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BY ECF

Honorable Robert W. Sweet
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Schoolcraft v. City of New York*, 10-CV-6005 (RWS)

Your Honor:

I am a Senior Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, representing the motion respondent City of New York (the “City”), in connection with the above-captioned matter. I write to briefly respond to plaintiff’s request in the letter of Nat Smith, of September 22, 2016, that the Court order payment of the fee award within 30 days of September 6, 2016.

The plaintiff’s application is without basis. First, plaintiff cites no legal authority for such an order. Rule 69(a)(1) of the Federal Rules of Civil Procedure governs the enforcement of money judgments, and specifies that enforcement shall be presumptively governed by state law. State law contains no provision for an order requiring payment of a judgment within 30 days.

Second, the requested payment would be premature because the Court’s order is non-final as a result of plaintiff’s own motions for reconsideration. *See United States v. Rodriguez*, 892 F.2d 233, 235 (2d Cir. 1989) (“The FRAP 4(b) clock stops when a party files a motion for reconsideration; that is, a timely motion for reconsideration renders the judgment non-final for appeal purposes”)(citations omitted). The Court’s award contains numerous interlocking determinations, and it is not severable into a minimum amount plus the amount that plaintiff would like to add to it. Due to plaintiff’s own motions, the entire fee award remains subject to modification and/or eventual appeal, upon which it can be stayed and after which it may go down and not only up. Were a formal stay pursuant to Fed. R. Civ. P. 62(b) deemed required pending plaintiff’s own motion for reconsideration, such a stay should be granted because it would be inequitable for plaintiff to both challenge the award and enforce it at the same time.

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Third, the 30-day period for payment demanded by plaintiff is unreasonable. For example, by statute, a municipality in New York is given 90 days to pay settlements. N.Y. C.P.L.R. § 5003-a. There is no reason to expect payment of such a large sum as was awarded here in only 1/3 of that time.

Accordingly, plaintiff's request for a 30-day payment order should be denied.

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/

Alan H. Scheiner
Senior Counsel
Special Federal Litigation Division

cc: All counsel by ECF