

STATE OF NEW YORK

SUPREME COURT

COUNTY OF WASHINGTON

ROBERT N. PHILLIPS, JR.

Petitioner,

Index No. 75862

vs.

RJI No. 57-1-2005-0353

THE VILLAGE OF FORT EDWARD,

Respondent.

STIPULATION OF
DISCONTINUANCE


IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties to the above-entitled proceeding, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the proceeding, the above entitled proceeding be, and the same hereby is discontinued, without costs to either party as against the other, upon filing this stipulation with the Clerk of the Court.


This stipulation may be filed without further notice with the Clerk of the Court.

DATED: Greenwich, New York
July 20, 2005

CATALFIMO & CATALFIMO

POKLEMBA & HOBBS, LLC

BY: 
MICHAEL J. CATALFIMO, ESQ.
Attorneys for Respondent
18 Hill Street - P.O. Box 184
Greenwich, New York 12834
(518) 692-9645

BY: 
JOHN J. POKLEMBA, ESQ.
Attorneys for Petitioner
358 Broadway, Ste 307
Saratoga Springs, New York 12866
(518) 581-9797

CATALFIMO & CATALFIMO
ATTORNEYS AT LAW
HILL STREET
P.O. BOX 184
GREENWICH, NY 12834
(518) 692-9645

Received
County Clerks Office
Aug 12, 2005 11:40:34A
Washington County
Deborah R Beahan

CATALFIMO & CATALFIMO

JAMES A. CATALFIMO
MICHAEL J. CATALFIMO*

EDWARD M. CONNELL

* ALSO ADMITTED IN MASS.

ATTORNEYS AT LAW

18 HILL Street - P.O. Box 184
GREENWICH, NEW YORK 12834

TELEPHONE (518) 692-9645

Fax (518) 692-2833

PLEASE REPLY TO GREENWICH

**CONFIDENTIAL
ATTORNEY/CLIENT PRIVILEGED
COMMUNICATION**

GRANVILLE OFFICE:

76 MAIN STREET - P.O. BOX 150

GRANVILLE, NEW YORK 12832

TELEPHONE (518) 642-9825

RECEIVED

JUL 21 2005

VILLAGE OF FORT EDWARD

**THIS CORRESPONDENCE CONSTITUTES LEGAL ADVICE
FROM ATTORNEY TO CLIENT AND IS NOT TO BE
DISTRIBUTED OR MADE AVAILABLE TO THE PUBLIC
OR MADE PART OF ANY PUBLIC RECORD**

July 21, 2005

VIA FAX ONLY TO 747-4662

Matthew Traver, Mayor
Village of Fort Edward
118 Broadway
Fort Edward, New York 12828

Re: Village of Fort Edward v. Robert N. Phillips, Jr.

Dear Matt:

Enclosed for your review, please find draft copy of proposed stipulation of settlement relative to the above-referenced matter. Please give me a call after you have had an opportunity to review it. As you will note, I will need some information from the Village Clerk in order to complete paragraph 4 of the Stipulation and Exhibit B.

Once the stipulation is acceptable to the Village, I will forward it to attorney Poklemba for his review.

I look forward to hearing from you.

Matthew Traver, Mayor
July 20, 2005
Page 2

Very truly yours,

CATALFIMO & CATALFIMO

A handwritten signature in black ink, appearing to read "Michael J. Catafimo", written over a horizontal line.

By: Michael J. Catafimo

MJC/
Enclosures (as stated)

F:\DATA\Municipal\fort edward\VPE v Phillips\Ltr-Mayor Traver enclosing draft settlement stip 050720.wpd

Exhibit A

ROBERT N. PHILLIPS, JR.
2Sunset Lane
Fort Edward, New York 12828

July 20, 2005

Board of Trustees
Village of Fort Edward
118 Broadway
Fort Edward, New York 12828

Dear Sirs:

This is to advise you that effective November 6, 2005, I voluntarily resign my position as Chief of Police of the Fort Edward Village Police Department and agree not to seek re-employment with said Department. I request that effective July 20, 2005, I be granted a paid administrative leave from my position as Chief of Police until the effective date of my retirement.

