

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:04-cv-01086-HB**

Billips et al v. Horn et al
Assigned to: Judge Harold Baer
Cause: 42:1983 Civil Rights Act

Date Filed: 02/10/2004
Date Terminated: 01/10/2005
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Alkim Billips
*Individually and on behalf of all other
persons similarly situated*

represented by **William Donald Gibney , Sr**
The Legal Aid Society
199 Water Street
New York, NY 08816
(212)-577-3419
Fax: (212)-509-8481
Email: wdgibney@legal-aid.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

David Serrano
*Individually and on behalf of all other
persons similarly situated*

represented by **William Donald Gibney , Sr**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Robert Rowland
*Individually and on behalf of all other
persons similarly situated*

represented by **William Donald Gibney , Sr**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Anthony Daniels
*Individually and on behalf of all other
persons similarly situated*

represented by **William Donald Gibney , Sr**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Commissioner Martin Horn
*In his official capacity as Commissioner
of the New York City Department of
Correction*

represented by **Michael Raymond DiChiara**
Joseph and Herzfeld
757 3rd Avenue
NY, NY 10017
(212) 588-5640
Fax: (212) 688-2548
Email: md@kdlawllc.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Sharon Carpinello
*In her official capacity as Acting
Commissioner of the New York State
Office of Mental Retardation and
Developmental Disabilities*

represented by **Marc Alan Konowitz**
New York State Office of the Attorney
General
120 Broadway
New York, NY 10271
(212) 416-8549

Fax: (212)-416-6075
 Email: marc.konowitz@ag.ny.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Raymond W. Kelly
*In his official capacity as Commissioner
 of the New York City Police Department*

represented by **Michael Raymond DiChiara**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Thomas A. Maul

represented by **Marc Alan Konowitz**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
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| 02/10/2004 | | SUMMONS ISSUED as to Sharon Carpinello, Martin Horn, Raymond W. Kelly. (gmo,) (Entered: 02/11/2004) |
| 02/10/2004 | 1 | COMPLAINT against Sharon Carpinello, Martin Horn, Raymond W. Kelly. (Filing Fee \$ 150.00, Receipt Number 499149) Document filed by Alkim Billips, Anthony Daniels, Robert Rowland, David Serrano.(gmo,) (Entered: 02/11/2004) |
| 02/10/2004 | | Magistrate Judge Frank Maas is so designated. (gmo,) (Entered: 02/11/2004) |
| 02/27/2004 | 2 | Letter addressed to William D. Gibney from Judge Harold Baer dated 2/19/04 re: a pretrial conference will be held on 4/15/04 in Room 2230 at 4:10 p.m. (db,) (Entered: 03/02/2004) |
| 03/09/2004 | 4 | ENDORSED LETTER addressed to Judge Baer from Michael DiChiara dated 3/5/04; granting defts an extension of time until 3/19/04 to respond to plntfs' complaint. (Signed by Judge Harold Baer on 3/5/04) (cd,) (Entered: 03/15/2004) |
| 03/10/2004 | 3 | ENDORSED LETTER addressed to Ms.Sherlock from William Gibney dated 2/24/04 re: counsel requests an adjournment of pretrial conference. Pretrial Conference set for 4/1/2004 04:10 PM before Judge Harold Baer. (Signed by Judge Harold Baer on 3/10/04) (djc,) (Entered: 03/15/2004) |
| 03/12/2004 | 5 | ANSWER to Complaint. Document filed by Martin Horn, Raymond W. Kelly.(jeh,) (Entered: 03/17/2004) |
| 03/15/2004 | 6 | NOTICE OF MOTION (FILED ON SERVICE DATE) to Dismiss the complt with attached declaration of Richard Wolfe in support. (nite dep. box). Document filed by Thomas A. Maul, Sharon Carpinello. (pa,) (Entered: 03/25/2004) |
| 03/24/2004 | 7 | MEMORANDUM OF LAW in Support re: 6 MOTION (FILED ON SERVICE DATE) to Dismiss.(nite dep. box). Document filed by Sharon Carpinello, Thomas A. Maul. (pa,) (Entered: 03/25/2004) |
| 03/30/2004 | 8 | ENDORSED LETTER addressed to Judge Baer from William Gibney dated 3/24/2004 re: additional time to respond to the State's motion to dismiss. The Court rules that you have received an adjournment regarding your time to answer and perhaps another with respect to the PTC- in any event so long as there is no other change in the PTSO that you bring to the 4/1/04 conference, it's ok with me. Plaintiff shall response to the motion to dismiss is now due on 4/6/2004 and the State shall reply on 4/13/2004. (Signed by Judge Harold Baer on 3/29/2004) (jsa,) (Entered: 04/01/2004) |
| 03/31/2004 | | Set Deadlines/Hearings: Replies due by 4/13/2004. Reply to Response to Brief due by 4/6/2004. (jsa,) (Entered: 04/01/2004) |
| 04/02/2004 | 9 | PRETRIAL SCHEDULING ORDER: Amended Pleadings due by 7/1/2004. Joinder of Parties due by 7/1/2004. All discovery except for expert Discovery due |

