

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

D. MICHAEL BEARD,  
Plaintiff,

v.

STEPHEN C. PRESTON,  
Secretary of Housing and  
Urban Development,  
Defendant.

Civil Action No. 06-0756 (GK)

STIPULATED SETTLEMENT AGREEMENT AND DISMISSAL

THIS STIPULATED SETTLEMENT AGREEMENT AND DISMISSAL (hereinafter the "Agreement") is made and entered into by and between Plaintiff D. Michael Beard (hereinafter the "Plaintiff") and the U.S. Department of Housing and Urban Development, Office of Inspector General (hereinafter the "Agency" or "HUD OIG").

BACKGROUND

Plaintiff has brought Civil Action 06-0756 (GK) against the Agency for retaliation pursuant to Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e, *et seq.*, and discrimination pursuant to the Age Discrimination in Employment Act (ADEA) of 1967, 29 U.S.C. §§ 621 *et seq.* The Agency has denied the allegations made by the Plaintiff. The purpose of this Agreement is to settle the claims in the above-captioned action and set forth the parties' respective rights and obligations.

**AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the following mutual promises, covenants and undertakings, the parties agree as follows:

**1. Monetary and Other Consideration.**

The Agency will pay to Plaintiff a total sum of Two Hundred Seventy Five Thousand Dollars and No Cents (\$275,000.00), in a lump sum, without off-set, withholding or deduction, by wire transfer to the client trust account of plaintiff's counsel according to information that will be provided by plaintiff's counsel contemporaneously with the execution of this Agreement. This payment, together with the Non-Monetary Considerations set forth in Paragraph 2 below, are understood and agreed to represent full payment in full satisfaction of all of Plaintiff's claims in the instant Complaint, including any other damages available to Plaintiff under this civil action and attorney fees and costs. Payment shall be made as promptly as practicable consistent with the normal processing procedures followed by the U.S. Department of Justice and the U.S. Department of the Treasury. Defendant shall promptly prepare and submit all required documentation to the Department of the Treasury for processing of the payments, but in no event longer than 21 calendar days of the Court's execution of this Agreement. Plaintiff bears the responsibility of any tax burden in connection to any monetary payment.

**2. Non-Monetary Consideration**

In addition to the monetary compensation above (Paragraph 1), Plaintiff shall be appointed Director of the Technical Oversight and Planning Division (TOP) within the Office of

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Audit. At the time of the signing of this Agreement, the TOP position will still be encumbered by its former Director, who has been promoted but is awaiting certification to a Senior Executive Service (SES) level position. Due to the personnel policies of the Office of Personnel Management (OPM) an individual must be certified by OPM prior to formally assuming her new position in permanent status within HUD OIG. Once so certified, the TOP Director position will be vacant and Plaintiff can then be placed into the position in a permanent status. The term "permanent" is used in the context of federal civilian personnel law and is intended to mean only that the position is not a previously determined term limited, *i.e.* temporary, appointment. Nothing in this Agreement shall limit Defendant's right and authority to assign work, determine priorities and otherwise direct Plaintiff in the performance of his duties as director of TOP, or to relieve Plaintiff's permanent assignment as Director of TOP consistent with all applicable federal and agency personnel rules and regulations. Neither shall this agreement limit Plaintiff's right to contest such action as having been taken in violation of the Agreement or in retaliation for having brought this action. In the interim, HUD OIG will place Plaintiff into the TOP Director position in an acting capacity 7 working days after the Court enters this Agreement. Upon OPM notification to HUD OIG of its certification of the former TOP Director, Defendant will initiate the process to permanently assign Plaintiff into the TOP Director position and will, absent events outside the control of HUD OIG, complete that process within 30 calendar days. Plaintiff shall be appointed Director of TOP at his current grade and step level. Agency counsel will provide counsel for plaintiff with timely notice in writing (including by e-mail) no less than once every thirty days, about the status of the current TOP Director's certification to the SES and the permanent assignment of plaintiff as Director of TOP.

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**3. Covenants.**

In consideration of the foregoing, Plaintiff covenants, promises and agrees as follows:

a. **Dismissal of lawsuit.** The parties agree that this is a global settlement of the above-captioned civil action . Execution of this Agreement by Plaintiff, Plaintiff's counsel and counsel for the Agency shall constitute a dismissal of this action with prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure. The Plaintiff further agrees that this Agreement automatically operates as the withdrawal, with prejudice, and release of any and all other pending EEO formal and informal complaints, grievances, requests for investigation, requests for Congressional inquiries, claims under other administrative procedures, appeals, or lawsuits against the Agency, or any of its current or former employees, that are or may be based upon the facts of his employment with the Agency prior to the date on which plaintiff executes this stipulation.

b. **Covenant Not To Sue.** Plaintiff covenants and agrees that he will not now or in the future bring any suit or administrative proceeding against the Agency and its successors, assigns, agents, representatives and past or present employees, with respect to any matter covered by the instant Agreement, other than an action to enforce Plaintiff's rights under this Agreement.

