

FILED by *[Signature]* D.C.
MAY 12 1998

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MICHAEL POTTINGER, PETER
CARTER AND BERRY YOUNG

Plaintiffs,

vs.

Case No. 88-2406-CIV-ATKINS

CITY OF MIAMI,

Defendant.

OMNIBUS ORDER APPROVING CLASS NOTICE OF SETTLEMENT AGREEMENT WITH SPECIFIED REVISIONS; SETTING DATES FOR RECEIPT OF OBJECTIONS TO SETTLEMENT AGREEMENT AND FOR PUBLIC HEARING; NOTING COURT'S POSSIBLE OBJECTIONS TO THE SETTLEMENT AGREEMENT; CONSTRUING LETTER TO COURT AND PETITION FROM "DOWNTOWN MIAMI RESIDENTS ALLIANCE" DATED May 1, 1998 AS NOTICE OF PENDENCY OF MOTION TO APPROVE SETTLEMENT AGREEMENT AND DULY NOTING SAME

THIS MATTER is before the court on the above referenced matters. After careful review of the entire record of this case, including all pending pleadings and objections, it is

ORDERED AND ADJUDGED that the "request for approval of class notice of settlement agreement and to set schedule of events" (d.e. 386) is GRANTED as proposed by Plaintiffs except that: (1) The notice shall contain a simple notification that the original class has been expanded from its original parameters to its current parameters. This is necessary because the rights of the original

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class members have been restricted by the additional class members by possibly shrinking each individuals pro rata share of the settlement resources. (2) In order to conserve space, the "coupon" at the bottom of the notice shall be removed and replaced with a sentence in bold print simply stating that individuals desiring assistance or information can contact the ACLU at the address or telephone number listed. (3) The notice shall be 1/3 of a page in the Miami Herald and the El Nuevo Herald, and full pages in the Miami Times and the New Times. At least one notice shall be run in the Miami Herald and El Nuevo Herald on a Sunday. The ads shall be run during the first three weeks of July.

It is further ORDERED AND ADJUDGED that objections to the settlement agreement must be filed by August 28, 1998, and a public hearing will be held in the courtroom of the undersigned located at 301 North Miami Ave., Fourth Floor, Miami, FL 33128, on Tuesday, September 29, 1998 at 9:00 a.m..

It is further ORDERED AND ADJUDGED that the Court wishes to note a few observations of the settlement agreement and encourage the parties to amend the agreement in accordance with these suggestions. (1) The current agreement calls for the class award to be \$600,000 and attorney's fees to be \$900,000. It seems reasonable to suggest that the class of Plaintiffs should receive

more than their ACLU attorneys. Therefore, the Court suggests, and may order, that the attorney's fees be reduced to \$749,000, and the cap on awards to homeless plaintiffs be raised from \$600,000 to \$751,000. The result is an award that is at least nominally larger than the fees collected by the ACLU, with no added cost to the city. (2) The Court is concerned that the settlement agreement and Proof of Claim Form requires documentation from claimants proving the loss of their personal belongings from up to 14 years ago, with no provision for those people who have no documentation of their loss (In any event, the Court questions how a homeless person would have documentation of the loss of their personal belongings if city workers destroyed the belongings in a "sweep" of homeless areas. It's not as if they will have receipts proving that they bought their cardboard boxes, etc.; or a government report of the destruction of their belongings unless they were arrested.) The Court suggests that some provision be made for those people who were not arrested, but had belongings destroyed, to make a claim without documentation. The Court recognizes the difficulties in allowing claims to be made without any proof, but is hopeful that some acceptable method, such as sworn affidavits can be crafted. (3) The agreement at Paragraph 7, sections A & B recites that the city shall provide training for its police officers in the area of

homelessness issues by "academics, service providers, or homeless persons." The agreement should be amended to state that while presentations or assistance by homeless persons may be used as aids to academics or service providers in the training program, they are not to be used in place of academics or service providers. The Court understands that this was probably the intent of the agreement, but it should be spelled out with greater specificity than is recited by paragraph (IV), ¶7. (4) While the agreement specifically deals with many aspects of "life sustaining conduct misdemeanors", it fails adequately to provide for the excretory functions of homeless people except to state that lewd and lascivious behavior may still be punished. The agreement should be amended more fully to deal with this issue. The Court suggests that public restrooms be designated as accessible to homeless persons in the downtown areas at all times of day or night. One way to do this would be to install, at least temporarily, banks of "port-a-johns" with sinks and/or showers at locations downtown where homeless people congregate. At this point, these suggestions are not orders of the Court, but may be made so before ultimate approval of the agreement.

It is further ORDERED AND ADJUDGED that the Court has received a letter / "petition" from Lucia Gelotte dated May 1, 1998 (Ms.

