

SETTLEMENT AGREEMENT AND RELEASE

Kramer, et al. v. Chesty Properties, et al.

December 15, 2015

This Settlement Agreement (the "Agreement") is entered into by and between Plaintiff Marcia Gottlieb and substituted plaintiff Tamar Klein for deceased plaintiff Meyer Kramer ("Plaintiffs"), Chesty Properties LLC, Gitti Schoenberger, , and Isaac Friedman, as administrator of Regency of Boro Park (collectively, "Defendants"). Plaintiffs and Defendants are collectively referred to as the "Parties."

PREAMBLE

WHEREAS, in January 2014, Defendants served Meyer Kramer and Marcia Gottlieb with Notifications of Termination of their Admission Agreements with Regency of Boro Park listing a discharge date of March 1, 2014 (the "Eviction Notices"); and

WHEREAS, on February 28, 2014, Meyer Kramer, Marcia Gottlieb, Ellen Schischa, and Benjamin Schischa filed an action against Defendants in the United States District Court for the Eastern District of New York (the "Court") captioned *Kramer et al. v. Chesty Properties et al.*, 14-CIV-01344 (RRM/MG) (the "Federal Action"); and

WHEREAS, on June 20, 2014, Meyer Kramer and Marcia Gottlieb filed an amended complaint in the Federal Action; and

WHEREAS, Defendants have applied to the New York State Department of Health for a regulatory waiver and enhanced licensure for Regency of Boro Park; and

WHEREAS, Defendants expressly deny any wrongdoing in the Federal Action; and WHEREAS, the Parties wish to avoid the delay, uncertainty, inconvenience and expense of continuing the Federal Action, and as a result of a mutual desire to settle their disputes, the Parties have reached a full and final settlement as set forth in this Agreement; and

WHEREAS, having read and understood the terms and conditions of this Agreement, and having had the opportunity to consult with legal counsel regarding this Agreement, the Parties agree that this Agreement constitutes a fair resolution of the Parties' disputes, and agree to be bound by all provisions contained herein, waiving any rights to trial or appeal that they may have;

The Parties, through their authorized representatives, **AGREE** as follows:

TERMS AND CONDITIONS

I. **Preamble.** The foregoing Preamble is incorporated herein.

II. Jurisdiction and Venue.

- A. The Parties acknowledge that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343, 2201 and 42 U.S.C. § 3613 and authority to enter this Agreement and to enforce its terms as set forth herein. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
- B. The Parties agree to jointly file this Agreement with the Court.
- C. The Court shall retain jurisdiction to enforce the terms of this Agreement upon the filing of an appropriate motion by either party. The Parties shall endeavor in good faith to informally resolve any differences regarding compliance and interpretation of this Agreement. Plaintiffs shall give Defendants and their respective counsel of record at least thirty (30) days' notice of any instance of alleged noncompliance with this Agreement, and an opportunity to cure, prior to filing a motion with the Court to enforce and/or modify this Agreement. Any and all notice(s) to Defendants shall be given to Hinman Straub P.C. If Defendants cure the alleged non-compliance with this Agreement, Plaintiffs will not file such motion with the Court.

III. Term and Scope of Agreement.

- A. All obligations under this Agreement, unless otherwise specified, shall commence within thirty (30) days from the date that this Agreement is so-ordered by the Court and shall continue for a period of three (3) years from that date.

IV. Fair Housing Policies and Practices by Defendants. For a period of three years following the Effective Date, Defendants will:

- A. Follow all fair housing laws, treat all residents fairly and equitably, and not retaliate against Plaintiffs.
- B. Adopt non-discrimination policies including:
 - 1. A confirmation that Regency does not prohibit or discourage residency at Regency by persons with physical disabilities who use walkers, canes, manual wheelchairs, motorized wheelchairs, and other assistive mobility devices, who can reasonably be accommodated at the facility; and
 - 2. Policies that encourage fair and equitable treatment of residents regardless of disability in provision of services.

