

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the settlement of the Notice of Claim, In the Matter of the Claim of H.H., an Incapacitated Person by Her Temporary Guardian, Adrienne J. Orbach Esq. v. the County of Westchester and Westchester Adult Protective Services in the amount of \$881,062.00.

Claimant H.H. by her Guardian, Adrienne J. Orbach, Esq. alleges that between 2017 and September, 2022, a Westchester County APS worker stole approximately \$881,062.00 that went undetected by APS rendering her destitute and unable to pay for necessary care. Claimant further alleges that the theft of Claimant's funds was a result of the County's negligence in hiring, retention and supervision of the APS case worker.

A review of the Attorney General's audit account has clearly established that the amount of \$881,062.00 was stolen from H.H. between 2017 and March 2022. Although it is unlikely that the County would be held liable for an intervening criminal act pursuant to a theory of negligent hiring or negligent retention, the County may be found liable pursuant to a theory of negligent supervision, given certain APS case management practices which, on information and belief, have been discontinued.

Under these circumstances, a jury may find in claimant's favor for \$881,062.00 paid outright, (and not subject to any future recovery by the County), as well as additional damages, such as emotional distress. Furthermore, should H.H. die before adjudication of the claim, the County's potential exposure to liability is not abated by death. The County could be subject to a lawsuit from H.H.'s heirs.

Your Committee has carefully considered the subject matter, the settlement proposal, and the attached Act and recommends authorizing the County Attorney or his designee to settle this lawsuit by payment to plaintiff in the amount not to exceed \$881,062.00.⁶ An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
November 13th, 2023

James B. Kelly
John J. ...
...
...
...
Cath. Park
Marilyn Barr

James B. Kelly
Dennis ...
Dell M.
Cath. Park
Marilyn Barr

Budget & Appropriations

COMMITTEE ON

Law & Major Contracts

l:sk

⁶ Claimant's attorney is acting *Pro Bono*.

Dated: November 13, 2023
White Plains, New York

Sylvia D. Brandon

COMMITTEE ON

Budget & Appropriations

FISCAL IMPACT STATEMENT

SUBJECT: Settlement for H [REDACTED], H [REDACTED] (G220160) NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 135,000

Total Current Year Revenue _____

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 6N Fund- 615/59/0697/4150/4280/04

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: H [REDACTED] H [REDACTED] G220160 Settlement -Total amount NTE \$881,062(2023-2025)

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Susan I Kettner

Title: Senior Assistant County Attorney

Department: Law

Date: November 9, 2023

Reviewed By: 

Budget Director

Date: 11/9/23

ACT NO.

2023

AN ACT authorizing the County Attorney to settle the Request for Authorization to Settle the Notice of Claim filed by Adrienne J. Orbach, Esq., as Guardian of the Person and Property of H.H.⁷, an Incapacitated Person against the County of Westchester and the Westchester County Adult Protective Services in the amount of \$881,062.00.

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized to settle the Notice of Claim of filed by Adrienne J. Orbach, Esq., as Guardian of the Person and Property of H.H., A Incapacitated Person against the County of Westchester and the Westchester County Adult Protective Services in the amount of \$881,062.00.

Section 2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purposes hereof.

Section 3. This Act shall take effect immediately.

⁷ The Proposed Settlement Agreement was "So Ordered" in the Article 81 Mental Hygiene Guardianship Part. As, all proceedings are under seal.

PRIVILEGED & CONFIDENTIAL

November 9, 2023

To: Ken Jenkins
Deputy County Executive

From: John M. Nonna
County Attorney

Re: Request for Authorization to Settle the Notice of Claim of Claim filed by Adrienne J. Orbach, Esq., as Guardian of the Person and Property of H.H.⁸, an Incapacitated Person against the County of Westchester and the Westchester County Adult Protective Services in the amount of \$881,062.00.

Attached for your information is a copy of the legislation concerning the settlement of the above-referenced matter, which was submitted today to the Board of Legislators for its consideration.

If you have any questions, please contact me.

JMN/sik

Enclosure

cc: Joan McDonald
Director of Operations

Catherine Cioffi
Director of Communications

⁸ The Proposed Settlement Agreement was "So Ordered" in the Article 81 Mental Hygiene Guardianship Part. as, all proceedings are under seal.

