

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RABBI SHMUEL HERZFELD, NAOMI BRODSKY, and HAROLD BRODSKY)	
)	
Plaintiffs,)	
v.)	Civil Action No. 11-00721 (JSG)
)	
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS and THE DISTRICT OF COLUMBIA)	
)	
Defendants.)	

**SETTLEMENT AGREEMENT AND RELEASE AMONG DEFENDANT
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS,
THE DISTRICT OF COLUMBIA AND PLAINTIFFS RABBI SHMUEL HERZFELD,
NAOMI BRODSKY, AND HAROLD BRODSKY**

I. Introduction

Plaintiffs Rabbi Shmuel Herzfeld, Naomi Brodsky, and Harold Brodsky (collectively, “Plaintiffs”) have sued Defendants District of Columbia Board of Elections and Ethics and the District of Columbia (collectively, “Defendants”), asserting violations of their rights pursuant to the First and Fifth Amendments to the United States Constitution. Having engaged in settlement negotiations, Plaintiffs and Defendants have agreed to resolve this litigation upon the terms of this settlement agreement (“the Agreement”).

II. Definitions

A. The following definitions are applicable only to the terms of this Agreement and do not otherwise affect, implicate, impact, or modify any obligations of the District under applicable federal or local law.

B. "Agreement" – means the instant document, which, along with any and all appendices and/or attachments hereto, constitutes and encompasses the entire agreement of the Parties, which may not be supplemented or amended by parol evidence or in any other manner except by express written agreement of the Defendants and of the Plaintiffs.

C. "Effective Date" – means the date of the last signature on this Agreement.

D. "Lawsuit" – means the instant civil action, *Rabbi Shmuel Herzfeld, et al. v. District of Columbia Board of Elections and Ethics and the District of Columbia*, 08-cv-0721 (JSG).

E. "Parties" – means, collectively, Plaintiffs and Defendants.

III. Scope of Settlement Offer and Resultant Settlement

A. This Agreement is a contract binding upon the Parties and their officials and employees.

B. Nothing in this Agreement is an admission of liability, duty, or wrongdoing by any Party or an admission that any policy, practice, or procedure of the District at any time or in any way violated federal or District law. The Defendants deny all liability and any and all factual claims asserted by Plaintiffs in the Lawsuit. This Agreement shall have no collateral estoppel or res judicata effect whatsoever, or otherwise preclude the District from asserting any defense in any other matter.

C. The Defendants' Settlement Offer ("Offer") and this resultant Agreement may be accepted only jointly and collectively by all Plaintiffs in release, resolution, and satisfaction of all claims arising out of the allegations raised by Plaintiffs in the complaint or in any amended complaint in this Lawsuit that have been or could have been brought by any of the Plaintiffs, their agents, heirs, and/or assigns, in any forum, against the Defendants, to include any and all

persons who are or have been agents, employees, officers, or officials of the Defendants.

Plaintiffs' acceptance of the Defendants' Offer and of this Agreement is reflected by Plaintiffs' signatures upon this Agreement.

D. Plaintiffs and their agents, heirs, and assigns agree to accept the terms and relief contained in this Agreement as full satisfaction of any and all claims, rights, demands, and/or causes of action, of whatsoever kind and nature, that they have or hereafter acquire against the Defendants and/or their agents, servants, officers, officials, and/or employees, in their individual and official capacities, arising out of the allegations raised by Plaintiffs in the complaint or in any amended complaints in this Lawsuit based on any theory of liability, arising on or before the date of final execution of this Agreement.

E. Within five business days of execution of this Agreement by all Plaintiffs and counsel for the Parties, the Parties shall file the attached proposed "Stipulation Dismissing Case Without Prejudice" (Exhibit A). Pursuant to paragraph IV below, within five business days after the Mayor submits the proposed Bill to the Council for the District of Columbia plaintiffs will file with the Court a dismissal with prejudice.

F. Failure to comply with the provisions of this Agreement shall not be a basis for an entry of sanctions against the District.

G. This Agreement constitutes the entire understanding between the Parties hereto and is intended as the complete and exclusive statement of the agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and negotiations thereto. All Exhibits attached hereto are incorporated herein by reference and made a part of this Agreement.

H. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

I. The undersigned representatives of the Parties certify that they are fully authorized to enter into and to execute the terms and conditions of this Agreement and to make such Agreement fully and legally binding upon and enforceable against every Party on whose behalf they have executed this Agreement. The individuals signing for the Defendants are their officials acting within the scope of their authority. The Parties stipulate, agree, and warrant that they will not challenge or contest in any way the capacity or the authority of any Party hereto to make the agreements, covenants, and stipulations herein.

J. No Third Party Beneficiary Rights. This Agreement creates no obligations or duties on the part of Parties other than as stated specifically in this Agreement. The Parties stipulate, agree, and acknowledge that nothing in this Agreement may be used by any person or entity for any purpose in any legal proceeding other than by Plaintiffs and Defendants as stated specifically in this Agreement. This Agreement does not create any rights that can be relied upon or enforced by individuals who are not Parties to this lawsuit. An alleged violation of this Agreement shall not create a new, independent private right of action except for an action to enforce the terms of this Agreement. The Parties stipulate, agree, and acknowledge that neither this Agreement nor the proposed Order is intended to create any third party beneficiaries.

K. This Agreement may not be amended or modified in any respect other than by an agreement in writing signed by the Defendants and by the Plaintiffs.

L. This Agreement shall be construed without regard to any presumption or other rule of law requiring construction against the party who caused it to have been drafted.

M. This Agreement shall be governed by and construed and enforced in accordance with the laws of the District of Columbia. This Court shall retain jurisdiction to enforce the terms of this Agreement.

N. The Parties have read this Agreement, have had a full opportunity to consult (and have in fact consulted) with legal counsel with regard to it, and have signed this Agreement voluntarily and freely and with the full understanding of its terms. The Parties further understand and agree that each has relied wholly upon his, her, or its own judgment, belief, and knowledge of the nature, extent, effect, and duration of the Lawsuit, and enter into this Agreement without reliance upon any statements or representations by any other Party or its representatives except those expressly set forth herein. Each Party waives and assumes the risk of any and all claims which exist as of the date of this Agreement or in the future, which that Party does not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, with respect to either facts or law, and which, if known, would materially affect its decision to enter into this Agreement.

O. None of the obligations and duties of any Party set forth in this Agreement may be assigned or delegated to any other person without the express, prior written consent of all other Parties.

P. This Agreement is not severable except with the prior written consent of all Parties.

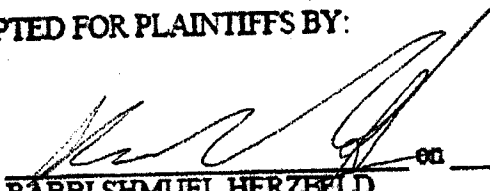
Q. Provided that all Parties hereto execute a copy of this Agreement, the Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means. This Agreement shall be

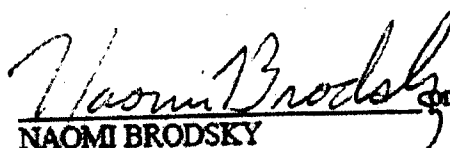
deemed fully executed and entered into on the date of execution by the last signatory required hereby.


IV. General Terms


Within three (3) months following the Execution of this Settlement Agreement, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia ("Council") a bill substantially in the form of Exhibit B hereto ("Proposed Legislation") and recommend its adoption by Council.

ACCEPTED FOR PLAINTIFFS BY:


on 1/5/12, 2012
RABBI SHMUEL HERZFELD



on 5 Jan, 2012
NAOMI BRODSKY


on Jan 5,, 2012
HAROLD BRODSKY


on Jan 5,, 2012
STEVEN LIEBERMAN (DC Bar No. 439783)
ROTHWELL, FIGG, ERNST &
MANBECK, P.C.
1425 K Street, NW, Suite 800
Washington, D.C. 20003

Attorneys for Plaintiffs

ACCEPTED FOR DEFENDANT DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS BY:

 on 11/6, 2012

RUDOLPH M.D. MCGANN [471731]

Staff Attorney

District of Columbia Board of
Elections and Ethics

441 4th Street, NW, Suite 270N


Washington D.C. 20001

Counsel for Defendant District of Columbia Board of Elections and Ethics

ACCEPTED FOR DEFENDANT DISTRICT OF COLUMBIA BY:

IRVIN B. NATHAN

Attorney General for the District of Columbia

 on 11/6, 2012

ELLEN A. EFROS

Deputy Attorney General

Public Interest Division

Office of the Attorney General

for the District of Columbia

441 Fourth Street, N.W., 6th Floor South

Washington, D.C. 200011

Attorneys for Defendant District of Columbia