

RESOLUTION #R 195-12

RESOLUTION AUTHORIZING EXECUTION OF SETTLEMENT AGREEMENT IN THE MATTER OF FREDDIE O. MARCANO VS. BOROUGH OF CLAYTON, DOCKET NO.: EH01WM-61649

WHEREAS, the Borough of Clayton is the Defendant in a matter filed with the State of New Jersey, Office of the Attorney General, Department of Law & Public Safety, Division of Civil Rights captioned Freddie O. Marciano vs. Borough of Clayton, Docket No.: EH01WM-61649; and

WHEREAS, the parties have agreed to enter into a Settlement Agreement for the purpose of resolving any and all disputes and/or issues between the parties; and

WHEREAS, the Borough of Clayton has determined that it is in the best interest of the government as well as the citizens of the Borough of Clayton to resolve the pending litigation; and

WHEREAS, neither party is hereby admitting to any liability and/or responsibility but that the settlement is being entered into for the sole purpose of resolving any and all pending issues between the parties; and

WHEREAS, the governing body is in agreement to settle this matter.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby authorize the settlement of the pending lawsuit titled Freddie O. Marciano vs. Borough of Clayton, Docket No.: EH01WM-61649.

2. That the Mayor or Borough Administrator be and is hereby authorized to execute said Settlement Agreement on behalf of the Borough of Clayton.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton on Thursday, September 13, 2012.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Municipal Clerk

CERTIFICATION

I, Christine Newcomb, Municipal Clerk, of the Borough of Clayton, in the County of Gloucester, and State of New Jersey do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton held on Thursday, September 13, 2012.



CHRISTINE NEWCOMB
Municipal Clerk

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made and entered into as of this ____ day of _____, 2012, between FREDDIE O. MARCANO (referred to herein as "MARCANO" or "RELEASOR"), on the one hand, and the BOROUGH OF CLAYTON (referred to herein as "CLAYTON"), on the other hand, with respect to that lawsuit encaptioned Freddie O. Marciano v. Borough of Clayton, State of New Jersey, Office of The Attorney General, Department of Law & Public Safety, Division on Civil Rights; Docket No. EH01WM-61649, concurrently filed with the Equal Employment Opportunity Commission under Federal Charge No. 17E 2010 00414 ("the Litigation") and all claims which were or could have been asserted therein.

By means of this Agreement, RELEASOR intends to fully and unconditionally release any and all claims he, his heirs, administrators, executors, personal representatives, beneficiaries, and assigns may have against CLAYTON, RICHARD MIDDLETON ("MIDDLETON"), SUSAN MILLER ("MILLER"), the Municipal Excess Liability Joint Insurance Fund and each of their affiliates, predecessors, successors, parents, subsidiaries, divisions, assigns, officers, directors, shareholders, representatives, employees, former employees, attorneys, consultants, elected officials, and agents, (collectively "RELEASEES") the remaining terms of which Agreement are now fully set forth in Paragraphs I through XVI below.

I. Consideration

In consideration of the payment of Ten Thousand Dollars and no cents (\$10,000.00) to RELEASOR, RELEASOR gives the releases, covenants, representations, and warranties stated herein. RELEASOR shall seek nothing further from CLAYTON including any other payment or benefits. Payment of the aforementioned \$10,000.00 shall be made within thirty (30) days of the execution of this Agreement by all parties in the form of a check made payable to Freddie O. Marciano.

This payment is inclusive of RELEASOR'S counsel fees and costs.

II. Covenant Regarding the End of MARCANO's Employment

CLAYTON and MARCANO agree that MARCANO's employment with CLAYTON is at an end and, due to irreconcilable differences with CLAYTON, MARCANO will not seek reinstatement or reemployment with CLAYTON now or in the future. MARCANO further agrees that this Agreement is good and sufficient cause for CLAYTON to reject any application for employment, reinstatement or reemployment submitted by him. MARCANO hereby expressly agrees that he

will never seek or accept any type of employment in any capacity with CLAYTON at all times now and in the future whether by appointment, selection or otherwise, this includes any type of re-employment guaranteed by civil service under the Intergovernmental Transfer Program.

