

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MEDIA ALLIANCE, INC. and STEPHEN C. PIERCE,

Plaintiffs,

-against-

09-cv-0659  
(MAD/RFT)

ROBERT MIRCH, Commissioner of Public Works for  
the City of Troy, individually and in his official capacity,  
and the CITY OF TROY,

Defendants.

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**SETTLEMENT AGREEMENT AND RELEASE**

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It is hereby stipulated and agreed, by and between plaintiffs, Media Alliance, Inc. and Stephen C. Pierce, and the defendants, Robert Mirch and the City of Troy, that this civil action brought pursuant to 42 U.S.C. § 1983 be settled and compromised on the following terms and conditions:

1. All of the terms and conditions of the settlement placed on the Record at the Settlement Conference on January 20, 2012, the transcript of which is attached hereto as Exhibit "A", are hereby incorporated and adopted into this written agreement and the parties acknowledge and agree to be bound by those terms and conditions as may be further expanded upon herein.

2. This settlement agreement is expressly contingent upon the approval by vote of the City of Troy City Council upon the recommendation of the Mayor of the City of Troy. If the City Council fails to approve this agreement, the settlement is deemed null and void.

3. This is a compromise settlement of disputed claims and demands, and neither this settlement agreement and release nor the resulting compromise settlement shall constitute an admission of liability or fault on the part of the defendants, Robert Mirch, Commissioner of

Public Works for the City of Troy, individually and in his official capacity, and the City of Troy, its agents, servants or employees as to any of the allegations in the pleadings, papers or other proceedings and filings in this action or otherwise. The parties stipulate and agree that the purpose of this compromise settlement is to bring this action to final and conclusive resolution and the desire of the parties to avoid the expense and risk of trial, post-trial proceedings, appeals, and the fee-shifting provisions of 42 U.S.C. §1988.

4. The defendant, City of Troy, agrees to pay to the plaintiff, Media Alliance, Inc., the sum of Five Thousand Dollars (\$5,000.00), which, except as set forth in paragraph 5 below, shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen bodily and personal injuries, property damages and the consequences thereof, federal civil rights claims, constitutional torts, state law torts, resulting, and to result from, the same subject matter giving rise to this action including but not limited to all federal section 1983 civil rights claims or state civil rights claims, civil torts, breach of contract claims, or other claims that plaintiffs or plaintiffs heirs, executors, administrators or assigns, and each of them, now have or may hereafter acquire against the defendants, their agents, servants and employees.

5. The defendant, City of Troy, further agrees to partner with the plaintiff, Media Alliance, Inc., to make an application, in good faith and with due diligence, for an "Our Town" grant from the National Endowment for the Arts, the details of which will be fully disclosed to the City of Troy by plaintiffs, which has an application deadline of March 1, 2012. Plaintiff Media Alliance agrees to be the official (lead) applicant for the "Our Town" grant and assumes full responsibility for the application submission, including meeting the deadline, the grant itself, and its administration, but the Mayor of the City of Troy must review and approve the

application for the grant before it is submitted to ensure that the projects which are the subject of the application are in the public interest of the residents of the City of Troy as contemplated by this settlement. Subject to the foregoing, the City of Troy agrees that, if and only if the grant is awarded and funded by the National Endowment for the Arts, the City will commit up to the sum of \$50,000.00, but no more, in 1 to 1 matching funds for the grant over a two-year period. If the "Our Town" grant is rejected by the National Endowment for the Arts or otherwise unapproved, denied, rescinded, defunded or the funds not made available or plaintiffs required to return the funds for any reason or in any manner whatsoever, the City of Troy has no obligation to commit any matching funds or make future applications with plaintiffs, and the payment of \$5,000.00 set forth in paragraph 4 above fulfills defendants' obligations to plaintiffs in full satisfaction of the settlement. Defendants further make no representations or warranties regarding the likelihood that the "Our Town" grant will be approved or funded by the National Endowment for the Arts. The City of Troy will pay Plaintiff Media Alliance the matching funds within two (2) weeks of Media Alliance's receipt of the Grant funds from the National Endowment for the Arts.

6. In addition to accepting the terms of paragraph 5 above, plaintiffs, Media Alliance, Inc. and Stephen C. Pierce, hereby agree to accept the sum of \$5,000.00 in full settlement and satisfaction of, any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from and, by reason of, the same subject matter giving rise to this action including but not limited to any federal section 1983 civil rights claims or state civil rights claims, civil torts, breach of contract claims or other claims that plaintiffs or their heirs, executors, administrators or assigns, and each of them, now have or may hereafter acquire against the defendants, their agents, servants and employees.

7. Plaintiffs and their heirs, executors, administrators and assigns further agree to indemnify, defend and hold harmless the defendants, their agents, servants and employees from any and all causes of action, claims, liens, rights, subrogation interests or contribution interests incident to or resulting from further litigation or the prosecution of claims by the plaintiff against any third party and agree to hold harmless, defend and indemnify the City of Troy from any and all claims, liabilities or demands made by any person or entity against the City of Troy in connection with the application for the "Our Town" grant due March 1, 2012, its administration or the specific projects which are the subject of the grant application. Plaintiffs agree to obtain all necessary liability insurance or other insurance and permits required for the projects and, if required, name the City of Troy as an additional insured on any such policies. By agreeing to provide 1 to 1 matching funds, the City is not undertaking any obligation or responsibility for the planning and execution of the projects which are the subject of the grant. Plaintiffs further agree to hold harmless and defend and indemnify the City of Troy from any claims by the National Endowment for the Arts for return or repayment of funds provided to plaintiffs under the Our Town grant if the grant is revoked or rescinded or otherwise violated and plaintiffs must return the grant money.