- C. Develop and implement a reasonable accommodation policy substantially in the form of Exhibit A, subject to the approval of the DOH. The reasonable accommodation policy shall extend to applying for a waiver of the regulatory and licensing requirements applicable to the admission of residents, and when necessary, for a resident who wants to be retained or readmitted after a temporary stay in a hospital or nursing home, if there is a reasonable prospect that such a waiver will be granted.
 - D. Include in the facility's in-service training module for managing partner/members of defendant LLC/partnership, administrator and Regency staff members who provide information to prospective residents, give tours, process applications, who implement Regency's housing-related policies regarding applications, unit assignments, and requests for reasonable accommodations/modifications, and/or who interact with residents an annual training on fair housing law and disability rights. For at least the first year, the training will be given by the Brooklyn Center for Independence of the Disabled.
 - E. Use the fair housing logo and/or "equal housing opportunity" logo/motto on website, brochures, advertisements – electronic or print media - and on all print materials provided to prospective residents.
 - F. Include on their website and in application packets/handouts given to prospective tenants a phrase stating the following nondiscrimination policy: "Our company is committed to equal housing opportunity. We do not discriminate based on race, color, national origin, religion, sex, disability, familial status, sexual orientation, marital status, age, and military status."
 - G. Adopt the Equal Housing Opportunity Policy and Acknowledgement Form attached hereto as Exhibit B. Defendants will ensure that each employee receives a copy of the Equal Housing Opportunity Policy and signs the Acknowledgement Form.
 - H. Defendants will apply the Letter Agreement attached as Exhibit C to Plaintiff Marcia Gottlieb. This Exhibit will not be filed with the Court.
- V. **Monetary Relief.** Defendants will pay Plaintiffs and their counsel the total sum of ^{twenty-four}~~thousand~~ (\$ 24,000). Payment will be made as follows: ^{dollars}
- Plaintiffs will supply payment instructions within ten (10) days of the effective date. The first payment of \$10,000*

will be made on or before January 15, 2016.
Eight (8) payments of \$1,500 will be made
on the fifth day of each month starting February
5, 2016 and ending September 5, 2016. A final
payment of \$2,000 will be made on or before
October 5, 2016. Defendants will deposit all checks
in escrow with Defendants' counsel by January
10, 2016.

~~All payments shall be delivered to MFY Legal Services, Inc., 299
Broadway, New York, NY 10007, Attention: Jota Borgmann.~~

VI. Releases.

- A. Subject to the payment of the Settlement Amount set forth in Section II of this Agreement, Plaintiffs hereby fully and finally release the Defendants, their present and former parent corporation(s), the Defendants' present and former subsidiaries and affiliates, their predecessors, successors, and assigns as well as their current and former directors, officers, operators, employees, representatives, attorneys, insurers, agents, and shareholders (collectively, "Defendant Released Parties") from any civil or administrative claim, action, suit, or proceeding Plaintiffs have, may have, or could have asserted in the future under any source of law from the beginning of the world to the Effective Date (the "Defendants' Covered Conduct"). The payment of all amounts required by Section II of this Agreement fully discharges the Defendant Released Parties from any obligation to pay restitution, compensatory damages, civil penalties, and costs and expenses of litigation, including attorneys' fees, to Plaintiffs for the Defendants' Covered Conduct.
- B. Defendants hereby fully and finally release Plaintiffs, as well as their assigns, agents, and attorneys from any civil or administrative claim, action, suit, or proceeding Defendants have, may have, or could have asserted in the future under any source of law from the beginning of the world to the Effective Date relating to the claims set forth in the Federal Action and any claims to facility or storage fees under Plaintiffs' Admissions Agreements ("Plaintiffs' Covered Conduct").
- C. Notwithstanding the foregoing, Plaintiffs do not release any right to enforce the terms of this Agreement and specifically reserve all such rights.

VII. Execution.

- A. This Agreement may be executed in counterparts, each of which will constitute an original and all of which shall constitute one and the same Agreement.
- B. The Parties may transmit their signatures by facsimile or by a scanned document sent by e-mail. Such signatures shall constitute acceptable binding signatures for purposes of this Agreement.
- C. The Effective Date of this Agreement will be the date on which all parties have exchanged the fully-executed Agreement.
- D. This Agreement may be executed by counsel for the Parties. Each Party represents that its counsel has authority to sign on its behalf.

VIII. Complete Agreement. This Agreement constitutes the complete agreement between the Parties and may not be amended except by a writing signed by the Parties.

IX. Costs. Each party to this Agreement shall bear its own legal and other costs incurred in connection with the Federal Action and the Eviction Notices, including the preparation and performance of this Agreement.

X. Captions. The bold-faced paragraph captions in this Agreement are for convenience only and do not add to, detract from, or change the substantive language or terms of this Agreement.

AGREED TO:

MARCIA GOTTLIEB AND TAMAR KLEIN

By: _____

Jota Borgmann, of counsel to
Jeanette Zelhof, Esq.
MFY Legal Services, Inc.
Attorneys for Plaintiffs
299 Broadway, 4th Floor
New York, NY 10007
Tel: (212) 417-3700

Date: _____

12/15/2015

CHESTY PROPERTIES LLC, GITTI SCHOENBERGER, ISSAC FRIEDMAN

By:  _____ Date: 12/15/15 _____

David T. Luntz
Hinman Straub, P.C.
Attorney for Defendants
121 State Street
Albany, New York 12207
Tel: (518) 436-0751