

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CORINNE VARGAS, KISHA TRENT,
ANNIE SMITH and R.G., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

TOWN OF SMITHTOWN,

Defendant.

Case No. 07-CV-5202
(JS)(WDW)

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED
SETTLEMENT OF CLASS ACTION AND SETTLEMENT HEARING**

A PROPOSED SETTLEMENT AND FAIRNESS HEARING

IS SCHEDULED FOR

AUGUST 28, 2009 AT 10:00 A.M.

AT THE

ALFONSE M. D'AMATO FEDERAL BUILDING

100 FEDERAL PLAZA

CENTRAL ISLIP, NEW YORK

PLEASE READ ON

THIS SETTLEMENT MAY AFFECT YOU!

**BECAUSE OF A LAWSUIT CALLED VARGAS V. SMITHTOWN, YOU MAY BE ABLE TO RECEIVE
MONEY IF YOU ARE AFRICAN-AMERICAN OR HISPANIC AND APPLIED TO
THE SMITHTOWN SECTION 8 HOUSING VOUCHER PROGRAM**

THIS NOTICE DESCRIBES WHO MAY BE ELIGIBLE TO RECEIVE THIS MONEY

PLEASE REVIEW THIS NOTICE CAREFULLY

ABOUT THE VARGAS V. SMITHTOWN LAWSUIT AND THE PROPOSED SETTLEMENT

What is Vargas v. Smithtown?

Vargas v. Smithtown is the name of a lawsuit. The lawsuit claimed that the defendant Town of Smithtown ran the Section 8 Housing Voucher Program in Smithtown in a way that discriminated against African-Americans and Hispanics.

The lawsuit was brought as a class action. A class action is a lawsuit that tries to protect the rights of a group of people (class members) instead of just one or two persons. The class members are:

All African-Americans and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Housing Voucher Program in 2002 or 2006 when the waitlist was opened and who were or would have been subsequently determined to be not eligible for the Section 8 Housing Voucher Program because they did not live or work in Smithtown.

This means that if you applied to the Section 8 Housing Voucher Program in 2002 or 2006, you may be a member of the class. If you are a member of this class, the Smithtown case was brought to help you.

What was the main policy that the lawsuit challenged?

In Smithtown, the Section 8 Housing Voucher Program is run by an agency, the Community Development Corporation of Long Island, which administers the program for Smithtown, at the direction of Smithtown. The main policy challenged in this lawsuit is that Smithtown preferred giving vouchers to people who lived in Smithtown.

For example, if someone who lived in Smithtown applied for a Section 8 Housing Voucher and a non-Smithtown resident also applied, the person living in Smithtown would get the Section 8 Housing Voucher first because of the local residency policy. Because most Smithtown applicants for Section 8 Housing Vouchers are white, the lawsuit claimed that the local residency policy has an illegal discriminatory effect against African-Americans and Hispanics.

The defendant Town of Smithtown has denied any wrongdoing.

Why does it matter if I am a class member?

First, the class and defendant Town of Smithtown have agreed to settle the case. This means that if you are a member of the class, you will have to accept the final settlement. Second, you may be entitled to receive a money distribution.

At this point, the settlement still has to be approved by the Judge. The Judge will hold a “fairness hearing” on August 28, 2009 that gives class members the right to go to Court and tell the Judge why the settlement is fair or unfair.

What does the settlement say?

The settlement is complicated, but here are some of the details:

- Smithtown and its insurance company will pay into the Settlement Fund;
- Smithtown will use a modified “residency preference” as follows: in administering the remaining 2006 waitlist, Smithtown will give vouchers to eligible applicants in the order that they appear on the Section 8 waitlist on a “one resident to one non-resident” basis. In other words, alternating between the next eligible resident followed by the next eligible non-resident;
- Smithtown will make sure that this modified “residency preference” does not harm minority applicants;
- Smithtown agrees to tell all of its current employees and agents, including the Community Development Corporation of Long Island employees, involved with the Section 8 Housing Voucher Program about the requirements contained in the Fair Housing Act of 1968 and about Smithtown’s policy of equal housing opportunity;
- Smithtown agrees to provide mandatory training to all of its current employees and agents involved with the Section 8 Housing Voucher Program, which will include the requirements of the federal Fair Housing Act, applicable local fair housing laws, Smithtown’s policy of equal housing opportunity, and the policies, operation, methods, and procedures governing the Section 8 Housing Voucher Program;
- Smithtown will actively advertise the Section 8 Housing Voucher Program to minority persons during the term of this settlement;
- Smithtown will let the public know about its non-discriminatory policies and its desire to treat all people in a considerate and professional manner with respect to the Section 8 Housing Voucher Program by displaying the local and federal fair housing posters at all offices where it conducts business;
- Smithtown will remove any language regarding a residency preference in the Section 8 Housing Voucher Program application form, in any correspondence it has with applicants on the waitlist, and in any advertising or any other public documents describing the selection process for vouchers;
- Each reopening of the waitlist in the future will be for at least a one-month period;
- Smithtown will change its Administrative Plan so that no applicant will be removed from the waitlist: (1) unless the applicant requests that his or her name be removed, (2) unless the applicant fails to respond to two written requests from Smithtown for information, which contain warnings that a failure to respond may result in removal