Gelotte has been ordered to provide a copy of this letter/petition " to the parties) purporting to represent what she calls the "Downtown Miami Residents Alliance." This letter/petition " asks the Court to "sign the Pottinger litigation," so the Court will construe the letter/petition as a Notice of the Pendency of the Settlement Agreement, and hereby duly notes the notice. No further action by the Court is necessary at this point concerning this letter and "petition," except as herein provided.

THE COURT WISHES TO MAKE CLEAR TO THE PARTIES AND TO MS. GELOTTE THAT THE INJUNCTION AGAINST ARRESTING HOMELESS RESIDENTS OF MIAMI HAS BEEN STAYED BY THE UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS FOR APPROXIMATELY THE LAST FIVE YEARS PENDING APPEAL OF THIS COURT'S ORDER DATES NOVEMBER 16, 1992. THIS MEANS THAT ANY ACTION OR INACTION ON THE PART OF THE CITY OF MIAMI DURING THE LAST FIVE YEARS RESPECTING THE PROBLEM OF HOMELESS RESIDENTS OF MIAMI WAS NOT TAKEN AS A RESULT OF ANY ORDER OF THIS COURT.

THE ORDER ENJOINING ARRESTING HOMELESS PEOPLE ENGAGED IN PERFORMING INNOCENT, HARMLESS, INOFFENSIVE ACTS SUCH AS SLEEPING, EATING, LYING DOWN, AND SITTING HAS BEEN REINSTATED SINCE APRIL 15, 1998, WHEN THE CASE WAS REMANDED TO THIS COURT BY THE ELEVENTH CIRCUIT COURT OF APPEALS. HOWEVER, THIS ORDER ONLY PREVENTS ARRESTS FOR HOMELESS AND INVOLUNTARY ACTS SUCH AS SLEEPING OR

SITTING, AND DOES NOT PREVENT THE POLICE FROM ARRESTING ANYONE WHO IS ENGAGED IN OFFENSIVE CONDUCT THAT IS ILLEGAL SUCH AS DISTURBING THE PEACE BY SCREAMING AT PEOPLE OR LITTERING BY ABANDONING THEIR PROPERTY ON THE STREETS AFTER THEY HAVE STOPPED USING IT. FURTHERMORE, NOTHING IN THE COURT'S ORDERS PREVENTS THE POLICE FROM ARRESTING ANYONE FOR EVEN HARMLESS CONDUCT SUCH AS SLEEPING IF IT IS NOT IN THE TWO AREAS ESTABLISHED AS "SAFE ZONES." IF MS. GELOTTE OR ANY OTHER PERSON HAS A COMPLAINT ABOUT HOMELESS PEOPLE IN ANY OTHER LOCATION BUT THESE TWO SAFE ZONES, THEN THEY SHOULD BE DIRECTED TO THE PROPER ELECTED OFFICIALS OR TO THE POLICE, BUT NOT TO THIS COURT. CURRENTLY, THESE TWO AREAS ARE BICENTENNIAL PARK AND UNDER THE 395 OVERPASS.

THE COURT HAS BEEN INFORMED THAT BICENTENNIAL PARK IS UNDER CONSTRUCTION TO BECOME PART OF THE NEW ARENA, AND THE 395 OVERPASS HAS BEEN FENCED IN BY THE CITY, MAKING BOTH OF THESE SIGHTS INACCESSIBLE TO HOMELESS PEOPLE. THEREFORE, THE PARTIES ARE DIRECTED TO MEET WITHIN FIVE DAYS OF THIS ORDER TO AGREE ON TWO NEW "SAFE ZONES" THAT CAN TAKE THE PLACE OF BICENTENNIAL PARK AND THE 395 OVERPASS AS AN ARREST FREE ZONE UNTIL THE SETTLEMENT AGREEMENT IS APPROVED.

It is further ORDERED AND ADJUDGED that the parties shall meet within five days of this order to discuss amending the agreement to

reflect the Court's suggestions, and shall file an amended settlement agreement, if one is reached, by May 20, 1998. If any or all of the issues addressed by the Court in this order are not dealt with in the amended agreement in the manner suggested by the Court, a joint status report shall be filed outlining the parties' positions on these issues by May 20, 1998.

DONE AND ORDERED at Miami, Florida, this 12th day of May, 1998.


SENIOR UNITED STATES DISTRICT JUDGE

cc: Clerk of the Court for the Southern District of Florida (to be forwarded to the Eleventh Circuit in compliance with the Eleventh Circuit Order dated December 7, 1994)

Quinn Jones, Esq.
Valerie Jonas, Esq.
Benjamin Waxman, Esq.