EXHIBIT A

-----X

In the Matter of the Claim of

**H. H., an Incapacitated Person by her
Guardian, Adrienne J. Orbach, Esq.**

**Stipulation of
Settlement**

-v.-

**County of Westchester and Westchester County
Adult Protective Services**

-----X

This settlement agreement is made and entered into this day of October, 2023, by and between H.H., by her Guardian, Adrienne J. Orbach, Esq. ("Claimant") and Westchester County, the Westchester County Department of Social Services Adult Protective Services Unit, and any of their past, present, and future officials, employees, agents, heirs, executors, successors, administrators, representatives, attorneys, and assigns, and any individual or entity to who they would be obligated to provide defense and indemnification, whether previously named or identified in this litigation or not ("collectively referred to as "the County").

WHEREAS, Claimant is a 96-year-old woman for whom a temporary guardian was appointed, on April 7, 2023, and a permanent guardian was appointed on May 24, 2023.¹

WHEREAS, on or about May 8, 2023, Claimant duly filed a Notice of Claim with the office of the Westchester County Attorney alleging that an employee of Westchester County Adult Protective Services ("APS") assigned as the caseworker for H.H. stole approximately \$300,000.00 to \$500,000.00 from H.H. entirely depleting her bank and retirement accounts by a series of withdrawals, transfers, credit card transactions and other deceptions over a period of time commencing in 2017 and continuing to in or about March of 2022, that went undetected by APS. Claimant further alleges that the theft of Claimant's funds was a result of the County's negligence in its hiring, retention and supervision of the above-mentioned APS worker; and

WHEREAS, on or about March 24, 2023, the aforementioned caseworker was arrested and charged with three felonies and one A Misdemeanor in connection with the alleged theft of Claimant's funds. Specifically, she was charged with 1) Grand Larceny in the Second Degree; 2) Grand Larceny in the Third Degree; 3) Identity Theft in the First Degree; and 4) Official Misconduct; and

¹ The Guardian was appointed pursuant to a Judgment entered in the office of the Clerk of the Supreme Court in Westchester County, New York on May 18, 2023 in Index Number 31022/2023. As the Guardianship matter is SEALED, and this Settlement Agreement is subject to Court approval, the claimant is referred to by her initials H.H..

WHEREAS, after extensive investigation, including, but not limited to a review of the bank statements, transaction history, and statements provided by the Guardian from H.H.'s documents, and the forensic summary provided to the parties pursuant to a Sharing Order, by the Office of the Attorney General of the State of New, it is now alleged that that the caseworker stole approximately \$881,062.00 between 2017 and 2022; and

WHEREAS, the County makes no admissions as to liability; and

WHEREAS, as the parties intend to settle the aforesaid claim in its entirety, in order to address H.H.'s emergent need for care, the County agrees as follows:

TERMS OF SETTLEMENT

The County will pay to H.H. for her lifetime benefit only, an amount constituting the lesser of the costs of care during her lifetime, including legal expenses and disbursements related to her guardianship, or the sum of \$881,062.00, whichever amount is less. In no event shall the County pay any amount in excess of \$881,062.00.

Payment Schedule

1. The funds shall be disbursed in the following manner:

- | | |
|-----------------|---|
| June 14, 2023 - | \$75,000.00 which sum has been paid by the County pursuant to a resolution of the Westchester County Board of Acquisition and Contract, dated June 8, 2023. |
| November 2023 | \$60,000.00, for the balance of H.H.'s 2023 expense.
\$60,000.00, one-time payment for arrearages for Court-ordered legal fees and disbursements pertaining to ongoing guardianship proceedings. |
| January 1, 2024 | \$400,000.00 annual estimated expenses for 2024 |
| January 1, 2025 | \$286,062.00, annual payment of expenses for 2025 |

2. The Personal Needs and Property Guardian shall assign any potential cause of action or claims of any nature whatsoever against the following institutions: Citibank, N.A., a/k/a Citibank, a/k/a Citi Priority Services, its Successors and/or Assigns with respect to Citigold Account [REDACTED], inclusive of checking account [REDACTED] and Citibank Savings Plus account [REDACTED]; Morgan Stanley, its Successors and/or Assigns, Accounts [REDACTED] Ameritrade and/or Insight Advisors LLC, their Successors and/or Assigns with respect to Accounts [REDACTED] and [REDACTED] Barclays International, its Successors and/or Assigns² with respect to Account [REDACTED] to the extent the amount is included in the Attorney General's Summary; Wells Fargo, its

² The amount of this account is currently unknown.

