

 KeyCite Yellow Flag - Negative Treatment  
**Opinion Amended** by Brad H. v. The City of New York, N.Y.Sup.,  
November 13, 2003

2003 WL 22721558

NOT APPROVED BY REPORTER OF DECISIONS  
FOR REPORTING IN STATE REPORTS. NOT  
REPORTED IN N.Y.S.2d.

Supreme Court, New York County, New York.  
Ias Part 23.

BRAD H., and Robert K., Michael R., Susan T.,  
and Kevin W. on behalf of themselves and all  
others similarly situated, Plaintiffs,

v.

The CITY OF NEW YORK; Hon. Rudolph W.  
Giuliani, Mayor of the City of New York; the New  
York City Health And Hospitals Corp.; Dr. Luis R.  
Marcos, M.D., President of the New York City  
Health and Hospitals Corp.; the New York City  
Department of Health; the New York City  
Department of Mental Health, Mental Retardation  
and Alcoholism Services; Dr. Neal L. Cohen, M.D.,  
Commissioner of the New York City Department  
of Health and Commissioner of the New York City  
Department of Mental Health, Mental Retardation  
and Alcoholism Services; the New York City  
Department of Correction; Mr. Bernard B. Kerik,  
Commissioner of the New York City Department  
of Correction; the New York City Human  
Resources Administration; Mr. Jason A. Turner,  
Administrator of the New York City Human  
Resources Administration; St. Barnabas Hospital;  
and Dr. Ronald GADE, M.D., President of St.  
Barnabas Hospital, Defendants.

Index No. 117882/99. | Nov. 12, 2003.

City jail inmates diagnosed with mental illnesses brought class action against city and jail officials alleging civil contempt for failure to abide by court order enjoining jail from violating mental hygiene laws. Court approved parties' stipulation of settlement, and signed amended final order and judgment, after fairness hearing. On city's motion to modify stipulation of settlement, and modify amended final judgment and order, the Supreme Court, New York County, Braun, J., held that Court had discretionary power to relieve party from stipulation of settlement, and amended final order and judgment, upon such terms as court deemed just.

Motion granted.

West Headnotes (1)

[1] **Municipal Corporations**

🔑 Compromise and settlement of litigation

Court had discretionary power to relieve city from stipulation of settlement, and amended final order and judgment, upon such terms as court deemed just, since particular portion of settlement would have required city to act illegally. McKinney's CPLR 2104.

Cases that cite this headnote

**Opinion**

**OPINION**

RICHARD F. BRAUN, J.

\*1 This is a class action. This court, as upheld by the Appellate Division, First Department, ordered in granting a preliminary injunction that defendants afford plaintiffs class members, who are prisoners of New York City jails treated therein for mental illness, discharge planning upon their release, contrary to how the vast majority of the prisoners had been treated prior to this court's decision (*Brad H. v. City of New York*, 185 Misc.2d 420, 712 N.Y.S.2d 336 [Sup Ct, N.Y. County], *affd for reasons stated below*, 276 A.D.2d 440, 716 N.Y.S.2d 852 [1st Dept 2000] ). On the eve of trial, and while motions were pending, including to hold defendants in contempt of court after a long hearing thereon held before this court, the action settled. After a fairness hearing, required in this class action pursuant to CPLR 908, this court approved the parties' stipulation of settlement, and signed the amended final order and judgment.

Defendants now move to modify one paragraph of the stipulation of settlement. By stipulation, the motion was also deemed to be a motion to modify the "amended final judgment and order."

Paragraph 61 of the stipulation of settlement now states:

For each Class Member determined as a result of the Pre-Screening Process to be eligible for the

**Brad H. v. City of New York, Not Reported in N.Y.S.2d (2003)**

reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of (a) his or her Release Date or (b) the date on which the Pre-Screening Process is completed.

Defendants want the stipulation of settlement to be modified so that the paragraph reads:

For each Class Member determined as a result of the Pre-Screening Process to be eligible for the reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of (a) his or her Release Date or (b) seven business days after the date on which the Pre-Screening Process is completed[.]