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| | | by 9/15/2004. No party may make a dispositive motion returnable after 09/01/04; Joint Pretrial Order due by 10/22/2004. Non jury trial; Estimated umber of trial days is 10 days. case is added to the November 2004 Trailing Trial Calendar; The law clerk assigned to this case is Erin Aslam, to whom all correspondence should be directed; (Signed by Judge Harold Baer on 4/1/04) (djc,) (Entered: 04/05/2004) |
| 04/06/2004 | 10 | MEMORANDUM OF LAW in Opposition re: 6 MOTION (FILED ON SERVICE DATE) to Dismiss. Document filed by Alkim Billips, Anthony Daniels, Robert Rowland, David Serrano. (db,) (Entered: 04/08/2004) |
| 04/08/2004 | 11 | SUMMONS RETURNED EXECUTED Summons and Complaint served. Martin Horn served on 2/10/2004, answer due 3/1/2004. Service was accepted by authorized agent at the NYC DOC Office. Document filed by Alkim Billips ; Anthony Daniels ; Robert Rowland ; David Serrano. (db,) (Entered: 04/09/2004) |
| 04/08/2004 | 12 | SUMMONS RETURNED EXECUTED. Sharon Carpinello served on 2/18/2004, answer due 3/9/2004. Service was accepted by Alan H. Sunukjian, assistant counsel. Document filed by Alkim Billips ; Anthony Daniels ; Robert Rowland ; David Serrano. (dle,) (Entered: 04/09/2004) |
| 04/08/2004 | 13 | SUMMONS RETURNED EXECUTED Summons and Complaint served. Thomas A. Maul served on 2/13/2004, answer due 3/4/2004. Service was accepted by Donald M. Matusik. Document filed by Alkim Billips ; Anthony Daniels ; Robert Rowland ; David Serrano. (tp,) (Entered: 04/09/2004) |
| 04/08/2004 | 14 | SUMMONS RETURNED EXECUTED Summons and Complaint served. Raymond W. Kelly served on 2/10/2004, answer due 3/1/2004. Service was accepted by personal service. Document filed by Alkim Billips ; Anthony Daniels ; Robert Rowland ; David Serrano. (jco,) (Entered: 04/09/2004) |
| 04/08/2004 | 15 | MOTION (FILED ON SERVICE DATE) to Certify Class. Document filed by Alkim Billips, Anthony Daniels, Robert Rowland, David Serrano. (kw,) (Entered: 04/12/2004) |
| 04/08/2004 | 16 | MEMORANDUM OF LAW in Support re: 15 MOTION (FILED ON SERVICE DATE) to Certify Class. Document filed by Alkim Billips, Anthony Daniels, Robert Rowland, David Serrano. (kw,) (Entered: 04/12/2004) |
| 04/08/2004 | 17 | SUMMONS RETURNED EXECUTED Summons and Complaint served. Sharon Carpinello served on 2/23/2004, answer due 3/15/2004. Service was accepted by Authorized Agent, Office of Attorney General. Document filed by Alkim Billips ; Anthony Daniels ; Robert Rowland ; David Serrano. (kw,) (Entered: 04/13/2004) |
| 04/16/2004 | 18 | REPLY MEMORANDUM OF LAW in Further Support Of Defendants Carpinello And Maul's re: 6 MOTION (FILED ON SERVICE DATE) to Dismiss.. Document filed by Sharon Carpinello, Thomas A. Maul. (jmi,) (Entered: 04/20/2004) |
| 04/22/2004 | 19 | ORDER re: 10 Memorandum of Law in Oppisition to Motion filed by Alkim Billips, David Serrano, Robert Rowland, Anthony Daniels. My hope as I thought I conveyed at the PTC was that in my view an adversarial posture might not be the way to go and I gather you are meeting amongst yourselves to see if an appropriate accomodation can be accomplished and further litigation avoided. However you come out I will await our meeting next month and then if necessary, turn my attention to the motion. So Ordered. (Signed by Judge Harold Baer on 4/21/04) (jco,) (Entered: 04/23/2004) |
| 05/24/2004 | 20 | ENDORSED LETTER addressed to Judge Baer from William Gibney dated 5/20/04 re: I'm delighted at the progress you report and will grant what I guess resembles a stay but I would like to grant it for 30 days and then have another report and if there are still open items that require mediation, to hold one early in July. For now the stay extends to June 25th with another report or preferable a settlement at that time and your request if necessary for more time or mediation and motions to dismiss will also be stayed. (Signed by Judge Harold Baer on 5/21/04) (tp,) (Entered: 05/25/2004) |
| 06/29/2004 | 21 | ENDORSED LETTER addressed to Judge Harold Baer, Jr. from Andrew Abraham, Marc Konowitz and Stephen Kitzinger dated 6/25/04 re: Counsel for both plaintiff and defendants write to inform the Court of the status of negotiations |