Successors and/or Assigns with respect to Account [REDACTED]; The Pension Service 11, Mail Handling Site A, Wolverhampton, WV98 1LW with respect to pension payments; and all other financial institutions known or unknown serving as custodian of H/H's assets.

3. The settlement amount is allocated exclusively for the lifetime use and benefit of H.H., including, but not limited to, expenses for her care and upkeep, Court-approved guardianship-related fees and disbursements, and obligations provided for in the Guardianship Commission. All money paid by the County pursuant to the terms of this Settlement Agreement up to the cap amount of \$881,062.00 pursuant to the terms of this Settlement Agreement shall be held in a separate Guardianship Account, (hereinafter "said Guardianship Account"). At the time of H.H.'s death, any amount allocated or paid by the County remaining in the "said Guardianship Account") after the payment of expenses, obligations, and Court-Ordered fees and disbursements, shall revert back to, and be refunded to, the County of Westchester.
4. It is understood and agreed that this is a full and final settlement of all claims for death, injuries, loss, and all damages known and unknown that Adrienne Orbach, Guardian of the Person and Property of H.H., her heirs, successors or assigns may have against the County of Westchester, inclusive of all of its Departments, and officers and employees of all of its Departments.

Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New York.

Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the parties with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

Effectiveness

This Settlement Agreement shall become effective immediately following execution by each of the parties. However, the settlement is subject to the approval by the Westchester County Board of Legislators, and by the Supreme Court, County of Westchester in a SEALED guardianship proceeding.

Confidentiality

Neither claimant nor any of her representatives, including her counsel of record, shall publicize or disclose the terms of this negotiated Settlement Agreement and accompanying General Release to any third party or entity, except that claimant may disclose such terms to her tax advisors with instructions that they should not disclose the terms to any other person or entity. Upon inquiry regarding this claim, claimant and/or representatives shall state only that this lawsuit has been resolved to the mutual satisfaction of the parties.

Miscellaneous

The provisions of this Settlement Agreement may be modified only by a subsequent written agreement signed by the Parties, and is subject to approval by the Supreme Court, County of Westchester, and the Westchester County Board of Legislators.

Dated: October , 2023

JOHN M. NONNA,
Westchester County Attorney
By Frederick M. Sullivan, Esq.
148 Martine Avenue, 6th Floor
White Plains, New York 10601
Attorney for Westchester County.

By: LUCILLE A. FONTANA, ESQ.
Fontana & Giannini LLP
140 Grand Street, Suite 400
White Plains, New York 10601
Attorney for Claimant

SO ORDERED:

HON. ROBERT M. DiBELLA, J.S.C.

EXHIBIT B

At the Supreme Court of the State of New York held in and for the County of Westchester at the Supreme Court Building, 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY, 10601.

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF WESTCHESTER**

Present: Hon. Robert M. DiBella, J.S.C

In the Matter of the Application of
ADRIENNE JILL ORBACH as Guardian for the Person
and Property of

H [REDACTED] H [REDACTED],

An Incapacitated Person.

**ORDER APPROVING
SETTLEMENT OF CLAIMS**

Index No. 31022-2023

Seq. #: 9

An Order To Show Cause having been signed on the 17th day of October 2023, upon the application of Adrienne J. Orbach, Esq., as Guardian of the Person and Property of H [REDACTED] H [REDACTED], an Incapacitated Person ("IP"), made with her Affirmation in Support, dated October 13, 2023, (with Exhibits A – D), requesting that this Court enlarge the Guardian's authority to sign and execute all documents to settle all and any existing/prospective claims against Westchester County Department of Adult Protective Services documents (*see Ex D: Affirmation In Support*) in the amount of \$881,062.00; and

The matter having come before the Court on November 2, 2023, at which time the following parties / Court-appointees appeared: (1) Adrienne J. Orbach, Esq., as Guardian of the IP's Person and Property, with/by Lucille Fontana, Esq., counsel for the Guardian; (2) Mental Hygiene Legal Service (Catherine P. Mendolia, Esq.), as Court-appointed counsel for the IP; (3) Gail M. Boggio, Esq., as Court Examiner for this Guardianship file; and (4) SCA Susan Kettner, Esq. for the Westchester County Attorney's Office; and

The Court having reviewed the application and the proposed settlement agreement and submitted as exhibits to the Guardian's application, and having determined that the interests of the IP would be substantially furthered by the settlement of the outstanding claims and in accordance with the applicable statutes and rules of this Court.

