

NAME & TITLE	James L. Shea, City Solicitor	CITY OF BALTIMORE	
AGENCY NAME & ADDRESS	Department of Law Suite 101, City Hall		
SUBJECT	<i>Rebecca Ebaugh v. M&CC – Rec & Parks Lawsuit</i>		

MEMO

TO: The Honorable President and Members
of the Board of Estimates

Date: April 21, 2022

ACTION REQUESTED OF BOARD OF ESTIMATES:

The Law Department requests authority to settle a pending lawsuit involving claims of disability, age and race discrimination, disparate treatment, hostile work environment and retaliation following the Plaintiff’s termination as Special Assistant to the Director of Recreation and Parks (“R&P”).

AMOUNT OF MONEY AND SOURCE OF FUNDS:

The amount of the proposed settlement is \$250,000, which includes attorney fees, backpay and emotional damages. Funds are to be paid from Suits & Judgments, Account Number 2044-000000-1450-703800-603070.

BACKGROUND/EXPLANATION:

Plaintiff, a Caucasian female, was hired in 2003 to serve as Special Assistant to Director of R&P. She was responsible for managing the Directors schedule, screening his emails, preparing his correspondence, maintaining his confidential communications and other related duties. Her employment was uneventful until January 2017 when she suffered a fall while securing the doors at the worksite. She was examined by Mercy Hospital and placed off work for approximately four (4) months. Mercy released her in May 2017, with restriction on her time screening emails and also that she be allowed to take breaks to allow for body comfort and exercise. Her supervisor abided by the restrictions. Her condition eventually improved to the point where Mercy lifted her restrictions; however, Plaintiff was unable to keep pace with the screening of emails, managing the Director’s meeting agenda, and maintaining his calendar up-to-date. Over the year following the January 2017 fall, Plaintiff was issued performance warnings and disciplinary suspension due to her performance. In January 2019, Plaintiff requested an accommodation and though she did not return her paperwork timely, R&P Human Resource personnel met with Plaintiff in March 2018 to discuss potential accommodations. The accommodation R&P offered Plaintiff was to demote her to an Office Support Specialist (“OSS”), which reduced her salary from \$55k to \$32k. Plaintiff did not accept the accommodation and was terminated effective March 30, 2018. Plaintiff was 63 years old at the time of termination and was replaced by a much younger African-American male.

Honorable President and Members
Of the Board of Estimates

The City filed several motions to dismiss Plaintiff's claims. The Court dismissed only her ADEA claim and allowed Plaintiff to amend her Complaint and proceed with her disability, race and retaliation claims. The parties conducted discovery and ultimately decided to seek court mediation. At mediation, Plaintiff sought \$780k in past and future wages and emotional distress, plus \$260k in attorney fees. The city argued that Plaintiff's future wages were speculative as Plaintiff was then 67 y/o, and that the attorney fees were grossly exaggerated. The city argued that given Plaintiff's annual salary of \$55k, it could not foresee offering more than \$125k (approx. 2 year's salary) in back and future wages. And that attorney fees would need to be reduced by more than half. The Court ultimately persuaded Plaintiff to accept a total of \$250k, inclusive of past and future wages, and attorney fees (subject to BOE approval) and dismiss all claims against the City.

Based on a review by the Settlement Committee of the Law Department of the legal and factual issues specific to this particular matter, the additional costs associated with continuing to litigate the matter, and the uncertainty of the outcome of the litigation, the recommendation to the Board of Estimates is to approve the settlement of this case in the amount of \$250,000.



James L. Shea
City Solicitor

APPROVED BY BOARD OF ESTIMATES:

Clerk

Date



By Unyime.Ekpa at 10:52:21 AM, 4/22/2022

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into this 17th day of April 2022, by and among Rebecca Ebaugh ("Ebaugh"), and The Mayor and City Council of Baltimore ("the City"). Ebaugh together with the City are referred to herein as the "Settling Parties."

RECITALS

WHEREAS on March 30, 2018, Plaintiff was terminated from her position as Special Assistant to the Director of the City's Department of Recreation and Parks ("Rec & Parks). The Parties dispute whether the City had a legitimate business purpose for separating Ebaugh. The City contends that Ebaugh was terminated because she was no longer capable of carrying out the functions of her position. Ebaugh contends that she was terminated on account of her race, age, and disability.

