

IN THE ELEVENTH JUDICIAL
CIRCUIT, IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

CASE NO. 98-11208 CA 01
CASE NO. 05-2117 CA 01

CARL L. MASZTAL, JOSEPH A.
GRAUPIER, JUANA MARTINEZ,
and MARISOL FERNANDEZ, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

THE CITY OF MIAMI, FLORIDA, *et al.*,

Defendants.

_____ /

**AMENDED ORDER ON OUTSTANDING APPEALS
AND SECOND DISTRIBUTION**

THIS CAUSE having come on to be heard by the Court on August 17, 2010, and the Court having reviewed the Court file, having reviewed the Settlement Agreements, having reviewed the latest Administrative Statistics, having reviewed all of the Administrator's records pertaining to each and every appeal, having reviewed a current Summary of Class Claims, having reviewed prior relevant Orders of the Court, having heard from the Administrator, having heard argument from Counsel and having been otherwise fully advised in the premises, the Court finds as follows:

FINDINGS OF FACT

1. The total settlement in this matter was \$17,155,000. The City contributed \$15,550,000 to the settlement and Adorno & Yoss contributed \$1,600,000 to the settlement.
2. The Court previously awarded \$3,071,447 for attorney's fees, costs and administrative fees. The total available for class distribution was \$14,078,503. A total of \$13,035,973.45 was distributed. A total of \$0.2555855673 per dollar of fees assessed and paid by each eligible class member was refunded.
3. The Court previously authorized a hold back of \$1,042,529.55. As of August 17, 2010, the total money remaining in the common fund is \$1,348,237.10.
4. Approximately 178,994 potential class members were originally identified by the Administrator.
5. As of August 12, 2010, the Administrator has received 57,602 total claims seeking a refund of the assessment paid.
6. Of those 57,602 total claims, 1,956 were postmarked after October 23, 2008 and were classified as late by the Administrator and therefore denied, leaving a total of 55,646 claims that were timely submitted.
7. Of the 55,646 timely claims, 6,951 were duplicates. Thus, there were 48,695 claims that were timely and non-duplicates.
8. The Administrator approved, processed and paid 47,662 of the 48,695 timely and non-duplicate claims.

9. The Administrator denied 1,033 timely and non-duplicate claims. These denied claims fell into three general categories:
 - a. missing signature;
 - b. missing claim information; and
 - c. invalid property or claimant.
10. The Administrator also, as aforementioned in paragraph 6, denied 1,956 claims for being late (postmarked after October 23, 2008).
11. Per Sections 4.3 and 4.7 of the Settlement Agreements,¹ a claimant had 15 days to appeal the denial of a refund or the amount of the refund.
12. Appeals were filed by 396 claimants whose claims were denied by the Administrator.
13. A total of 218 of the 396 claimants did not timely appeal the denial of their claim, therefore they lost any right to appeal.
14. A total of 178 claimants have timely appealed the Administrator's denial of their claim, as follows:
 - a. Of the 355 claims that were denied because of missing claim information, 11 timely filed appeals. The property owners in this group did not provide enough information to prove their property was assessed the fees at issue. The Administrator has advised that two letters were sent to each property owner explaining the deficiency with no response. These property owners were assessed a total of

¹ The City of Miami and Adorno & Yoss each signed a separate Settlement Agreement with the Class. The Settlement Agreements and all important documents are at www.miamifirefeesettlement.com.

\$2,914.68 in fees and would be entitled to a refund of \$744.94 if all claims were approved.

b. Of the 492 claims that were denied because the property or the claimant was invalid, 27 timely filed appeals. These property owners were assessed a total of \$712,312.45 in fees and would be entitled to a refund of \$182,056.73 if all claims were approved.

i. 15 of the 27 appealed invalid claims were not approved because the property on which they filed was not found in the data provided to the Administrator. These claimants are asserting that they were assessed \$634,817.45. If these claims were approved these property owners would be refunded \$162,250.13. These property owners have not proven the property they owned was assessed the fee at issue. The Administrator has advised that two letters were sent to each property owner explaining the deficiency with no response.

ii. 12 of the 27 appealed invalid claims were not approved because the name provided does not match the information provided to the Administrator. These claimants were assessed \$77,495. If these claims were approved these property owners would be refunded \$19,806.59.

c. The Administrator has advised that multiple letters were sent to each claimant explaining the above deficiencies without a sufficient response.