Defendants' attorneys argue that they rushed in negotiating the final settlement and thus did not show their clients the final version of the stipulation of settlement that contained the time period in subpart (b) of paragraph 61. Defendants argue that, if they are held to that provision, they would be violating Federal and New York State laws and regulations. Plaintiffs class members contend that the provision is a key one of the settlement in that a reactivation of medicaid benefits is of critical importance to the plaintiffs class members upon their release from jail or as soon thereafter as possible.

Courts favor stipulations of settlement, particularly those made in "open court" (CPLR 2104), and will only set them aside upon a showing of good cause, including fraud, collusion, mistake, accident, or that an attorney had no authority to enter into a settlement on behalf of the party that he or she represents (*see Hallock v. State of New York*, 64 N.Y.2d 224, 230 [1984] ), or where a party inadvisably, inadvertently, or improvidently entered into the settlement (*Matter of Frutiger*, 29 N.Y.2d 143, 150 [1971] ). A court has the inherent power to vacate its own judgments, based on inadvertence, mistake, fraud, surprise, or excusable neglect (*Matter of McKenna v. County of Nassau, Off. of Court Attorney*, 61 N.Y.2d 739, 742 [1984] ).

\*2 Social Services Law § 366-a (1) requires that a person must apply for medicaid to his or her local social services department. Upon receiving such an application, the department must verify the applicant's eligibility. Where the applicant cannot provide necessary documentation (usually the case of someone who is being released from jail and would not normally have sufficient documents with him or her in jail), the department has to promptly investigate his or her eligibility (Social Services Law §

366-a [2] ). After receiving the application and completing any necessary investigation, the department must determine the applicant's eligibility for medicaid, and, if eligible, the amount of assistance and its commencement date (Social Services Law § 366-a [3][a] ).

Defendants have shown that in most instances they need to perform an investigation in accordance with Social Services Law § 366-a (2), and that the normal course of investigation would take the time period in the proposed amendment. Thus, requiring defendants to follow paragraph 61 in the stipulation of settlement would force them to act illegally, and consequently defendants have demonstrated that they are entitled to the modification sought in the stipulation of settlement, and amended final order and judgment (*see Rampe v. Giuliani*, 281 A.D.2d 609, 722 N.Y.S.2d 564 [2nd Dept 2001]; *390 W. End Assocs. v. Baron*, 274 A.D.2d 330, 332, 711 N.Y.S.2d 176 [1st Dept 2000] ). However, this court has the discretionary power to relieve defendants from the stipulation of settlement, and amended final order and judgment upon such terms as this court deems just (*see 1420 Concourse Corp. v. Cruz*, 135 A.D.2d 371, 373, 521 N.Y.S.2d 429 [1st Dept 1987], *appeal dismissed* 73 N.Y.2d 868 [1989] ). Therefore, the motion has been granted upon such terms, by this Court's separate decision and order, to the extent of amending paragraph 61 of the stipulation of settlement by adding language to the end of the current version of subpart (b) so that it will now read "the date on which the Pre-Screening Process is completed, where the Class Member has provided necessary documentation before the completion thereof, pursuant to Social Services Law § 366-a (2)(a)"; adding as "(c)," the substitute subparagraph (b) sought by defendants, with additional language at the end thereof, so that the subpart will read "seven business days after the date on which the Pre-Screening Process is completed, where an investigation is deemed necessary, pursuant to Social Services Law § 366-a (2)(a)," and in keeping with this court's equitable, discretionary power, because the receipt of medicaid at the earliest possible appropriate time is of such significant importance to assist the plaintiffs class members, by adding as (d) "where it appears that a Class Member is in immediate need and an investigation is deemed necessary, temporary medicaid benefits shall be granted pending completion of an investigation," as required by Social Services Law §§ 2(18), 133 (*see Henrietta D v. Giuliani*, 119 F Supp 2d 181, 185 [US Dist Ct, E.D.N.Y.2000]; *cf. Pastore v. Sabol*, 230 A.D.2d 835, 836, 646 N.Y.S.2d 709 [2nd Dept 1998] [where the claims for temporary medicaid assistance, pursuant to Social Services Law § 133, were dismissed as academic because plaintiff and plaintiffs-intervenors had received medicaid benefits retroactive to the date of their applications] ). The amended final order and judgment was amended accordingly.

**Brad H. v. City of New York, Not Reported in N.Y.S.2d (2003)**

2003 N.Y. Slip Op. 51412(U)

**Parallel Citations**