Sincerely yours,

Robert N. Phillips, Jr.

Exhibit B**VILLAGE OF FORT EDWARD
118 Broadway
Fort Edward, New York 12828**

To Whom it May Concern:

Robert N. Phillips, Jr. was hired on 1/7, 199⁵ as a Patrolman with the Village of Fort Edward Police Department [the "Department"] and worked for the Department in that capacity until 7/6, 200⁴. During his employment, Mr. Phillips handled numerous types of police matters for the Department and performed his duties in a satisfactory manner.

On 7/7, 200³, Mr. Phillips was promoted to the position of Chief of the Department. He voluntarily resigned from that position, effective November 6, 2005.

Very truly yours,

Matthew Traver
Mayor, Village of Fort Edward

EXHIBIT "C"

STATE OF NEW YORK

COUNTY OF WASHINGTON

FORT EDWARD VILLAGE BOARD OF TRUSTEES

IN THE MATTER OF A PROCEEDING UNDER NEW YORK
VILLAGE LAW SECTION 8-804 AND CIVIL SERVICE LAW
SECTION 75 FOR DISCIPLINE

OF

STIPULATION OF
DISCONTINUANCE

ROBERT N. PHILLIPS, JR.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the Charging Party and the attorneys for the Respondent, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the proceeding, the above entitled proceeding be, and the same hereby is discontinued, upon filing this stipulation with the Clerk of the Village of Fort Edward.

This stipulation may be filed without further notice with the Clerk of the Village of Fort Edward.

DATED: Greenwich, New York
July 20, 2005

CATALFIMO & CATALFIMO

POKLEMB & HOBBS, LLC

BY: _____
MICHAEL J. CATALFIMO, ESQ.
Attorneys for Charging Party,
Village of Fort Edward
18 Hill Street - P.O. Box 184
Greenwich, New York 12834
(518) 692-9645

BY: _____
JOHN J. POKLEMB & HOBBS, ESQ.
Attorneys for Respondent
358 Broadway, Ste 307
Saratoga Springs, New York 12866
(518) 581-9797

CATALFIMO & CATALFIMO
ATTORNEYS AT LAW
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P.O. BOX 184
GREENWICH, NY 12834
TELEPHONE (518) 692-9645

EXHIBIT "C" (Cont'd)

STATE OF NEW YORK

SUPREME COURT COUNTY OF WASHINGTON

ROBERT N. PHILLIPS, JR.

Petitioner,

Index No. 7585

vs.

RJI No. 57-1-2005-0353

THE VILLAGE OF FORT EDWARD,

Respondent.

STIPULATION OF
DISCONTINUANCE

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties to the above-entitled proceeding, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the proceeding, the above entitled proceeding be, and the same hereby is discontinued, without costs to either party as against the other, upon filing this stipulation with the Clerk of the Court.

This stipulation may be filed without further notice with the Clerk of the Court.

DATED: Greenwich, New York
July 20, 2005

CATALFIMO & CATALFIMO

POKLEMBA & HOBBS, LLC

BY: _____
MICHAEL J. CATALFIMO, ESQ.
Attorneys for Respondent
18 Hill Street - P.O. Box 184
Greenwich, New York 12834
(518) 692-9645

BY: _____
JOHN J. POKLEMBA, ESQ.
Attorneys for Petitioner
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Saratoga Springs, New York 12866
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ATTORNEYS AT LAW
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GREENWICH, NY 12834
TELEPHONE (518) 692-9645

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GREENWICH, NY 12834
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STATE OF NEW YORK

COUNTY OF WASHINGTON

FORT EDWARD VILLAGE BOARD OF TRUSTEES

IN THE MATTER OF A PROCEEDING UNDER NEW YORK
VILLAGE LAW SECTION 8-804 AND CIVIL SERVICE LAW
SECTION 75 FOR DISCIPLINE

OF

STIPULATION OF
SETTLEMENT

ROBERT N. PHILLIPS, JR.

