

2005 WL 351729

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United States District Court,
S.D. New York.

Lakisha REYNOLDS, Georgina Bonilla, April Smiley, Lue Garlick, Adriana Calabrese, Jenny Cuevas, and Elston Richards, on their own behalf and on behalf of all others similarly situated,
Plaintiffs,

v.

Rudolph GIULIANI, as Mayor of the City of New York, Jason Turner, as Commissioner of the New York City Human Resources Administration, Brian J. Wing, as Commissioner of the New York State Office of Temporary and Disability Assistance, and Barbara Debuono, as Commissioner of the New York State Department of Health, Defendants.

No. 98 Civ. 8877(WHP). | Feb. 14, 2005.

Opinion

ORDER

PAULEY, J.

*1 On December 30, 2004, this Court issued its Memorandum and Opinion granting in part and denying in part plaintiffs' requests for declaratory relief and a permanent injunction requiring defendants to process applications for food stamps, Medicaid and cash assistance in accord with federal and state law. See *Reynolds v. Giuliani*, No. 98 Civ. 8877(WHP), 2004 WL 3017014 (S. D.N.Y. Dec. 30, 2004).

On January 13, 2005, plaintiffs moved for reconsideration of this Court's holdings that: (1) 18 N.Y.C.R.R. § 387.8(a)(2)(i)(a) does not confer a privately enforceable right of action; and (2) plaintiffs' claim under New York Social Services Law § 133 is barred by the doctrine of

sovereign immunity.

Motions for reconsideration are governed by Local Civil Rule 6.3, which provides in pertinent part: "There shall be served with the notice of motion a memorandum setting forth concisely the matters or controlling decisions which counsel believes that court has overlooked." Thus, the movant must demonstrate that the court overlooked controlling decisions or factual matters which, had they been considered "might reasonably have altered the result reached by the court." *Consol. Gold Fields v. Anglo Am. Corp.*, 713 F.Supp. 1457, 1476 (S.D.N.Y.1989); accord *In re Initial Public Offering Antitrust Litig.*, Nos. 01 Civ.2014(WHP), 01 Civ. 11420(WHP), 2004 WL 789770, at *1 (S.D.N.Y. Apr. 13, 2004).

Plaintiffs argue that this Court overlooked several Second Circuit decisions enforcing the obligation of local public assistance agencies to provide assistance to the needy even where such agencies also serve as agents of the state for some purposes. See *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir.2004); *Koster v. Perales*, 903 F.2d 131 (2d Cir.1990); *Holley v. Lavine*, 605 F.2d 623 (2d Cir.1979). This Court notes that the issue concerning Eleventh Amendment immunity was not fully briefed or argued by the parties prior to this Court's December 30, 2004 Memorandum and Opinion.

After considering the parties' motion papers, plaintiffs' motion for reconsideration is granted. Upon reconsideration, this Court concludes that plaintiffs' pendent state claims under 18 N.Y.C.R.R. § 387.8(a)(2)(i)(a) and New York Social Services Law § 133 are privately enforceable in this action. This Court's reasoning is set forth in an Amended Memorandum and Opinion dated February 14, 2005.

To avoid piecemeal determinations, this Court amends its original findings of fact and conclusions of law to reflect its decision on plaintiffs' motion for reconsideration. The December 30, 2004 Memorandum and Opinion is withdrawn and is superceded by the Amended Memorandum and Opinion dated February 14, 2005.