WHEREAS following her termination, Ebaugh filed suit in the U.S. District Court for the District of Maryland on March 11, 2020 (styled *Rebecca Ebaugh v. Mayor and City Council of Baltimore, et al.*, Case NO. 20-cv-663-ELH) alleging claims of race, age and disability discrimination as well as retaliation. Those claims are hereinafter referred to as "the Litigation Claims".

WHEREAS, the Settling Parties deny the other claims.

WHEREAS, the Settling Parties now desire to resolve the Litigation Claims without the potential for future litigation; and

WHEREAS, the Settling Parties wish to clarify and agree on the terms and conditions of resolving the Litigation Claims and any continuing obligation of the parties to one another:

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Settling Parties hereby covenant and agree as follows:

1. **Recitals:** The foregoing recitals are incorporated into and made part of this Agreement.

2. **Settlement Terms:** Ebaugh agrees to dismiss the Litigation Claims against the City in return for the City agreeing to pay Ebaugh Two Hundred Fifty Thousand Dollars (\$250,000.00), inclusive of attorney fees within 30 days of approval by the City's Board of Estimates ("BOE"). Should the BOE *not* approve the settlement amount, the terms of this Agreement shall become null and void. If approved by the BOE, the City will issue a check made payable to Rebecca Ebaugh and the law of Iamele & Iamele, LLP, within thirty (30) days of BOE approval. The City will report this payment in an IRS Form 10-99.

3. **General Release and Covenant not to Sue:** In return for the above consideration, Ebaugh agrees that she, her heirs, assigns, agents, representatives, attorneys and successors in interest unconditionally release and forever discharge and covenant not to sue the City, their officials, agents, employees, employers, agencies, departments, directors, officers, members, representatives, assigns, attorneys, successors in interest, and all other persons, firms, governmental entities and corporations from any and all Claims arising out of or relating to Litigation Claims referenced herein. "Claims" includes, but are not limited to, any and all losses, costs, expenses, debts, actions (statutory, in law or in equity), causes of action, suits, damages, claims, demands and all other claims, liabilities and obligations of any nature whatsoever including but not limited to any and all claims for discrimination under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Equal Pay Act, the Older Worker

Benefits Protection Act, the Family and Medical Leave Act, the Consolidated Omnibus Budget Reconciliation Act, the Americans With Disabilities Act, the Employee Retirement Income Security Act, and any comparative state law, whether presently known or unknown, including attorneys' and consultant's fees. The waiver of claims also includes any administrative remedies such as grievances and arbitrations of whatever nature.

4. **Valid Consideration:** The Settling Parties agree that the exchange of promises and actions set forth herein constitute valid and sufficient consideration on the part of each party.

5. **Warranty of Capacity to Enter Into Release:** Ebaugh represents and warrants that no other person or entity has any interest in the claims, demands, allegations or causes of action referred to in this Settlement Agreement except as otherwise set forth herein and that she has the sole right and exclusive authority to execute this Settlement Agreement, and that she has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, obligation or causes of action referred to in this Settlement Agreement. If any person should assert a claim on behalf of Ebaugh against the City that Ebaugh did not have the right or authority to enter into this Settlement Agreement, Ebaugh agrees to indemnify, defend and hold the City harmless from any and all claims or contentions, damages, costs, liability and attorneys' fees as a consequence or result of such claim or lawsuit.