THIS STIPULATION OF SETTLEMENT is entered into by and between the VILLAGE OF FORT EDWARD, a New York Municipal Corporation having offices and place of business at 118 Broadway, Fort Edward, New York 12828 [hereinafter "Village"] and ROBERT N. PHILLIPS, JR., an individual residing at 2 Sunset Lane, Fort Edward, New York 12828 [hereinafter "Phillips"]. Village and Phillips are hereafter sometimes collectively referred to as the "Parties" and, individually, as "Party".

RECITALS:

This Stipulation is entered into with reference to the following facts:

A. Phillips is employed by the Village as its Chief of Police.

B. Disputes have arisen between Phillips and the Village regarding Phillips'

employment. The disputes are set forth in a Statement of Charges and Answer on file in the above referenced disciplinary proceeding [hereinafter the "Disciplinary Proceeding"] and in a petition on file in a special proceeding pending in the Washington County Supreme Court under the title: Robert N. Phillips, Jr. vs. Village of Fort Edward (Index No.7586) [hereinafter the "Article 78 Proceeding"]. The Disciplinary Proceeding and Article 78 Proceeding are hereinafter collectively referred to as the "Litigation"].

C. All matters, claims and potential claims arising out of or relating to the subject matter of the Litigation, or which could have been raised in the Litigation, and all claims or potential claims relating to or arising out of the Village's employment of Phillips, known or unknown, existing between the Parties as of the effective date of this Stipulation, are collectively referred to herein as the "Disputes".

D. The Parties desire to settle, terminate and completely resolve, as between themselves, all of the Disputes, and further desire to terminate the Litigation.

NOW, THEREFORE, in consideration of entering into this Stipulation and the mutual promises and releases set forth below, and for the purposes of settling the Disputes and terminating the Litigation, the Village and Phillips hereby agree as follows:

SETTLEMENT TERMS

1. Reinstatement. The Village shall reinstate Phillips to his position as Chief of Police of the Village of Fort Edward, effective July 20, 2005 [the "Reinstatement Date"].

2. Voluntary Resignation. Phillips shall, simultaneously with the execution of this Stipulation, voluntarily resign from his position as Chief of Police of the Village of Fort Edward by signing and submitting Exhibit "A", the resignation to be effective November 6, 2005 [the "Employment Termination Date"].

3. Paid Administrative Leave. From the Reinstatement Date to the Employment Termination Date, Phillips shall be on paid administrative leave from his position as Chief of Police. During that time, he shall be paid his regular salary of \$792.40 per week, shall continue to be enrolled in the Village's group health insurance plan and shall be entitled to accrue service and salary credits with respect to his participation in the New York State and Local Police and Fire

Employees Retirement System; but shall not receive, or be entitled to accrue or be paid for, any other benefits or perquisites of employment (including, without limitation, vacation, sick, personal, holiday or other leave time). While on Administrative Leave, Phillips shall not carry, exhibit or use a badge, shield, business card or other identification which identifies him to be the Chief of Police of the Village's Police Department; shall not carry, exhibit or use a Village issued firearm or weapon of any kind; shall not represent himself to be on active duty as an employee of the Fort Edward Village Police Department, or to have the right, privilege or legal authority to act for on behalf of the Village with respect to any of the operations, activities or duties of its Police Department; and shall not exercise or perform any law enforcement or administrative duties or responsibilities of any kind for or on behalf of the Village or its Police Department.

4. Reimbursement for Past Due Salary and Benefits. The Village shall, not later than the second regular payroll date following the completed execution of this Stipulation, pay to Phillips the sum of \$ _____; which payment represents, and shall be accepted by Phillips in full and final settlement and satisfaction of: a) any unused leave time accrued to Phillips as of April 11, 2005; b) Phillips' regular salary for the period April 11, 2005 through and including July 19, 2005; and c) any other salary or benefits of employment due or owing to Phillips through and including July 19, 2005.

