding plaintiffs were prejudiced by the continued delays, the March 7, 2023 Order established revised deadlines as agreed upon by the parties and directed that NJDOC would be sanctioned for noncompliance. The Order, however, explicitly provided that NJDOC would only incur sanctions if NJDOC failed to abide by the payment schedule *or* failed to obtain a court-approved extension. As NJDOC has sought

Numbers are not entitled to receive the court-approved settlement funds. Such issues, however, are not currently before this court and will not be addressed at this time.

court-approved leave to amend the payment schedule set forth in the March 7, 2023 Order, NJDOC has not violated the court's Order.

NJDOC has demonstrated its failure to disburse the funds to all Tier 1 claimants is due to circumstances outside of its control. While staffing issues are within the auspices of NJDOC's control, inaccurate court records are not. NJDOC's failure to foresee this final obstacle does not warrant imposition of sanctions, particularly as NJDOC does not seek to avoid disbursing *any* payment to the affected Tier 1 claimants by May 15, 2023 but rather to provide the minimum \$2,000 payment³ due with the balance to be paid⁴ once the child support judgment information is verified and all required audited reports are complete. Accordingly, defendants' motion to enforce the class settlement is granted.

Paragraph 1(d) of the March 7, 2023 Order is stayed until July 15, 2023 with respect to individual Tier 1 awards in excess of \$2,000 provided that the following conditions are satisfied: the claim is subject to an ongoing child support judgment search or is awaiting an audited report of financial obligations from NJDOC's Central Office Revenue Unit, and NJDOC timely transmits the minimum \$2,000 payment to the Settlement Administrator with instructions to release the \$2,000 to the affected Tier 1 claimants within thirty (30) days of receipt from NJDOC

³ Section III(A)(7) of the Settlement provides, in pertinent part, ". . . in no case shall the application of a lien reduce the compensation paid to a Class Member below \$2,000."

⁴ Defendant explains that the maximum payment for Tier 1 Claimants is \$2,940, thus the remaining balance, if any, could not exceed \$940.

pursuant to Paragraph 1(c) of the March 7, 2023 Order. On or before July 15, 2023, NJDOC shall cause the Settlement Administrator to pay the balance of any Tier 1 award to the affected Tier 1 claimants.