NOW, upon the motion of Adrienne J. Orbach, Esq., as Guardian of the IP's Person and Property, it is hereby

ORDERED, that the Guardian's retention of Lucille Fontana, Esq. as Counsel to Guardian to settle all and any existing/prospective claims against Westchester County Department of Adult Protective Services is hereby approved *nunc pro tunc* to the May 1, 2023 – the date of the retainer executed by the Guardian (*see Exs. C: Affirmation In Support*) - as a non-list appointment under Part 36 of the Rules of the Chief Judge, inasmuch as Ms. Fontana's extensive experience in negligence matters and the exigencies of this settlement to provide necessary resources for the IP's care, among other reasons, constitute "good cause" for her appointment as Counsel to Guardian in the instant matter (22 NYCRR 36.2[b][2]); and it is further

ORDERED, that Adrienne J. Orbach, Esq., as Guardian of the IP's Person and Property, is authorized and directed to execute any and all documents (*Exs. A and B: Affirmation In Support*) to settle the subject claims against the County of Westchester in the amount of **\$881,062.00** upon the terms and conditions set forth in the Stipulation of Settlement, so as to best protect the IP's welfare and interests in the community; and it is further

ORDERED, the Guardian shall be permitted to pay for necessary services for the IP in order to continue to maintain her care at the assisted living facility, which could include private duty nurses which could be in excess of **\$10,000.00**, in order to maintain suitable housing and care as necessary services at the assisted living memory care unit where the IP resides; and it is further

ORDERED, that the Guardian shall serve a copy of this Order via NYSCEF upon MHLS, Westchester County Attorney and the Court Examiner no later than five (5) days after its entry.

Dated: November 6, 2023
White Plains, NY

ENTER:



Hon. Robert M. DiBella, J.S.C.

TO: Lucille Fontana, Esq.
E-Mail: lfontana@fgnylaw.com

Adrienne J. Orbach, Esq.
E-Mail: adrienne@orbachlawny.com

Mental Hygiene Legal Service
E-Mail: cmendoli@nycourts.gov

Gail M. Boggio, Esq.
E-Mail: gboggio@mccarthyfingar.com

Susan Kettner, Esq.
E-Mail: sikc@westchestercountyny.gov

EXHIBIT C

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT IN CONSIDERATION OF THE PAYMENTS TO BE MADE BY THE COUNTY OF WESTCHESTER AS SET FORTH IN THE SETTLEMENT AGREEMENT, DATED _____ 2023, WHICH AGREEMENT IS INCORPORATED INTO THIS RELEASE AND IS MADE A PART THEREOF, ADRIENNE J. ORBACH, as Guardian of the Person and Property of H.H., an Incapacitated Person¹

As RELEASOR

Releases and discharges, to the maximum extent permitted by law, the County of Westchester, the Westchester County Attorney's office, its officials, agents, employees and counsel, the RELEASEE, RELEASEE'S heirs, executors, administrators, successors, and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the RELEASEE, the RELEASOR, RELEASOR'S heirs, executors, administrators, successors, and assigns ever had, Now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this RELEASE.

This waiver and release are intended to include and is limited to all possible legal theories which RELEASOR would have against RELEASEE.

The words "RELEASOR" and "RELEASEE" include all releasors and all releasees under this RELEASE, This RELEASE may not be changed orally.

IN WITNESS WHEREOF, the RELEASOR has hereunder set RELEASOR'S hand and seal on this _____ day of October, 2023.

IN PRESENCE OF _____

Adrienne J. Orbach, Guardian

State of New York, County of Westchester, ss.:

¹ The Guardian was appointed pursuant to a Judgment entered in the office of the Clerk of the Supreme Court in Westchester County, New York on May 18, 2023, in Index Number 31022/2023. As the Guardianship matter is SEALED, and this Settlement Agreement is subject to Court approval, the claimant is referred to by her initials H.H.

On the ____ day of October, 2023, before me personally came Adrienne J. Orbach, Guardian of the Person and Property of H.H., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument on behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of New York that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Notary Public