5. Letter of Reference. The Village will, if requested by Phillips, provide him with a letter of reference in the form annexed hereto as Exhibit "B."

6. Return of Property. Phillips shall, simultaneously with the execution of this Stipulation, return to the Village all items of Village property now in his possession (including, without limitation, keys, business cards, official identification, Village issued firearms or other

weapons, Village issued uniforms, badges, hats, coats, shoes, vests, night sticks, etc.) Phillips acknowledges and agrees that he has retrieved from the Village any items of his own personal property.

7. Releases. (a) Except with respect to Phillips's Reserved Rights described in paragraph 8(a) below, Phillips does hereby release and discharge the Village, its successors, assigns, trustees, officers, employees and agents [collectively the "Village Releasees"] from all actions, causes of action, suits, debts, dues, sums of money, attorney's fees, wages, fringe benefits, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law, admiralty or equity, which against the Village Releasees Phillips ever had, now has, 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 day of the date of this Stipulation, including, without limitation, any claim or claims which were asserted or could have been asserted in the Litigation; any claim or claims which arise out of or are in any way related to the Disputes, Phillips's voluntary resignation from employment with the Village or any other transactions or relationships between Phillips and the Village; or any loss, damage or injury whatsoever which arises out of, or results from any act or omission by or on the part of the Village Releasees, or any of them, committed or omitted prior to the date of this Stipulation, including, but not limited to, severance pay, sick leave, holiday pay, vacation pay, life insurance, group medical insurance or any other fringe benefit of Phillips's employment with the Village.

(b) Except with respect to the Village's Reserved Rights described in paragraph 8(b) below, the Village does hereby release and discharge Phillips, his heirs, assigns and personal

representatives [collectively the "Phillips Releasees"] from all actions, causes of action, suits, debts, dues, sums of money, attorney's fees, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law, admiralty or equity, which against the Phillips Releasees the Village ever had, now has, 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 day of the date of this Stipulation, including, without limitation, any claim or claims which were asserted or could have been asserted in the Litigation; any claim or claims which arise out of or are in any way related to the Disputes, Phillips's voluntary resignation from employment with the Village or any other transactions or relationships between Phillips and the Village; or any loss, damage or injury whatever which arises out of, or results from any act or omission by or on the part the Phillips Releasees, or any of them, committed or omitted prior to the date of this Stipulation.

8. Reservation of Rights. (a) Notwithstanding anything hereinabove or hereinafter contained to the contrary, this Stipulation is not intended, and shall not be deemed or construed to constitute or effect a waiver, release or relinquishment by Phillips of the following rights [hereinafter "Phillips's Reserved Rights"]:

(i) the right, from and after the date of this Stipulation, to enforce the terms and provisions of this Stipulation; and

(ii) any claims, actions or joinders for contribution or indemnity, now existing or that may arise on account of injuries or damages sustained or claimed by persons or entities not bound by this Stipulation.

(b) Notwithstanding anything hereinabove or hereinafter contained to the contrary, this Stipulation is not intended, and shall not be deemed or construed to constitute or effect a waiver, release or relinquishment by the Village of the following rights [hereinafter "the Village's Reserved Rights"]:

(i) the right, from and after the date of this Stipulation, to enforce the terms and provisions of this Stipulation; and

(ii) the right to assert, prosecute and recover upon any claims, known or unknown, suspected or unsuspected, against Phillips which arise out of facts which are finally adjudged by a court of competent jurisdiction to be a willful breach of fiduciary duty or a crime under any federal, state, or local statute, law, ordinance or regulation (excluding, however, the conviction for harassment in the second degree which was entered against Phillips in Greenwich Village Justice Court on or about May 4, 2005), or which are based upon facts which give rise to a recovery by the Village under any applicable policies of insurance solely as a result of acts or omissions by Phillips and as to which the Village's insurance carrier has a contractual right to subrogation against Phillips; and

(iii) any claims, actions or joinders for contribution, or indemnity, now existing or that may arise on account of injuries or damages sustained or claimed by persons or entities not bound by this Stipulation.

