

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN GILL SMITH,)	
)	
Plaintiff,)	
)	No. 03-6494
and)	
)	
THE UNITED STATES OF AMERICA,)	The Honorable Thomas J. O'Neill
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
THE CITY OF PHILADELPHIA,)	
)	
Defendant.)	
_____)	

SETTLEMENT ORDER

I. Introduction

This Settlement Order ("Order") resolves a civil action in which the United States intervened to assert claims against the City of Philadelphia ("City") for declaratory, injunctive, and monetary relief to enforce the provisions of title II of the Americans with Disabilities Act of 1990 ("title II" and "ADA"), 42 U.S.C. §§ 12131 *et seq.*, and section 504 of the Rehabilitation Act of 1973 ("section 504"), 29 U.S.C § 794, and those statutes' implementing regulations. The Order also resolves the state and local claims asserted by John Gill Smith pursuant to the Pennsylvania Human Relations Act, 43 P.S. § 951 *et seq.*, and the Philadelphia Commission on Human Relations, Fair Practices Ordinance, The Philadelphia Code § 9-1105 *et seq.* The United States and Mr. Smith allege that the City discriminated against Mr. Smith in the provision of emergency medical services (EMS) by excluding him from and denying him the benefits of the City's EMS because of his disability.

The City of Philadelphia states that this settlement is made in compromise of disputed claims and for the sole purpose of avoiding the expense and inconvenience of further litigation. By entering into this Order, defendant does not admit, either directly or by implication, any violation of any law, statute, regulation, or ordinance. On the contrary, defendant continues to expressly and vigorously deny that it violated any law, statute, regulation or ordinance in connection with the above-captioned action. Neither this Order nor the settlement of the above-captioned action shall be construed in any court whatsoever, or otherwise, as an admission of

liability on the part of the City of Philadelphia, or any other current or former agents, servants, workers, or employees of the City of Philadelphia.

As a result of ongoing discussions, the United States, Mr. Smith, and the City (collectively, the "parties") have reached agreement that it is in the parties' best interest, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms without further litigation.

In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS, AND ORDERS THE FOLLOWING:

II. Jurisdiction and Venue

1. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 12133, and 29 U.S.C. § 794a. The parties agree that venue is appropriate.

2. Plaintiff John Gill Smith is a qualified individual with a disability within the meaning of the ADA and section 504, 42 U.S.C. § 12102(2), 12131 and 12132, and 29 U.S.C. 794, with respect to the City's provision of emergency medical services. The United States Department of Justice ("Department") is the federal agency responsible for enforcing title II of the ADA, 42 U.S.C. § 12131 *et seq.*, and section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

3. Defendant City of Philadelphia is a public entity within the meaning of the ADA, 42 U.S.C. § 12131(1), and a recipient of Federal financial assistance under section 504, 29 U.S.C. § 794.

4. Pursuant to title II of the ADA and section 504, the City of Philadelphia, as a public entity and recipient of federal financial assistance, must ensure that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the City, or be subjected to discrimination by the City, 42 U.S.C. § 12132, 29 U.S.C. 794(a).

III. Obligations of the City of Philadelphia

5. The City, by and through its officials, agents, employees, and all persons in active concert or participation with the City, shall not engage in any act or practice that discriminates against any individual on the basis of disability with respect to the provision of emergency medical services, or excludes from or denies such individuals the benefits of the City's EMS programs and services.

6. Within 90 days of the effective date of this Settlement Order, or as soon thereafter as possible, the City will implement a supplemental training program on HIV and other infectious diseases the components of which will be pre-approved by the Department. Participation in the training program will be mandatory for all Paramedics and Emergency Medical Technicians

(EMTs) within the Philadelphia Fire Department. The training will consist of a variety of training materials, and will be conducted on an on-going and periodic basis, as follows:

- a. The Fire Department shall purchase multiple copies of a training video, mutually selected by the parties, to be disseminated within the fire stations of each precinct. All Paramedics and EMTs are required to view the video at least twice a year, and sign a certification verifying each viewing;
- b. Prior to each dissemination of the video, the Medical Director for the EMS Division of the Philadelphia Fire Department "(Medical Director)" will issue a directive instructing all Paramedics of their obligation to watch the video;
- c. At least once a year, the Medical Director shall issue a directive instructing Paramedics that Paramedics are required to adhere to all protocols regardless of whether a patient has HIV disease and that it is against the policy of the EMS to discriminate against patients with HIV/AIDS;
- d. At least once a year (but not at the same time as the actions required in paragraphs a-c), the Fire Department will disseminate information, published by the Centers for Disease Control and Prevention, or other entity, that explains how blood borne pathogens are transmitted, and the measures that can be taken to avoid exposure;
- e. The Fire Department will post at each Fire Station its policy regarding the treatment of individuals with HIV and other infectious diseases, and the use of universal precautions;
- f. All incoming Paramedics will be provided all written materials described in paragraphs b-e, and will be required to view the training video described in paragraph a.

7. The Medical Director will devise a procedure to verify that each paramedic has participated in the supplemental training program, and that the Fire Department has adhered to the requirements set forth in paragraph 6. Within 180 days of the effective date of this Order, the City will submit to the Department records certifying participation in the training program by all currently-employed Paramedics and EMTs within the Philadelphia Fire Department and the appropriate dissemination of training materials. For the duration of this Order, the City will submit records on a yearly basis (at the one, two, and three year mark of the Order) certifying EMT and Paramedic participation in the training program.)

8. The City agrees to pay \$50,000 as settlement of the monetary claims in this action upon receipt of a release signed by the individual plaintiff and pursuant to the conditions described in paragraph 10.