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| | | in this matter. I'm delighted at your progress but sadly your agenda and mine are not the same and I want to resolve the case now having with this adjournment provided plenty of time. You are on the November Trailing Trial Calendar, take as much time as you like but is it is not resolved by August 19, be here for a PTC at 2:50 p.m. and we will set some definite dates including trial. (Signed by Judge Harold Baer on 6/28/04) (jco,) (Entered: 06/30/2004) |
| 07/07/2004 | 22 | ENDORSED LETTER addressed to Judge Harold Baer, Jr. from William Gibney dated 7/6/04 re: 9/9/04 is fine with the caveat that the motions are fully briefed 9/1/04, so trust you will arrive with a settlement in hand or even send it in advance. Look forward to seeing all your prose. (Signed by Judge Harold Baer on 7/7/04) (db,) (Entered: 07/08/2004) |
| 09/10/2004 | 23 | ENDORSED LETTER addressed to Judge Baer from Marc Konowitz dated 8/31/2004 re: Sadly I have little way to extend the dates for trial and other dates that have passed are now also beyond resurrection. You are on the November trial calendar according to the PTSO. If I ordered any adjournemtns which interface or supercede that timetable, let me know. We can talk again on October 5, but don't count on making motions since even now I will not have the 60 days my rules permit me to decide any motion. Feel better. So ordered. (Signed by Judge Harold Baer on 9/8/2004) (jsa,) (Entered: 09/13/2004) |
| 10/27/2004 | 24 | ENDORSED LETTER addressed to Judge Harold Baer from William Gibney dated 10/21/04 re: counsel writes to report the status of the negotiations in this case. One more time we will forebear – but the case will be dismissed without prejudice come 1/6/05. Alternatively I will try it on that date assuming 30 days' notice. Enough is enough. Judges, at least Federal Judges, have different agendas from litigating any one item on that agenda is moving cases. (Signed by Judge Harold Baer on 10/26/04) (kw,) (Entered: 10/29/2004) |
| 12/20/2004 | 25 | ORDER; denying 6 Motion to Dismiss; The Clerk of the Court is instructed to close this motion. The State defendants have until 12/30/04 to oppose the plaintiffs' class certification motion and the plaintiffs have until 1/6/05 to reply. The Court will hold a class certification hearing on 1/13/05 at 12:00 p.m.. The pre-trial materials, including the joint pre-trial order, fully briefed motions in limine, if any, and objections to exhibits, together with a brief response to any such objections, are due in Chambers on 1/31/05. A non-jury trial will commence on 2/9/05. (Signed by Judge Harold Baer on 12/17/04) (sac,) (Entered: 12/22/2004) |
| 01/04/2005 | 26 | ENDORSED LETTER addressed to Judge Baer from Edward J. Curtis, Jr. dated 12/30/04 re: counsel requests that the State Defendants' time to answer be extended to January 6, 2005; OK but keep the balance of our time-table in mind, e.g. class cert hearing – it doesn't change. (Signed by Judge Harold Baer on 12/30/04) (djc,) (Entered: 01/05/2005) |
| 01/10/2005 | 27 | ORDER OF DISCONTINUANCE with prejudice and without prejudice.... (Signed by Judge Harold Baer on 1/7/05) (jf,) (Entered: 01/11/2005) |
| 02/14/2005 | 28 | STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL.... (Signed by Judge Harold Baer on 2/14/05) (jf,) (Entered: 02/16/2005) |