Attorney's fees

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Towns Face Huge Legal Bill in Mt. Laurel Matter

State High Court To Hear Housing Fees Case

By Henry Gottlieb

A lawyer at a Rutgers Law School-Newark clinic will ask the state Supreme Court next week to keep alive a battle to force eight towns to pay for 14 years of litigation in a Mt. Laurel housing suit. If she wins, the towns could be liable for $250,000 to $1 million in fees.

Barbara Stark, staff attorney for the Rutgers Constitutional Litigation Clinic, is expected to argue before the Court next Tuesday that the Civic League of Greater New Brunswick is entitled under federal civil rights laws to the recovery of legal costs in the successful suit against the towns.

Earlier this year, a ninth municipality, Plainsboro, settled its portion of the case by paying $30,000 in plaintiffs' legal costs. The towns remaining in the case are Cranbury, East Brunswick, Monroe, North Brunswick, Old Bridge, South Brunswick, South Plainfield and Piscataway.

Stark will ask the Court to uphold a Dec. 29, 1987 ruling by the Appellate Division of Superior Court that established criteria under which successful plaintiffs can win legal costs from towns that were found to have violated the state's fair housing laws (*Urban League of Greater New Brunswick, et al v. Township Committee of the Township of Cranbury, et al.*, 222 N.J. Super. 131).

In his opinion for the appeals court, Judge James Coleman Jr., left, said that recovery of fees is possible if the proceedings established a prima facie violation of the Federal Fair Housing Act.

Federal Civil Rights Laws Are Key

The appeals panel ruled that to collect the fees, the Civic League, formerly the Urban League, must prove that the towns also violated federal civil rights laws by setting up exclusionary zoning to keep minorities from living in the communities. Under Title VIII of the civil rights law, successful plaintiffs can be reimbursed for legal fees; state law makes no provision for such recoveries.

Appellate Division Judge James Coleman Jr., in an opinion joined by judges James Havey and Edwin Stern, ordered a de novo trial on the fee dispute but noted that the granting of attorneys' fees is discretionary and also contingent on the plaintiffs' ability to finance the litigation.

The appeals panel sent the parties back to the trial court and said they could use only the record of the case to [illegible] exclusionary zoning found to have violated the state constitution also violated federal law. The trial judge in the fee dispute was Superior Court Judge Eugene Serpentelli, one of three judges assigned by the Supreme Court to hear Mt. Laurel cases, after the 1983 *Mt. Laurel II* decision.

The Civic League case, filed in 1974, tried in 1976, and decided by precedents established in the 1975 *Mt. Laurel I* ruling, was consolidated on appeal with a series of cases that eventually formed the nucleus of the *Mt. Laurel II* decision. The 1975 case (*Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township*, 67 N.J. 151) said towns could not bar low- and moderate-income housing through exclusionary zoning. The 1983 case (92 N.J. 158) [illegible] approval of their projects if their plans contained low- and moderate-income housing.

Following its success on the underlying housing issue, the plaintiff applied to Judge Serpentelli for legal fees in 1986.

Judge Serpentelli ruled initially that the plaintiffs were not entitled to an award because they had not been successful litigants on any federal constitutional or statutory claims alleged in the complaint. In reversing Judge Serpentelli's ruling, however, the court said that recovery of fees is possible if the proceedings established a prima facie violation of the Federal Fair Housing Act.

'Supported by No Legal Authority'

Phillip Lewis Paley, who will argue the towns' case before the Supreme Court, says in a brief that the appeals court created an unprecedented mechanism for fee recovery that is "supported by no legal authority."

Paley, a partner with the Newark firm of Kirsten, Simon, Friedman, Allen, Cherin & Linken, also objects to the appeals court's decision to send the matter back to the trial court for a new hearing.

"This procedure, in fact, is the functional equivalent of a trial," Paley says in his brief. "It will add to the extraordinary costs already incurred by all parties. Not only must each of the 35 days of trial transcripts and exhibits be reviewed and analyzed, assuming

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availability, but experts will certainly be retained, and once retained, will need to expend substantial time analyzing testimony and exhibits 12 years old."

He also says there is some doubt that the files and transcripts of the 1976 trial are still intact.

Paley estimated earlier this year that the total bill could cost the towns at least $250,000 and as much as $1 million. John Payne, a Rutgers Law professor who has worked on the case, says he agrees $250,000 would be the minimum.

Reimbursement

Even if the clinic prevails, Payne and Stark and other salaried public-interest-group lawyers who worked on the case will receive nothing personally, Payne says. The Civic League of New Brunswick and public-interest legal groups, including the American Civil Liberties Union, would receive the money as reimbursement of funds they expended for expert witnesses, transcripts, and other costs.

In their brief to the Supreme Court, the Rutgers' lawyers rejected the towns' assertion that allowing fees in the case would open the possibility that any future plaintiff in a Mt. Laurel case could recover fees merely by asserting that the exclusionary zoning violated federal civil rights laws.

Because almost all Mt. Laurel matters are now handled by the state Council on Affordable Housing, which makes no provision for legal fees, the parties in the current case are the only ones likely to be affected, Payne and Stark say in their brief.

Payne also takes issue with the towns' attorneys' assertion that the record of the 1976 proceedings is insufficient to give the trial judge enough information to decide whether there is prima facie evidence that federal civil rights laws were violated by exclusionary zoning.

"The Civic League plaintiffs believe that they can readily make the required showing ...," the brief says. ■