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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

DEC 10 1998

PRESENT: HON. ELAINE SLOBOD
ACTING SUPREME COURT JUSTICE

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JON HANSEN,

Plaintiff,

- Against -

DECISION/ORDER

TOWN OF WALLKILL; HOWARD MILLS,
WALLKILL TOWN SUPERVISOR; and TOWN
BOARD OF THE TOWN of WALLKILL,

Index No. ~~1633-96~~ 1632-98

Defendants.
-----X

By interim decision/order dated September 9, 1998 counsel were directed to address certain issues related to the Freedom of Information Law, (FOIL-Article 6 of the Public Officers Law).

At issue is the validity of a \$25,000.00 liquidated damages provision contained in an agreement between the parties. The clause in question has allegedly been triggered by the defendants' breach of a confidentiality provision. Defendants argue that the Supervisor's disclosure of the amount paid by the Town to the plaintiff which was revealed at a public meeting in direct response to a question from a Town resident, fell within an exception in the agreement which authorized disclosure "required by law or legal process".

Plaintiff argues that provisions of FOIL did not mandate disclosure in this instance. However, it is clear that any attempt to conceal the financial terms of this expenditure would violate the Legislative declaration of §84 of the Public Officer's Law, as it would conceal access to information regarding expenditure of public monies.

Although exceptions to disclosure are provided in §§87 and 89, plaintiff has not met his burden of demonstrating that the financial provisions of this agreement fit within one of these statutory exceptions (see Matter of Washington Post v New York State Ins. Dept 61 NY2d 557, 566). While partially recognized in Matter of LaRocca v Bd of Education 220 AD2d 424, those narrowly defined exceptions are not relevant to defendants' disclosure of the terms of a financial settlement (see Matter of Western Suffolk BOCES v Bay Shore Union Free School District AD2d 672 NYS2d 776). There is no question that defendants lacked the authority to subvert FOIL by exempting information from the enactment by simply promising confidentiality (Matter of Washington Post, supra p567).

Therefore, this Court finds that the disclosure made by the defendant Supervisor was "required by law", whether or not the contract so provided. The fact that this member of the public was not forced to go through the formal motions of a written FOIL request is of no consequence. The intent of the Legislature was to create responsive government. Therefore, when, as in this case, precise information is known by a member of a public body, the enactment should not be construed as condoning temporary stonewalling by requiring unnecessary written applications for "records". Such obstruction would violate not only the intent of FOIL but also that of the Open Meetings Law (Article 7 of the Public Officer's Law).

Even if the agreement was construed, for the sake of argument, to require a written request under FOIL before disclosure, any damage sustained by virtue of this immediate verbal disclosure,

rather than by way of document disclosure some days thereafter, would be *de minimis* and therefore the attempt to extract \$25,000 under these circumstances violates yet another public policy against contractual penalties (see Truck Rent-a-Center v Puritan 41 NY2d 420, 424-425).

Accordingly summary judgment is granted to defendant and the plaintiff's complaint is dismissed. (CPLR 3212(b)).

So ordered.

Dated: Goshen, New York
December 9, 1998


HON. ELAINE SLOBOD
ACTING SUPREME COURT JUSTICE

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