III. Covenant to Not Pursue Legal Action and to Dismiss Litigation

RELEASOR hereby agrees that he shall dismiss (or cause to be dismissed) his claims as asserted in the Litigation with prejudice and without costs.

MARCANO further agrees that he shall not take any action against any individual or entity, based upon his period of employment with CLAYTON or the circumstances surrounding the end of his employment with CLAYTON.

IV. General Release

RELEASOR hereby knowingly and voluntarily releases and forever discharges the RELEASEES, collectively, separately, and severally, from any and all state or federal claims, causes of action, and liabilities of every type and description whatsoever, including, but not limited to, any claims alleging any violation of:

- Title VII of the Civil Rights Act of 1964, as amended;
- The Civil Rights Act of 1991;
- Sections 1981-1988 of Title 42 of the United States Code, as amended;
- The Employment Retirement Income Security Act of 1974, as amended;
- The Immigration Reform and Control Act, as amended;
- The Americans with Disabilities Act of 1990, as amended;
- The Age Discrimination in Employment Act of 1967, as amended;
- The Workers' Adjustment and Retraining Notification Act, as amended;
- The Occupational Safety and Health Act, as amended;
- The Family Medical Leave Act;
- The New Jersey Law Against Discrimination;
- The New Jersey Family Leave Act;
- The New Jersey State Wage and Hour Law;
- The New Jersey Conscientious Employee Protection Act;
- The New Jersey Equal Pay Law;
- Any other federal, state or local civil or MARCANO rights law or any other local, state or federal law, regulation or ordinance;
- Any public policy, contract, tort or common law; or
- Any allegation for costs, fees or other expenses including attorney's fees incurred,

that he, his heirs, administrators, executors, personal representatives, beneficiaries, and assigns may have against RELEASEES for compensatory or punitive damages or other legal or equitable relief of any type or description. These released claims shall be referred to as the "Released Claims".

V. Release Include Unknown Claims

A. RELEASOR understands and agrees that the Released Claims are intended to and do include any and all claims of every nature and kind whatsoever (whether known, unknown, suspected, or unsuspected and whether pursuant to any law or cause of action presently in effect or which may be enacted or created in the future) which he has or may have against the RELEASEES, individually or collectively.

B. RELEASOR further acknowledges that he may hereafter discover facts different from or in addition to those which he now knows or believes to be true with respect to the Released Claims and agrees that, in such event, this Agreement shall nevertheless be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

C. RELEASOR represents and acknowledges (i) that he has conducted whatever investigation deemed necessary by him and his attorneys to ascertain all facts and matters related to this Agreement; (ii) that he has consulted with and received advice from legal counsel concerning this Agreement; and (iii) that he is not relying in any way on any statement or representation by CLAYTON or its attorneys, except as expressly stated herein, in reaching his decision to enter into this Agreement.

VI. No Assignment or Transfer of Released Claims

RELEASOR represents and warrants that as of the Effective Date, RELEASOR have not assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate, to any person, firm, corporation, association, or entity whatsoever any of the Released Claims. RELEASOR hereby agrees to indemnify and hold harmless Releasees against, without limitation, any and all rights, claims warranties, demands, debts, obligations, liabilities, costs, expenses (including attorneys' fees), causes of action, and judgments based on, arising out of, or connected with any such transfer, assignment, or hypothecation, or purported transfer, assignment, or hypothecation.

VII. No Admission of Liability

RELEASOR understands and agrees that this Agreement is a release of disputed claims and does not constitute an admission of liability on the part of

RELEASEES, in general, or CLAYTON or MILLER OR MIDDLETON, in particular, as to any matters whatsoever and that the parties merely intend by this Agreement to avoid further litigation and buy their peace.

VIII. Indemnification

RELEASOR understands and agrees that CLAYTON has not withheld any amount from the agreed upon payment made pursuant hereto for federal, state, or local taxes or other withholdings. RELEASOR hereby agrees to indemnify and hold Releasees harmless with respect to all damage, loss, liability, or expense, including penalties, interests, and attorneys' fees, arising out of any actions, suits, proceedings, demands, judgments, or other loss resulting from any action, of any nature whatsoever, to require any of the Releasees to pay any such taxes or other withholdings which arise from the payment made hereunder.