6. **ADRA Disclosures:** Without detracting in any respect from any other provision of this Agreement:

a. Ebaugh, in consideration of the compensation described in Paragraph 2 of this Agreement, agrees and acknowledges that this Agreement constitutes a knowing and voluntary waiver of all rights or claims she has against the City as set forth herein, including, but not limited to, all rights or claims arising under the Age Discrimination in

Employment Act of 1967, as amended ("ADEA"), and including, but not limited to, all claims of age discrimination and retaliation in violation of the ADEA;

b. Ebaugh represents, agrees and acknowledges that the consideration provided under this Agreement is in addition to anything of value to which she is already entitled.

c. Ebaugh represents that she has consulted with an attorney prior to executing this Agreement.

d. Ebaugh also acknowledges that she was informed that she had twenty-one (21) days in which to review and consider this Agreement and that she was, in fact, provided with the twenty-one (21 days) to review and consider this Agreement. Ebaugh further acknowledges that if she signs this Agreement, she has seven (7) calendar days within which to revoke his acceptance, in which case this Agreement shall have no effect. Ebaugh may revoke her acceptance by providing written notice of her withdrawal to:

**Gary Gilkey
Chief Solicitor, Labor & Employment Division
Baltimore City Law Department
Baltimore, Maryland 21202**

e. This Agreement shall not become effective or enforceable until seven days after the City has received Ebaugh's signed copy of this Agreement. If Ebaugh timely exercises her right to revoke this Agreement, this Agreement shall not be admissible or be used for any purpose.

7. Costs and Expenses. Each party will be responsible for his, her or its own costs and expenses incurred in connection with this matter.

8. **No Admission of Liability:** It is understood and agreed by the Settling Parties that this Agreement and the releases contained herein shall not be construed as an admission of liability on the part of the City, any such liability being expressly denied, and that rather, the purpose of this Agreement is to fully and finally resolve all differences amongst the Settling Parties and to allow the Settling Parties to avoid the time, expense and uncertainties of protracted litigation.

9. **Entire Agreement of the Parties:** It is understood and agreed by the Parties that this Agreement constitutes the entire Agreement among the Settling Parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous written or oral agreements and discussions. This Agreement may only be amended by a writing signed by all parties hereto.

10. **Drafting of the Agreement.** The Parties acknowledge and agree that this Agreement represents the product of negotiations and shall not be deemed to have been drafted exclusively by any one party. In the event of a dispute regarding the meaning of any language contained in this Agreement, the Settling Parties agree that the same shall be accorded a reasonable construction and shall not be construed more strongly against one party than the other.

11. **Severability:** In the event that any covenant, condition, or other provision contained in this Agreement is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained herein. If such condition, covenant or other provision shall be deemed invalid due to its scope of breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope of breadth permitted by law.

12. **WAIVER OF JURY TRIAL:** TO THE EXTENT AN ACTION IS FILED IN ANY COURT FOR A BREACH OF ANY COVENANT, TERM OR CONDITION OF THIS

AGREEMENT, THE SETTLING PARTIES HEREBY VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY.

13. **Knowing and Voluntary Act:** Each of the Settling Parties represents that each has read this Agreement and that each party has voluntarily executed this Agreement knowingly and voluntarily.

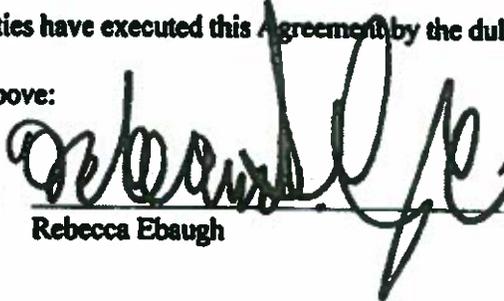
14. **Survival of Terms:** The Settling Parties agree that this Agreement shall upon approval inure to the benefit of the Settling Parties and their respective agents, assigns, partners, heirs, executors, administrators, and personal or legal representatives. The Settling Parties understand and agree that the terms, covenants, and conditions set forth in this Agreement shall survive the closing of the Agreement.

15. **Governing Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions, and any disputes arising out of or under this Agreement shall be subject to the exclusive jurisdiction of the state or federal courts located in Baltimore City, Maryland.

16. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. An emailed, facsimile or copy signature will be binding and legal in all respects as if it were an original signature to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by the duly authorized representatives as of the date first written above:


WITNESS


Rebecca Ebaugh (SEAL)

MAYOR AND CITY COUNCIL OF BALTIMORE

Laquell Green
WITNESS

By: [Signature] (SEAL)
Reginald Moore,
Director, Department of Recreation and Parks

Approved as to Form and Legal Sufficiency

By: [Signature]

DATE: April 30, 2022