from the waitlist, (3) unless the applicant misses three scheduled appointments, or (4) unless the applicant does not meet Section 8 Housing Voucher Program eligibility standards;

- Smithtown will change its Administrative Plan so that a voucher-holder who does not have a home within Smithtown (and is therefore not guaranteed by law the right to commute) will make every effort to search for housing in Smithtown during the first 60-day term of the voucher, and will keep a record of that search. If the voucher-holder is not able to find acceptable housing within Smithtown during that first term, the voucher-holder will be granted full commuting rights;

- Smithtown will place the non-resident applicants at the top of the current waitlist in the order they would have been assigned based on their original waitlist number if they were on the waitlist before the 2006 reopening of the waitlist, or were on the 2006 waitlist and their number has already been reached.

What do I do if I want to tell the Judge what I think about the proposed settlement, whether I like it or I think it is unfair?

The District Court will hold a fairness hearing. You can go to the hearing to tell the Judge why you think the settlement is fair or unfair. After the fairness hearing, the Judge will decide whether the proposed settlement is fair to both the class members and the defendant Town of Smithtown. If she decides it is fair, the Judge will sign the proposed settlement as an Order of the Court, and it will take effect.

The fairness hearing will be held on August 28, 2009 in the courtroom of Judge Joanna Seybert located in the Alfonse M. D’Amato Federal Building, 100 Federal Plaza, Central Islip, New York 11722. Any member of the class may go to the hearing, in person or by choosing a lawyer to go to the hearing, and tell the Judge: (1) why the settlement should not be approved; (2) why a judgment dismissing the lawsuit on the terms contained in the settlement agreement should not be entered; or (3) why the attorneys for the class should not be awarded their requested attorneys’ fees and expenses.

In order to appear at the hearing, you must send the following information by first-class mail postmarked by August 14, 2009 to the Clerk of the Court and to the lawyers listed below:

- A written statement of all of your objection(s) and all the reasons for those objection(s), including any briefs or affidavits in support of those objection(s), and a statement telling the Clerk of the Court whether or not you are going to come to the hearing;
- Your name, address and telephone number, or the name, address and telephone number of your lawyer;
- The approximate date on which you applied for the Smithtown Section 8 Housing Voucher Program; and
- Your race or ethnic group.

Remember, the above information must be sent to the Clerk of the Court at Office of the Clerk, United States District Court, Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, NY 11722 and to **each** of the following lawyers by first-class mail postmarked no later than August 14, 2009:

Stacey Friedman
32nd Floor
125 Broad Street
New York, NY 10004
Tel: (212) 558-4000
Fax: (212) 558-3588

David Arntsen
Devitt Spellman Barrett, LLP
50 Route 111
Smithtown, NY 11787
Tel: (631) 724-8833
Fax: (631) 724-8010

You do not have to come to the Hearing if you think the settlement is fair. But, if you do not go to the Hearing after you have already sent the information (as discussed above) to the Clerk of the Court and the lawyers, you will never be allowed to object to the fairness of the settlement.

How can I decide if the settlement is fair?

This notice gives you some information about the settlement. The good news is that the settlement includes a lot of information and gives a lot of help to class members. The bad news is that there are many details. We have tried to make it easy to understand.

If you want to go over the proposed settlement with someone, please contact the Claims Administrator by mail at Smithtown Housing Discrimination Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914; by toll-free phone at (800) 766-3330; by fax at (516) 931-0810; or visit the website at www.berdonclaims.com.

How do I get out of the settlement?

If you do not want to be a member of the class, or if you want to be able to start your own lawsuit or be part of a different lawsuit against the defendant concerning the claims in this lawsuit, then you must take steps to get out of the class. This is called “excluding yourself” and sometimes is referred to as “opting out” of the class.

