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The Lawyers' Committee and the Town of Smithtown Reach \$925,000 Settlement in Housing Discrimination Case

WASHINGTON, D.C., March 5, 2009 – The Lawyers' Committee for Civil Rights Under Law announced that an agreement with the Town of Smithtown, New York settling a pending lawsuit against the Town located in Suffolk County, was filed yesterday in the federal District Court for the Eastern District of New York. The lawsuit was filed in December of 2007 by the Washington, D.C.-based Lawyers' Committee on behalf of a class of African-American and Hispanic persons who unsuccessfully sought federal housing assistance vouchers from Smithtown. The claimants alleged that the implementation of a residency preference as part of Smithtown's administration of a federal housing assistance program, known as the Section 8 Housing Choice Voucher Program, violated the Fair Housing Act by rejecting minority applicants who did not live or work in Smithtown.

The settlement agreement includes a provision requiring the Town to deposit \$925,000 in a fund from which monetary damages will be distributed to the individuals who represent the class. These individuals will also be immediately eligible to receive the next available housing vouchers. Class members, who include African-American and Hispanic persons who previously applied for Section 8 vouchers and were placed on 2002 or 2006 waitlists, but were bypassed because they did not live or work in Smithtown will also be eligible for monetary damages from this fund. In addition, the agreement includes that a provision that attorneys' fees and costs of \$200,000 will be paid from the fund. To the extent funds remain after diligent efforts to locate and compensate members of the class have been completed, they will be donated to organizations with missions to further promote fair housing within Suffolk County. The agreement also provides that prior applicants who were not residents of Smithtown, were placed on the 2002 or 2006 waitlist, and were passed over because of the residency preference will be placed at the top of the existing wait list and will receive full consideration for the next available vouchers.

"This is a significant settlement for Section 8 programs in which a residential preference combined with regional demographics may have a disparate impact upon minority, non-resident applicants for a Section 8 Housing program," said Lawyers' Committee for Civil Rights Under Law Executive Director Barbara R. Arnwine. "It is incumbent upon all housing agencies to implement their Section 8 programs in a manner that complies with all fair housing laws."

The Section 8 Voucher Program permits localities to employ a residency preference as long as the preference does not violate the Fair Housing Act. In preliminary discussions to resolve the case, the Town and the Lawyers' Committee agreed that the Section 8 program should provide housing to those in need, affirmatively further fair housing and support the continued operation of program as a fiscally sound program in full compliance with the Fair Housing Act and all federal laws and regulations governing Section 8 programs. Both sides actively pursued a mediated settlement and the agreement filed yesterday achieves these shared goals.

The settlement permits the Town to retain a residency preference by which vouchers are awarded to eligible applicants in the order they appear on the Section 8 waitlist on a "one resident" to "one non-resident" basis. This preference is permitted because given the present composition of the waiting list; this formula fairly allocates Section 8 vouchers in a manner that promotes racial equity in the distribution of such vouchers. Because the racial composition of the waitlist may change over time, the Town will examine and adjust the residency preference anytime the waiting list is opened in the future to insure that the residency preference will not result in a selection rate for minority applicants that is less than four-fifths of what the selection rate for African-American and Hispanic applicants would be without consideration of a residency preference, a formula that other courts have deemed acceptable.

The proposed consent decree requests the Court to preliminarily approve the agreement, hold a hearing in the near future examining the fairness of the agreement and then issue final approval. Upon final approval, the \$925,000 will be deposited in a fund from which the administrator of the fund will determine who is entitled to damage awards and distribute these awards as well as the attorneys' fees and costs.

The plaintiffs are represented *pro bono* by the Lawyers' Committee and individual lawyers who have committed to provide their services on this matter *pro bono publico*.

The Lawyers' Committee for Civil Rights Under Law (LCCRUL), a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law, particularly in the areas of housing, community development, employment, voting, education and environmental justice. For more information about the LCCRUL, visit www.lawyerscommittee.org.

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