**4. General Release and Waiver by Plaintiff.**

By this Stipulation, Plaintiff waives, releases and abandons any and all civil claims, whether asserted or unasserted, against Defendant including, but not limited to, the United States Department of Housing and Urban Development, the United States Department of Housing and

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Urban Development Office of the Inspector General, and/or its/his agents, servants or employees, past or present, that arose as a result of or in any way related to Plaintiff's employment with the Defendant, up to the date of this Stipulation, except as a result of exposure to toxic, carcinogenic, or other harmful or hazardous substances not presently known. Such waived, released, and abandoned claims include, but are not limited to, the above-styled litigation and any other complaint filed or pending in any other forum whatsoever, as well as any and all other claims arising out of the events involved in said litigation or claims arising from plaintiff's employment with Defendant up to the date Plaintiff executes this Stipulation. This Stipulation shall also include all Plaintiff's claims for attorney's fees and costs incurred in connection with any administrative filings and processes, the District Court litigation process and any other proceedings involving the claims raised in this action.

**5. No Admission of Liability.**

Execution of this Agreement shall not constitute a finding by the Court or an admission by the Agency that it violated any laws or regulations as alleged in the complaint, or that there was any wrongful conduct whatsoever, nor a finding by the Court or an admission by plaintiff that the Agency is not at fault as alleged in the Amended Complaint. The Agency denies that any of its agents, servants, or employees violated any laws or regulations as alleged in the instant Complaint, or that there was any wrongful conduct whatsoever. This Agreement is entered into by both parties for the sole purpose of compromising disputed claims and avoiding the risks and expenses of further litigation.

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**6. Knowing and Voluntary Waiver of Rights and Claims.**

By executing this Agreement, Plaintiff represents that he has read this Agreement; that he has had the opportunity to consult the advisor of his choice prior to signing this Agreement; and that he executes this Agreement freely, knowingly, and voluntarily without threat, duress, coercion, or promise of any future consideration.

**7. Governing Law.**

The Court shall retain jurisdiction to enforce the terms of this Agreement and to conduct such further proceedings and award relief as may be necessary to resolve this action finally.

**8. Entire Agreement.**

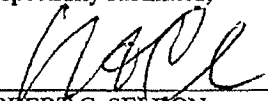
The parties hereto acknowledge that this Agreement sets forth their full and complete understanding with regard to the resolution of the above-captioned civil action and the claims raised therein. By executing this Agreement, the parties further acknowledge that they each understand its terms; that such terms are acceptable to each; that there are no additional obligations, either written or oral, to be performed by any party beyond those set forth herein; that such terms are final and binding as to all claims related to the instant Complaint that have been brought or could have been advanced on behalf of Plaintiff against the Agency; and that the terms of this Agreement will not establish any precedent, nor will this Agreement be used as a basis to seek or justify similar terms in any other case. The terms of this Agreement may not be altered, amended, changed, supplemented, or modified in any manner or degree except by a written instrument signed by each of the parties hereto.


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9. Severability

Should any provision of this Agreement become invalid, illegal or unenforceable, that shall not affect the validity or enforceability or any other provisions of this Agreement.



Respectfully submitted,

  
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ROBERT C. SELDON,  
D.C. BAR #245100  
Robert C. Seldon & Associates, P.C.  
1319 F Street, N.W. - Suite 200  
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(202) 393-8200  
Counsel for Plaintiff

  
\_\_\_\_\_  
JEFFREY A. TAYLOR,  
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United States Attorney

  
\_\_\_\_\_  
RUDOLPH CONTRERAS,  
D.C. BAR #434122  
Assistant United States Attorney

  
\_\_\_\_\_  
D. MICHAEL BEARD  
Plaintiff

  
\_\_\_\_\_  
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Washington, D.C. 20530  
(202) 305-1334  
  
\_\_\_\_\_  
J. BRYAN HOWELL  
Office of General Counsel  
HUD OIG

Counsel for Defendant

SO ORDERED, on this 9<sup>th</sup> day of February 2009.

Gladys Kessler  
UNITED STATES DISTRICT JUDGE