To exclude yourself, you must:

- Send a letter by first-class mail clearly stating that you want to be excluded from the class, such as: “I want to be excluded from the settlement class in the lawsuit named Vargus v. Smithtown, No. 07-CV-5202”;
- Include your:
 - (a) name;
 - (b) address;
 - (c) phone number; and
 - (d) signature.

It will not be enough to give only your name and address, or only the name and address of your lawyer.

- Mail your exclusion request so that it is postmarked no later than August 14, 2009 to:

Smithtown Housing Discrimination Litigation - Exclusion
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914

You cannot exclude yourself on the phone or by email. If you properly ask to be excluded, you will not be entitled to participate in the settlement, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

What if I have questions about this notice?

If you have questions about this notice or the Smithtown lawsuit, please contact the Claims Administrator, as indicated above.

HOW TO GET A MONEY DISTRIBUTION

Who can get a money distribution?

To receive a money distribution, the following must be true:

- You are an African-American or Hispanic individual;
- You applied to the Smithtown Section 8 Voucher Program when the waitlist was opened in 2002 or 2006; and
- You were not eligible for the Smithtown Section 8 Voucher Program because you did not live or work in Smithtown, New York.

This means that if you applied to the Smithtown Section 8 Housing Voucher Program in 2002 or 2006, YOU MAY BE A MEMBER OF THE CLASS.

**IF YOU THINK YOU MAY BE ELIGIBLE, MAKE SURE THAT THE
CLAIMS ADMINISTRATOR HAS YOUR CONTACT INFORMATION:**

write to: Smithtown Housing Discrimination Litigation, c/o Berdon Claims
Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914

call toll-free: (800) 766-3330 • *fax:* (516) 931-0810 *or visit the website:* www.berdonclaims.com

If you do not know if you are eligible, please contact the Claims Administrator to find out.

Please share this information with anyone else you know who also
may have applied to Smithtown for Section 8 Housing Vouchers.

What if I applied for Section 8 from Smithtown but I don't remember the date I applied?

Contact the Claims Administrator as indicated above, and make sure the address they have on file is correct.

What is the procedure for getting a money distribution?

The Claims Administrator will: (1) decide whether or not you qualify as a class member who is entitled to money; and (2) make the distribution of money to qualified class members.

The Claims Administrator will decide whether or not a person or a group of people qualify as class members who are entitled to receive money. Individuals who disagree with the decision may appeal to the Claims Administrator but not to any court or other tribunal.

The Claims Administrator will decide the amounts to be paid to each class member. If there is enough money to pay all class members, payments will be based upon the following schedule:

(a) Those class members who applied and were given a date to be interviewed by Smithtown or its agents or employees about their eligibility for the Smithtown Section 8 Housing Voucher Program, whether or not the class member was actually interviewed and whether or not the interview was cancelled, will receive \$10,000.

(b) Those class members, not described in paragraph (a), who were on the 2002 Smithtown Section 8 Housing Voucher waitlist will receive \$1,000.

(c) Those class members, not described in either paragraph (a) or (b), but who were on the 2006 Smithtown Section 8 Housing Voucher waitlist and whose number has been passed by Smithtown will receive compensation in the amount of \$400.

If there is not enough money, payments may be lower.

How will the Claims Administrator know where to contact me?

The Claims Administrator will use the last address that Smithtown had on file for you. Because some class members have been on the Smithtown waitlist for years, this may be a problem because class members may have moved.

If you moved and did not leave your new address, contact the Claims Administrator and update your address.

If you moved more than one year ago, the request you gave to the post office to forward your mail will no longer be in effect. Contact the Claims Administrator and update your address. **YOU MUST MAKE SURE THAT YOUR ADDRESS IS CORRECT.**

If you know someone else who may have applied to Smithtown but who may have moved since they applied, tell them to contact the Claims Administrator and update their address.

What if I have more questions?

If you have questions or want to update your address, please contact the Claims Administrator at:

Smithtown Housing Discrimination Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914
Phone: (800) 766-3330
Fax: (516) 931-0810
Website: www.berdonclaims.com

Dated: July 1, 2009

BY ORDER OF THE COURT

SMITHTOWN

IMPORTANT LEGAL INFORMATION

Smithtown Housing Discrimination Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914

FIRST-CLASS MAIL
U.S. POSTAGE
PAID
PEARL PRESSMAN LIBERTY
COMMUNICATIONS GROUP