8. It is also agreed, by and among the parties that, other than the terms of paragraph 5 above, the settlement sum of \$5,000.00 represents the entire amount of the compromise settlement, that the entire settlement proceeds shall be allocated, and that the respective parties will each bear their own litigation costs, statutory costs, fees, expenses and attorneys' fees. Specifically, the parties shall abide their own attorneys' fees and costs and no party shall seek prevailing party status or attorneys' fees under 42 U.S.C. § 1988.

9. All parties hereby waive their right to appeal any and all rulings, orders, and decisions in this action.

10. The defendant City of Troy and plaintiff Media Alliance, Inc. will jointly draft and approve a single press release concerning this settlement, which will be approved by both the City of Troy and Media Alliance, Inc. before it is made public and released. The press release will be released to the public within two (2) days following the Judge's "So Ordering" this Agreement.

11. The plaintiff Media Alliance, Inc. represents and affirms that it has the consent of its Board of Directors to enter into this settlement agreement and that Stephen C. Pierce has authority to enter into the settlement agreement.

12. The City of Troy agrees to make payment of the \$5,000.00 within two weeks of approval of this settlement agreement by the Troy City Council.

13. The parties further agree and stipulate that any and all funding obtained through the "Our Town" grant, whether or not matching funds from the City of Troy or direct funds from the National Endowment for the Arts, will be used by plaintiff Media Alliance, Inc. solely for the purposes of the Our Town grant and the application therefore which must be approved by the Mayor of the City of Troy before its submission, specifically projects which improve the quality of life, encourage creative activity, create community identity and a sense of place and revitalize the local economy within the neighborhoods of the City of Troy and which are directed toward the welfare, benefit and interest of the residents of the City of Troy at large. The parties agree and stipulate that no such funds will be used for political-based events.

14. Upon approval of this settlement agreement by the City of Troy City Council, plaintiffs agree to consent to the dismissal with prejudice of this action and agree to execute and file any necessary papers for the purpose of such dismissal, including the Stipulation of Dismissal attached hereto as Exhibit "B".

15. Based upon the mutual consideration described herein, the parties release and forever discharge each other from all expenses, claims or demands, in law or in equity regarding any matters arising on or before the date this agreement is executed by the parties concerning or relating to the claims and defenses asserted in this action.

16. This Court shall have continuing jurisdiction over this settlement agreement notwithstanding the dismissal of the action with prejudice.

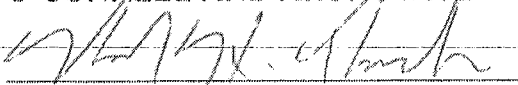
17. The failure of any party to insist upon strict adherence to any term of this agreement on any occasion shall not be considered a waiver thereof or deprive that party thereafter to insist upon strict adherence of that term or any other term of the agreement.

18. This agreement sets forth the entire agreement between the parties and supersedes any and all prior oral and/or written agreements between them. This agreement may not be altered, amended, or modified except by a further writing signed by all the parties to this agreement.

Date: 2/14/12

O'CONNELL AND ARONOWITZ

By:

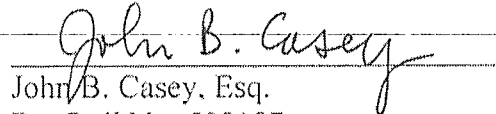


Neil H. Rivchin, Esq.  
Bar Roll No: 501459  
Attorney for Plaintiffs

Date: 02/13/2012

DREYER BOYAJIAN LLP

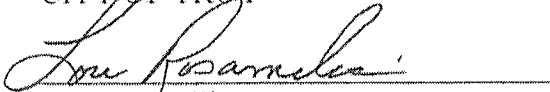
By:



John B. Casey, Esq.  
Bar Roll No: 508187  
Attorney for Defendants

CITY OF TROY

By:

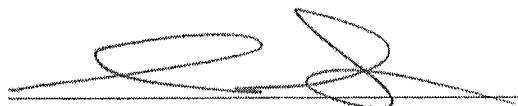


Lou Rosamilia  
Mayor of the City of Troy

Date:

2/13/2012

By:



Ian Silverman  
City of Troy Corporation Counsel

Date:

2/13/12

MEDIA ALLIANCE, INC.

By:

  
Stephen C. Pierce, President

Date: 2-15-12

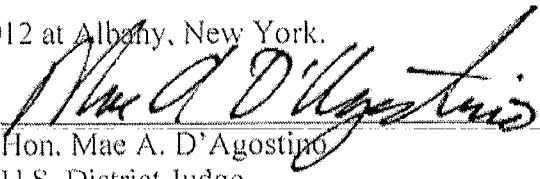
  
STEPHEN C. PIERCE

Date: 2-15-12

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ROBERT MIRCH

Date:

SO ORDERED, this 22 day of February, 2012 at Albany, New York.

  
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Hon. Mae A. D'Agostino  
U.S. District Judge

MEDIA ALLIANCE, INC.

By:

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Stephen C. Pierce, President

Date:

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STEPHEN C. PIERCE

Date:

  
\_\_\_\_\_  
ROBERT MIRCH

Date:

2/14/12

SO ORDERED, this 22 day of February, 2012 at Albany, New York.

  
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Hon. Mae A. D'Agostino  
U.S. District Judge