

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO.: 8:04-CV-1153-T-17MSS

ACCESS FOR THE DISABLED, INC. and
JOHNNY LONG,

Plaintiffs,

vs.

SANFORD M. SANDELMAN, TRUSTEE,

Defendant.

**PLAINTIFFS' MOTION TO COMPEL DEFENDANT TO CONCLUDE
SETTLEMENT OR, IN THE ALTERNATIVE, TO REOPEN THE CASE**

Plaintiffs, by and through the undersigned counsel, hereby submit this Motion to Compel Defendant to Conclude Settlement or, in the Alternative, to Reopen Case, and as good cause therefore, state as follows:

1. On or about May 17, 2005, just before the Pretrial Conference was scheduled to take place in this matter, the Parties reached a settlement and provided notice to the Court, pursuant to Rule 3.08, M.D. Fla. L.R., that a settlement had been reached.

2. Pursuant to this Notice, the Court cancelled the Pretrial Conference and issued an Order of Administrative Closure for sixty days pending the filing of a Stipulation for Dismissal.

3. On May 18, 2005, the undersigned prepared and forwarded to Defendant's counsel by facsimile a Stipulation for Settlement for the Parties to approve and execute to memorialize the settlement, together with a demand for attorney's fees, expenses and costs.

4. On May 26, 2005, after not having heard back from Defendant's counsel, the undersigned inquired as to the status of the matter. Defendant's counsel responded the same day that

he had forwarded the Agreements to his client and would follow up on the matter.

5. On June 1, 2005, after not having heard back from Defendant's counsel, the undersigned inquired as to whether Defendant's counsel had followed up with his client and when Plaintiffs could expect to receive the executed agreement.

6. On June 8, 2005, the undersigned inquired again as to whether Defendant's counsel had received the signed settlement back from his client yet. On the same day, Defendant's counsel advised that he had spoken with his client and expected "finalization within the next few days."

7. On June 16, 2005, the undersigned inquired again as to when Plaintiffs might expect to receive the final/ executed documents. Plaintiffs received no response to this inquiry.

8. On June 22, 2005, the undersigned reminded Defendant's counsel that on June 8, 2005, he had represented that he expected finalization within the next few days, and again inquired into the status of the matter. Plaintiffs received no response to this inquiry.

9. On July 14, 2005, the undersigned advised Defendant's counsel that the deadline to reopen the case was July 18, 2005, and that the settlement must either be concluded by then or the case would have to be reopened.

10. In response to Plaintiffs' inquiry and the impending deadline to reopen the case, Defendant's counsel agreed to reopen the case and represented that, "it is still our intention to settle per our discussions. I will again contact my client about the status of the agreement."

11. Based on the foregoing, and the undersigned's hope that Defendant would eventually respond to the proposed Stipulation for Settlement, Plaintiffs moved to reopen the case and requested that the Court reopen the case and provide the Parties with an enlargement of time to consummate the settlement in this action.

12. On July 19, 2005, the Court entered an Order reopening the case and allowing the

Parties ten (10) days to conclude the settlement. If the settlement was not concluded within that time, the Court ordered that the case will be reset for trial at that time.

13. Plaintiffs have continued to attempt to extract a response from Defendant to the proposed Stipulation for Settlement and have otherwise attempted to conclude the settlement, but to no avail.

14. More specifically, on July 27, 2005, the undersigned corresponded with Defendant's counsel asking if he had received any news from his client on the settlement. In response, Defendant's counsel simply stated, "[N]ot yet."

15. Notwithstanding the Defendant's delay in responding to the Stipulation for Settlement, it is Plaintiffs' position that the Parties reached a settlement in this action on May 17, 2005. Although a Stipulation for Settlement had not yet been drafted or executed as of that date, counsel for the Parties verbally agreed to a settlement and notified the Court of the settlement pursuant to Rule 3.08, M.D. Fla. L.R.

16. Critically, Defendant has, since May 17, 2005, acted consistently with a case that is settled. In point of fact, Defendant has not filed any objections to the settlement nor to the Court's Order of Administrative Closure entered on May 17, 2005, which states, "This Court was notified of the settlement of this case, and it will be administratively closed for sixty days pending the filing of a Stipulation for Dismissal."

17. If Defendant had any objection to the settlement, or did not agree that a settlement had been reached, it had an obligation to notify the Court of such objection in a timely manner following the Court's Order of Administrative Closure. Of course, no such objection was filed, indicating Defendant's agreement that this case was settled.

18. As such, Plaintiffs request that the Court compel Defendant to conclude the

settlement by entering into a written agreement which memorializes the verbal agreement reached by counsel for the Parties on May 17, 2005.

19. To the extent that Defendant disputes any of the terms and conditions set forth in the Stipulation for Settlement prepared by Plaintiffs and forwarded to Defendant on May 18, 2005, Plaintiffs respectfully request that the Court assign a U.S. Magistrate Judge to adjudicate the dispute if it cannot be resolved by the Parties.

WHEREFORE, Plaintiffs respectfully request that the Court grant this Motion, and compel Defendant to conclude the settlement in this action, or in the alternative, reopen the case.

CERTIFICATE OF SERVICE

I hereby certify that on **August 2, 2005**, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Robert Nathan Hightower, Esquire at rn@clw.macfar.com; and amd@clw.macfar.com.

s/Todd W. Shulby, Esq.

Todd W. Shulby, Esq.

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