9. Discontinuance of Litigation. The Parties consent and agree that the Litigation be discontinued and dismissed by the entry of Stipulations in the form annexed hereto as Exhibit

"C."

10. Representation and Covenant Not to Sue. The Parties hereby represent and agree

that, with the exception of the Litigation, they have not filed or pursued, nor will they file or pursue any charges, suits, complaints, grievances or other actions which assert, arise out of, or are in any way related to the claims released under this Stipulation; provided, however, that this paragraph shall not apply to: (a) any action or claim to enforce the terms of this Stipulation; or (b) any action or claim to enforce or exercise the Reserved Rights described in paragraph "8" of this Stipulation; or (c) any action or claim to obtain judicial redress for an act or omission of a Party occurring after the effective date of this Stipulation.

11. Confidentiality. The Parties each covenant and agree that, from the date this Stipulation is executed by them, the terms and provisions contained in this Stipulation and the payments and credits made or given in connection therewith shall, to the greatest extent permitted by law, remain confidential; and that neither the Parties, their attorneys nor anyone else acting on their behalf, shall discuss, disclose or publicize the terms of this Stipulation to any person or third party, other than their accountants, tax advisors, the Internal Revenue Service, the New York State Department of Taxation and Finance, the New York State and Local Government Police and Fire Employees Retirement System or any Court or tribunal. This confidentiality agreement applies to this Stipulation, the terms the Stipulation, the amounts paid or credited to Phillips under the terms of the Stipulation and all matters involving the Stipulation and the settlement of the Disputes which is provided for herein. Neither Phillips nor his attorneys shall publicize the Stipulation, the terms of the Stipulation, the amounts paid or credited to Phillips under the terms of the Stipulation, or any other matters involving the Stipulation or the settlement of the Disputes which is provided for therein, to the media, trial reporting service or TTLA- or ATLA-sponsored databases. Either party may publicly state, to

the media or others, that the matter has been concluded or resolved to the Parties' mutual satisfaction. Each Party may also discuss matters pertaining to the Stipulation to the extent necessary to comply with any subpoena, Court Order or compulsory process directed to them but, in so doing, shall make every reasonable effort to make known the existence of the confidentiality provision of the Stipulation and to comply with it; and the Village may, to the extent necessary to comply with the New York Freedom of Information Law, release a copy of the Stipulation to any party making a proper request for the same.

12. Disparaging Remarks. The Parties each covenant and agree that, from the date this Stipulation is executed by them, neither Party shall make disparaging, critical, or derogatory remarks about the other with respect to the Disputes or the Litigation. By way of illustration of the this general statement, but not of limitation thereof, Phillips shall not make any remarks, statements or appearances which violate the provisions of Section 1.30 of the Rules and Regulations of the Fort Edward Village Police Department.

13. Remedies For Violation of Confidentiality and Disparaging Remarks Provisions. Should either Party violate the provisions of paragraphs 11 or 12 of this Stipulation, the other Party shall, in addition to any other rights and remedies afforded to it at law or in equity, have the right to obtain injunctive relief against the breaching Party without the necessity of proving irreparable harm or injury.

14. Effect of Settlement. This Stipulation of Settlement shall be in full settlement of all of the Disputes. Neither Party shall be entitled to costs or an award of attorney's fees arising out of the Disputes or the Litigation.

15. Inurement. This Stipulation and the agreement set forth herein shall inure to the

benefit of and shall be binding upon the Parties and their respective agents, attorneys, representatives, predecessors, successors, affiliates, subsidiaries, officers, directors, employees, heirs and assigns.

16. Voluntary Settlement. The Parties hereby represent that they have read this Stipulation and understand it. The Parties further represent that they have entered into this Stipulation of their own free will and accord, relying on their own judgment and the advice of their counsel; and that they have not been induced to enter into this Stipulation by, and expressly disclaim any reliance upon, any statement, act, promise, undertaking, or representation of any kind or character made by any Party or its attorneys or agents prior to the effective date of this Stipulation, except as expressly set forth herein.

