

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

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JOSEPH'S HOUSE AND SHELTER, INC.,

Plaintiff

-against-

**DOCKET NO.
05 CV 513
(FJS)(DRH)**

CITY OF TROY PLANNING BOARD,

Defendant

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JOSEPH'S HOUSE AND SHELTER, INC.,

Plaintiff,

**DOCKET NO.
05 CV 757
(FJS)(DRH)**

-against-

CITY OF TROY, NEW YORK,

Defendant

-----X

CONSENT DECREE AND RELEASE

WHEREAS, Plaintiff Joseph's House and Shelter, Inc. ("Joseph's House), having filed an action in this Court with a docket number 05 CV 513 against the defendant City of Troy Planning Board ("Planning Board") pursuant to the Federal Fair Housing Act and Title II of the Americans With Disabilities Act asserting that the Planning Board, by denying Joseph's House's

application for a building permit for a proposed residential building to be located at 202 Fourth Street, Troy, New York, unlawfully discriminated against the persons with mental illness to reside in the residential building, and

WHEREAS, the Planning Board, having answered the above-mentioned action, having denied these allegations, and having filed a counter-claim against Joseph's House and

WHEREAS, Joseph's House, having filed a subsequent action with this Court with a docket number of 05 CV 757 against the defendant City of Troy, New York ("City") under 42 U.S.C. Section 1983, the First Amendment of the United States Constitution, the Federal Fair Housing Act, and the Americans with Disabilities Act asserting claims for retaliation against the City based upon the City Council's denial of federal Emergency Shelter Grant ("ESG") funds to Joseph's House after it had filed the action with docket number 05 CV 513 against the Planning Board, and

WHEREAS, the City, having answered the action with docket number 05 CV 757, having denied these allegations, and the parties having conducted discovery on both actions and having made motions for summary judgment, and

WHEREAS, the motions for summary judgment for both parties in both actions having been denied by this Court and,

WHEREAS, through the efforts and cooperation of the Administration of Mayor Harry J. Tutunjian and of Joseph's House, and the desire of the parties to avoid the expense and risk of trial, the parties hereby consent to the issuance of a judgment upon the following terms, subject only to the approval of the City Council upon the recommendation of the Mayor:

1. This judgment is binding on Joseph's House on its behalf and on behalf of its present and past directors, employees, attorneys, successors, assigns, agents and representatives and the Planning Board and the City, on behalf of their past and present officials, employees, attorneys, successors, assigns, agents and representatives with regard to any and all claims and disputes concerning, relating to, and/or arising out of the facts and allegations asserted in the both of the above-mentioned actions filed in this Court.

2. It is expressly understood that this Consent Decree has been entered into by the parties solely for the purpose of avoiding further expense and risk in connection with litigating any and all claims and/or disputes. It does not constitute an admission by any of the parties of any violation of any federal, state or local law; or the breach of any duty whatsoever, whether based upon statute, common law, contract, or otherwise.

3. Joseph's House will discontinue with prejudice the actions it filed in this Court against the Planning Board and the City and the Planning Board will discontinue with prejudice its counter-claims against Joseph's House in the action with docket number 05 CV 513, upon the terms of this Agreement.

4. It is expressly understood that the Planning Board has approved Joseph's House plans to perform construction on its property located at 202 Fourth Street, Troy, New York, the property that was in dispute in these actions. Except as stated in paragraph "5" below, the future actions of the Planning Board and the City with regard to the construction and any other work to be performed by Joseph's House at the above-mentioned premises will be taken in the ordinary course of business. In other words, the Planning Board and the City will grant all necessary permits, grant any extensions of those permits as well as any extensions of the existing building

permit, perform any inspections of the premises during the course of construction, issue any necessary approvals, and issue a certificate of occupancy in the ordinary course of business.

5. In consideration of the representations, assurances, and release contained herein, the City will designate and guarantee to Joseph's House \$62,500 per year for four consecutive years in ESG funding or from an alternative source. Additionally, with regard to the initial construction and any other related work to be performed by Joseph's House at 202 Fourth Street, Troy, New York, the City will waive all building permit fees and other permit fees associated with such construction and other related work.

6. In light of the consideration described above, the parties release and forever discharge each other from all expenses, claims or demands, in law or in equity, regarding any matter arising on or before the date this Agreement is executed by the parties, concerning or relating to the claims and defenses asserted in the above-mentioned actions.

7. This Court shall have continuing jurisdiction over this Agreement.

8. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement.

9. This Agreement sets forth the entire agreement between the Joseph's House and the Planning Board and the City and supersedes any and all prior oral and/or written agreements between them. This Agreement may not be altered, amended or modified except by a further writing signed by all the parties to this Agreement.

10. The parties shall abide their own attorneys' fees and costs.

DATED: ALBANY, NEW YORK
JULY , 2009

DISABILITY ADVOCATES, INC.

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**CO-COUNSEL FOR DEFENDANTS
CITY OF TROY PLANNING BOARD
AND CITY OF TROY, NEW YORK**

SO ORDERED:

F. Scullin

FREDERICK J. SCULLIN, U.S.D.J.

7/20/09