IX. Modification

No provision of this Agreement may be changed, altered, modified or waived except in writing signed by RELEASOR and a duly authorized representative of CLAYTON, which writing shall specifically reference this Agreement and the provision which the parties intend to waive or modify.

X. Severability

In the event any provision of this Agreement should be held to be unenforceable, each and all of the other provisions of this Agreement shall remain in full force and effect.

XI. Attorneys' Fees, Costs and Expenses

RELEASOR understands and agrees that the aforesaid payments to him include and encompass therein any and all claims with respect to attorneys' fees, costs, and expenses for or by any and all attorneys who have represented him or with whom he has consulted or who have done anything in connection with the Civil Action and/or the Released Claims.

XII. Consultation with Counsel

RELEASOR acknowledges that he has been afforded adequate time to consider this Agreement and General Release. RELEASOR further acknowledges that CLAYTON has not placed any time limitation on RELEASOR'S execution and return of this Agreement. CLAYTON encourages RELEASOR to consult with counsel prior to signing this agreement. RELEASOR further acknowledges by his

signature below that he has been advised to consult with counsel prior to the execution of this Agreement and General Release.

XIII. Entire Agreement

The parties hereto acknowledge that this Agreement constitutes a full, final, and complete settlement of their differences and supersedes and replaces any and all other written or oral exchanges, agreements, understandings, arrangements, or negotiations between or among them relating to the subject matter hereof, and affirmatively state that there are no other prior or contemporaneous agreements, exchanges, representations, arrangements, or understandings, written or oral, between or among them relating to the subject matter hereof other than that as set forth herein, and that this Agreement contains the sole and entire Agreement between them with respect to the subject matter hereof. The parties hereto further acknowledge and agree that language proposed for, deleted from, or otherwise changed in the various drafts of this Agreement but not included herein shall not be considered in any way in the interpretation and application of this Agreement and shall not in any way affect the rights and obligations of the parties hereto.

XIV. Covenant to Dismiss Litigation and Any other Claims

MARCANO hereby agrees that he shall dismiss (or cause to be dismissed) with prejudice and without costs his claim against CLAYTON filed with the Department of Law and Public Safety, Division on Civil Rights, under caption of Freddie O. Marcano v. Borough of Clayton; Docket No. EH01WM-61649 and concurrently with the Equal Employment Opportunity Commission under Federal Charge No. 17E 2010 00414. MARCANO will further dismiss or cause to be dismissed any other claim or cause of action pending in any forum related to his employment at Clayton, including but not limited to any matter pending with the Public Employees Relations Commission, or any appeal from any matter which was pending with the Public Employees Relations Commission at any time. MARCANO shall take no further action against any individual or entity based upon the matters set forth within MARCANO's pleadings and/or based upon any other cause of action that MARCANO may have stemming or originating from MARCANO's period of employment with CLAYTON.

XV. Understanding

RELEASOR acknowledges and represents that he has read this Agreement in full and, with advice of counsel, understands and voluntarily consents and agrees to each and every provision contained herein.

XVI. Applicable Law and Mutual Submission to Jurisdiction

This Agreement shall be construed and enforced according to the laws of the State of New Jersey. RELEASOR agrees to submit any and all disputes arising out of or based on this Agreement to the jurisdiction of the Courts of the State of New Jersey.

XVII. Counterparts Acceptable

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

IN WITNESS HEREOF, the undersigned have executed this Agreement on the date shown below.

FREDDIE O. MARCANO



Date: 9.7.2012

Sworn to and subscribed to before me on this 7th day of September, 2012.



NOTARY PUBLIC
MICHAEL J. WARD, IV
ATTORNEY-AT-LAW
STATE OF NEW JERSEY

BOROUGH OF CLAYTON

By: 

Date: 9/13/12

Title: Mayor

Sworn to and subscribed to before me on this 13th day of September 2012.


NOTARY PUBLIC
ATTORNEY / STATE OF NEW JERSEY