

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE

NEW YORK, NY 10007

CHAMBERS OF
JUDGE MORRIS E. LASKER

CTCR - 93/35
Order - 93/32
RCRM - 93/26

November 19, 1993

Kenneth F. Schoen, Esq.
Office of Compliance Consultants
225 Broadway, 13th Floor
New York, New York 10007

Dear Mr. Schoen:

I have today signed and arranged to have
filed the order contained in your letter of
November 16th relating to donation of
"undeliverable" funds.

Very truly yours,

Morris E. Lasker

cc: Leonard Koerner, Esq.
Robert Daly, Esq.
John Boston, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

JAMES BENJAMIN, et. al.,

Plaintiffs,

-against-

75 Civ. 3073 (MEL)

BENJAMIN J. MALCOLM, et. al.,

Defendants

-----x

ORDER RE: DONATION
OF "UNDELIVERABLE"
FUNDS RESULTING
FROM HOUSING ORDER
VIOLATIONS

ERNESTO MALDONADO, et. al.,

Plaintiffs,

-against-

76 Civ. 2854 (MEL)

WILLIAM CIUROS JR., et. al.,

Defendants

-----x

DETAINEES OF THE BROOKLYN HOUSE
OF DETENTION FOR MEN, et. al.,

Plaintiffs,

-against-

79 Civ. 4913 (MEL)

BENJAMIN J. MALCOLM, et. al.,

Defendants

-----x

DETAINEES OF THE QUEENS HOUSE OF
DETENTION FOR MEN, et. al.,

Plaintiffs,

-against-

79 Civ. 4914 (MEL)

BENJAMIN J. MALCOLM, et. al.,

Defendants

-----x

-----X
IOLA FORTS, et. al.,

Plaintiffs,

-against-

76 Civ. 101 (MEL)

BENJAMIN J. MALCOLM, et. al.,

Defendants
-----X

GUY ZEPH AMBROSE, et. al.,

Plaintiffs,

-against-

76 Civ. 190 (MEL)

BENJAMIN J. MALCOLM, et. al.,

Defendants
-----X

On April 13, 1981, the Court issued an Order prohibiting the defendants from housing any member of the plaintiff class in non-housing areas (such as dayrooms, gymnasiums and receiving rooms) in the subject jails. It enforced this Order with a supplementary Order on May 3, 1989, which prohibited defendants from confining inmates in non-housing areas for more than twenty-four (24) hours. The 1989 Order also required defendants to house "overload" inmates (inmates being transferred from a housing area in one facility to a housing area in another facility) without delay, setting a guideline of twelve (12) hours.

In response to the plaintiffs' motion to hold the defendants in contempt of these Orders, the Court entered further Orders on November 9, November 30, and December 21, 1990, finding the defendants in contempt, and requiring the defendants to pay compensatory fines to new admission inmates held in a non-housing areas for more than twenty-four (24) hours. On February 21, 1991, the Court directed the Office of Compliance Consultants (OCC) to review defendants' compliance with the requirement that they house overloads without delay.

The Court entered further Orders on June 11 and July 31, 1991, prohibiting the defendants from removing for any length of time any member of the plaintiff class who has already been assigned to a bed from his/her housing area to a non-housing area, and then back to a housing area in the same institution, solely for the purpose of creating new bed space for a new admission or overload inmate ("in-house" transfers). The Orders required the defendants to pay compensatory fines to those inmates who have been transferred "in-house" and to overload inmates held in a non-housing areas for more than twelve (12) hours. The Court directed OCC to continue to monitor defendants' compliance with the terms of the Orders issued in May 1989, December 1990 and July 1991, and to inter alia identify any members of the plaintiff class to whom compensatory fines are owed, and perform all necessary tasks to ensure that these members of the plaintiff class shall be paid the fines to which they are entitled.

To date, compensatory fines amounting to \$16,250 have been assessed to the Department of Correction as a result of violations of these Orders. Of that sum, OCC has determined that \$7,350 is "undeliverable". Funds are designated "undeliverable" after several unsuccessful attempts have been made to locate the claimant. When OCC receives notification that a claim has been substantiated, OCC ascertains the inmate's address of record. A check is sent by certified mail to that address or to an alternative address if one is provided by the inmate. If the check is returned, a letter is sent to the inmate via regular mail. The letter states that the inmate is entitled to receive funds as the result of a housing order violation and requests that the inmate contact OCC. If the inmate fails to contact OCC, OCC attempts to contact the inmate by telephone. OCC also runs the inmate's New York State identification number through the Inmate Information System computer to determine if the inmate has re-entered the City correctional system. OCC also checks to determine if the inmate is in a correctional facility upstate. Forty-nine checks of this type are currently in the possession of OCC. Since these fines serve deterrent and punitive purposes, as well as compensatory purposes, it is inappropriate that these funds revert to the defendants. OCC has proposed to donate these "undeliverable" funds, and any subsequent "undeliverable" funds that accrue, to Community Funds, Inc., a New York not-for-profit corporation. These funds will be used to assist female inmates upon their release from prison or jail. The plaintiffs and the defendants have endorsed this proposal.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. The defendants shall issue a check for the amount of \$7,350, made payable to Community Funds, Inc., and deliver this check to the Office of Compliance Consultants. The Office of Compliance Consultants shall deliver these funds to Community Funds, Inc., who shall use this donation for the purpose of assisting female inmates upon their release from prison or jail.

2. Every six months, the Office of Compliance Consultants shall inform the defendants of the amount of "undeliverable" funds that have accrued for that period. The defendants shall issue a check for that amount, made payable to Community Funds, Inc., and deliver that check to the Office of Compliance Consultants. The Office of Compliance Consultants shall deliver these funds to Community Funds, Inc., who shall use this donation for the purpose of assisting female inmates upon their release from prison or jail.

3. Upon receipt of the defendants' check made payable to Community Funds, Inc., the Office of Compliance Consultants shall return all of the undelivered checks, the amounts of which are reflected in the check to Community Funds, Inc., to the defendants.

4. If "undeliverable" funds for any six month period accrue in an amount in excess of \$5,000, either party may move to modify the provision of this Order which identifies the recipient of the funds as Community Funds, Inc. The criterion for granting such a motion shall be the showing of good cause to alter the identity of the donee, and the moving party shall not be obliged to meet any other requirement of proof of the Federal Rules of Civil Procedure or of judicial decisions establishing standards for the modification of consent decrees.

It is so ordered.

Dated: New York, New York
November , 1993

United States District Judge