9. Within seven (7) days of the entry of this Order, the City will transmit to Mr.

Smith, through his counsel, Ronda Goldfein, AIDS Law Project, a Release of All Claims. The City will send counsel for the United States a copy of the release when it is sent to Mr. Smith.

10. Within forty-five (45) days of the City's receipt of Mr. Smith's signed Release of All Claims, or as soon thereafter as possible, the City will forward the monetary settlement to Liacouras & Smith, LLP, 1515 Market Street, Suite 808, Philadelphia, PA 19102 and AIDS Law Project, 1211 Chestnut Street, Suite 600, Philadelphia, PA 19107, by overnight mail.

IV. Monitoring

11. The United States may review compliance with this Order at any time and may enforce this Order if the United States believes that it or any requirement thereof has been violated. If the United States believes that this Order or any portion thereof has been violated, the United States will raise its concern(s) with the City and Plaintiff, and the parties will attempt to resolve the concern(s) in good faith. The United States will give the City thirty (30) days from the date it notifies the City of any breach of this Order to cure the breach prior to instituting any court action.

12. If Plaintiff believes that this Order or any requirement thereof has been violated, he will raise his concern(s) with the City and the United States, and the parties will attempt to resolve the concern(s) in good faith. Plaintiff will give the City thirty (30) days from the date it notifies the City of any breach of this Order to cure the breach prior to instituting any court action.

13. Failure by the United States or Plaintiff to enforce any provision or deadline of this Order shall not be construed as a waiver of the right to enforce other provisions or deadlines of this Order.

14. This Order shall remain in effect for three years from the effective date. The Order of dismissal by the Court shall specifically incorporate this Settlement Order in full, and the Court shall retain jurisdiction to enforce this Order. This Order will expire without further order from the Court three years from the date of entry and approval.

15. The United States District Court for the Eastern District of Pennsylvania shall have exclusive jurisdiction and venue to construe and enforce this Settlement Order, and to resolve any and all disputes arising out of or relating to this Order, which shall be governed by and construed in accordance with the laws of the United States and the Commonwealth of Pennsylvania.

16. The effective date of this Settlement Order is the date on which the Court enters this Order.

17. This Order shall be binding on the Parties, their elected or appointed successors in interest, and defendant's agents and employees.

18. This Order, along with the Release signed by Mr. Smith, constitutes the entire agreement among the parties relating to John Gill Smith and United States v. City of Philadelphia, Civil Action No. 03-6494 (E.D. Pa.), and Department of Justice No. 204-62-189, and no other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Order, including its attachments, shall be enforceable. This Order does not purport to remedy any other potential violations of the ADA, section 504, or any other federal law, and nothing in this Order shall preclude the United States from filing a separate action under the ADA and/or section 504 for any alleged violation not covered by this Order. This Order does not affect the City's continuing responsibility to comply with all aspects of the ADA and section 504.

19. The individuals signing this Settlement Order represent that they are authorized to bind the parties to this Order.

SO ORDERED this _____ day of _____, 2006.

THOMAS N. O'NEILL, JR.
United States District Judge
Eastern District of Pennsylvania

AGREED AND CONSENTED TO:

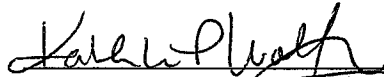
FOR THE UNITED STATES:

ALBERTO R. GONZALES
Attorney General


WAN J. KIM
Assistant Attorney General
Civil Rights Division

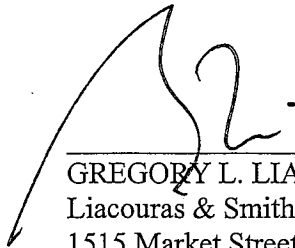
PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
215-861-8200

JOHN L. WODATCH, Chief
PHILIP L. BREEN, Special Legal Counsel
ALLISON J. NICHOL, Deputy Chief
Disability Rights Section
Civil Rights Division


LAURA F. EINSTEIN, Trial Attorney
KATHLEEN WOLFE, Trial Attorney
Civil Rights Division - Disability Rights Section
United States Department of Justice
950 Pennsylvania Avenue NW - NYA
Washington, DC 20530
202-514-9583

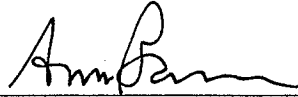
FOR JOHN GILL SMITH:


RONDA B. GOLDFEIN
AIDS Law Project of Pennsylvania
1211 Chestnut Street, Suite 600
Philadelphia, Pennsylvania 19107
(215) 587-9377



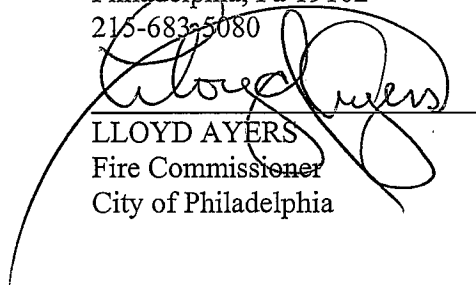
GREGORY L. LIACOURAS
Liacouras & Smith, LLP
1515 Market Street, Suite 808
Philadelphia, Pennsylvania 19102
(215) 241-5305

FOR THE CITY OF PHILADELPHIA:



ANNE BARDEN
Chief Deputy City Solicitor
Labor and Employment Unit

WILLIAM J. SPEARING
Assistant City Solicitor
Labor and Employment Unit
1515 Arch Street, 16th Floor
Philadelphia, Pa 19102
215-683-5080



LLOYD AYERS
Fire Commissioner
City of Philadelphia