- d. Of the 1,956 claims denied because they were late, 140 have appealed. These property owners were assessed a total of \$442,094.00 in fees and would be entitled to a refund of \$112,992.81 if all claims were approved. In a prior hearing before the Court, a predecessor Judge ruled that he did not have the authority under the Settlement Agreements to extend the deadline for filing requests for refunds with the Administrator.
15. Per section 4.7 of the Settlement Agreements, if the common fund is not exhausted a second distribution shall be made to all qualified class members, provided the administrative costs associated with the second distribution is not excessive compared to the amount to be distributed.
16. The Administrator has advised the parties that as of August 17, 2010 \$1,348,237.10 remains in the common fund and the costs and fees associated with a second distribution would not exceed \$155,957.00, including the costs and fees associated with notifying claimants of the ruling with respect to their appeal. The Administrator has further advised that a second distribution can be completed in 30-45 days once approved by the Court.
17. Per sections 2.11, 4.6 and 4.7 of the Settlement Agreements, any remaining funds in the common fund after a second distribution revert to the City for the use and benefit of the Fire Department.
18. This Court has reviewed the Court file, reviewed the Settlement Agreements, reviewed the latest Administrative Statistics, reviewed all of

the Administrator's records pertaining to each and every appeal, reviewed a current Summary of Class Claims, reviewed prior relevant Orders of the Court regarding the appeals, held several hearings on the appeal issues, heard from and questioned the Administrator who appeared live at the hearing (and a prior hearing related to the appeals), and heard from counsel for the Class, counsel for the City and counsel for Adorno & Yoss.

ORDER

Based upon the foregoing, it is Ordered and Adjudged as follows:

1. The Court affirms the Administrator's decision to deny the claims of the 140 claimants who timely filed objections to the denial of their claims which were denied because the forms were postmarked after October 23, 2008. This Court, through a predecessor judge, has previously found that it does not have the authority to extend the time deadlines established by the Settlement Agreements. This Court also declines to alter that prior ruling and extend the deadlines.
2. The Court affirms the Administrator's decision to deny the claims of the 11 claimants who timely filed objections to the denial of their claims which were denied because of missing claim information.
3. The Court affirms the Administrator's decision to deny the claims of the 15 claimants who timely filed objections to the denial of their claims which were denied because the property or the claimant was invalid.
4. The Court affirms the Administrator's decision to deny the claims of the 12 claimants who timely filed objections to the denial of their claims which

were denied because the name did not match the information provided to the Administrator.

5. The Administrator shall immediately issue a letter of denial to those claimants whose appeals were denied by the Court. The letter shall state, at a minimum, a) that the appeal was denied, b) that the Court will be entering a written Order denying the appeal of the claimant, c) that the written Order will be posted on www.miamifirefeesettlement.com, d) that the date the Order is signed by the Court starts the time period in which the claimant may have to further appeal, e) that the claimant must be aware that they have a limited time period to appeal, and f) that the claimant may wish to consult with legal counsel to be fully aware of their legal rights and obligations.
6. The Court approves the sum of \$155,597.00 for additional administrative costs in notifying the claimants of the denial of their appeals and a second distribution.
7. The Administrator and the parties shall provide this Court with an updated status report in 60 days so the Court can determine the propriety of a Second Distribution, per section 4.7 of the Settlement Agreements.
8. Due to a clerical error, the Court's September 8, 2010 Order on Outstanding Appeals and Second Distribution was not timely mailed to those claimants whose appeals were denied by the Court. Thus, the Court hereby quashes the September 8, 2010 Order. The Court further orders that this Amended Order be published and posted as set forth

herein, and mailed to each and every claimant who timely filed an appeal
and whose appeal was denied by this Amended Order.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this
_____ day of October, 2010.

Conformed Copy

NOV 02 2010

The Honorable John Schlesinger
Circuit Court Judge

cc: All Counsel of Record
www.miamifirefeesettlement.com
Administrator