17. Advice From Independent Counsel. Each party understands that by executing this Stipulation in the appropriate place, it is entering into a legally binding contract that affects its rights. Phillips represents to the Village that he has had adequate time and opportunity to consult with legal counsel of his own choosing with respect to the meaning of this Stipulation and its effect upon Plaintiff's rights; that he has consulted with counsel of his choosing, to wit: Poklemba & Hobbs, LLC (John J. Poklemba, Esq. of counsel); that he is familiar with and understands the provisions of this Stipulation; and that he enters into the Stipulation knowingly and voluntarily, without being subject to coercion, duress or undue influence of any kind; and that he understands that by entering into the Stipulation, he is waiving and giving up his right to a hearing on the Statement of Charges under Section 75 of the New York Civil Service Law, Section 8-804 of the New York Village Law, the due process clauses of the New York State and United States Constitutions and other applicable provisions of law.

18. Counterparts. This Stipulation may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Photographic copies of signed counterparts may be used in lieu of the originals for any purpose.

19. Interpretation. Phillips and the Village each acknowledge that they have had the opportunity to participate in the drafting of this Stipulation and to receive the benefit and input of counsel in connection therewith. Accordingly, any rule of construction, interpretation or otherwise to the effect that ambiguities contained in the Agreement shall be resolved against the drafting party shall not be invoked or relied upon in connection with the interpretation of this Stipulation.

20. Cooperation. Each of the parties hereto shall use its best efforts to take or cause to be taken, and to cooperate with the other party hereto, to the extent necessary, with respect to all actions, and to do, or cause to be done, consistent with applicable law, all things necessary, proper or advisable to consummate and make effective the provisions of this Stipulation.

21. Severability of Invalid Provisions. If any provision of this Stipulation or the application of it is held invalid, the invalidity will not affect other provisions or applications of the Stipulation that can be given effect without the invalid provisions or applications, and to this end the provisions of this Stipulation are declared to be severable.

22. Choice of Law. This Stipulation will be deemed to have been executed and delivered within the State of New York, and the rights and obligations of the parties will be construed and enforced in accordance with, and governed by, the laws of State of New York without regard to principles of conflict of laws.

23. Litigation Costs and Expenses. In the event of litigation in connection with or concerning the subject matter of this Stipulation (including, without limitation, any action or proceeding to interpret or enforce its terms), the prevailing party will be entitled to recover all costs and expenses incurred by the party in connection therewith, including reasonable attorney's fees.

24. Waiver of Breach--Effect. No waiver of any breach of any term or provision of this Stipulation will be construed to be, nor will be, a waiver of any other breach of this Stipulation. No waiver will be binding unless in writing and signed by the party waiving the breach.

25. Entire Agreement. This Stipulation constitutes the entire agreement between the Parties with respect to the settlement of the Disputes and the termination of the Litigation, and supercedes any and all prior agreements or understandings, written or oral, pertaining thereto. No other promises or agreements shall be binding upon the Parties with respect to the subject matter unless contained in this Stipulation, or separately agreed to in writing and signed by each Party.

IN WITNESS WHEREOF, the Parties hereby execute this Stipulation to be dated July 20, 2005 and be effective upon signature of all Parties and their attorneys.

VILLAGE OF FORT EDWARD,

Acting By and Through its BOARD OF
TRUSTEES

CATALFIMO & CATALFIMO
ATTORNEYS AT LAW
18 MILL STREET
P.O. BOX 184
GREENWICH, NY 12834
TELEPHONE (518) 692-9645

Date

BY: _____

Matthew Traver, Mayor

Date

BY:

Richard Forte, Trustee

Date

BY:

John Boucher, Jr., Trustee

Date

BY:

John W. Weber, Jr., Trustee

Date

BY:

P.J. Williams, Trustee

Date

ROBERT N. PHILLIPS, JR.