UNITED STATES DISTRICT COURT

DISTRICT COURT OF NEW JERSEY

26/1093247.v1
HOWARD MANKOFF, ESQ. (HM 9083)
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ATTORNEYS FOR DEFENDANT, CITY OF LONG BRANCH

THE LIGHTHOUSE INSTITUTE FOR EVANGELISM INC., d/b/a THE LIGHTHOUSE MISSION, and REVEREND KEVIN BROWN, Plaintiffs vs. CITY OF LONG BRANCH, BCIC FUNDING CORP., BREEN CAPITAL SERVICES, INC., ABRAMS GRATTA & FALVO, P.C., PETER S. FALVO, ESQ., EUGENE M. LaVERGNE, ESQ., AND John Does, A-Z, Defendants	HON. WILLIAM H. WALLS, U.S.D.J. case Number: 00-cv-3366 (WHW)

MOTION FOR SUMMARY JUDGMENT OF THE CITY OF LONG BRANCH

Defendant, the City of Long Branch [hereinafter known as "the City"], by and through its attorneys, Marshall, Dennehey, Warner, Coleman and Goggin, hereby moves for summary judgment as to the Plaintiffs', the Lighthouse Institute and Reverend Kevin Brown's [hereinafter collectively known as "Lighthouse"] remanded claims for compensatory damages based upon the RLUIPA (Religious Land Use and Institutionalized Persons Act) Equal Terms provision, 42 U.S. §§2000cc (b)(1) as to

superseded C-1 zoning ordinance, 20-6.13 [hereinafter C-1 Ordinance] as stated in the Second Verified Amended Complaint.

I. Relevant Procedural History

This matter concerns Lighthouse's remanded compensatory damages claims against the City based upon its alleged inability to operate as a "church" at 162 Broadway, a property which Lighthouse purchased in 1994 in what has always been a commercially zoned area of the City and is now the heart of the City's Redevelopment Zone. (See Second Amended Complaint attached as Exhibit "A"). Specifically, the Third Circuit reversed this Court's prior Order granting summary judgment to the City as to Lighthouse's claims that the C-1 Ordinance violated RLUIPA's Equal Terms provision, and remanded for a determination on compensatory damages for a closed period. (See Third Circuit Opinion dated 11/27/07 attached as Exhibit "B").

By way of background, Lighthouse initiated this action in the Superior Court of New Jersey, Monmouth County-Law Division at No. MON-L-2729-00 on June 8, 2000 alleging constitutional violations against the City and legal malpractice and other claims against defendants BCIC Funding Corp., Breen Capital Services, Inc., Abrams, Gratta and Falvo, P.C., Peter S. Falvo, John Does A-Z, and Eugene M. Lavergne. The City removed this case to the District Court of New Jersey, Docket No. 00-Civ-003366 (WHW).

Lighthouse requested injunctive relief and claimed damages for: (1) Reverend Brown's alleged lost wages as a pastor; (2) Lighthouse's alleged lost revenues, including all charitable contributions from private and public donors; (3) the cost of building renovation allegedly to be funded by the AT&T Pioneers, (4) the costs associated with disrepair of the building at 162 Broadway, which allegedly resulted from Lighthouse's

inability to conduct its religious "business;" and, (5) "emotional, spiritual and other damages suffered by a church and minister when deprived of the inherent right to worship and function." (Exhibit "A"). Lighthouse filed a Statement of Damages requesting monetary damages of $11,000,000. for Lighthouse and $7,777,777. for Reverend Brown. (See attached as Exhibit "C"). Lighthouse filed its first Amended Complaint on October 23, 2000 following the enactment of RLUIPA in September 2000, to add claims under 42 U.S.C. §§ 2000cc(a)(b)(1).

In April 2003, this Court denied Lighthouse's Motions for Summary Judgment and Preliminary Injunction and partially granted the City and Falvo's Motions for Summary Judgment. This decision was affirmed by the Third Circuit by non-precedential opinion dated May 28, 2004. The Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 100 Fed. Appx. 70, 74 (3d Cir. 2004), writ of cert. denied, 543 U.S. 1120, 125 S. Ct. 1061, 160 L. Ed. 2d 1067 (U.S. 2005)[hereinafter known as "Lighthouse I"].

On July 22, 2004 Lighthouse filed a Second Amended Complaint adding claims regarding the Redevelopment Plan. (Exhibit "A"). Lighthouse and the City filed cross-motions for summary judgment. By order dated December 27, 2005 this Court granted summary judgment in favor of the City on all claims. Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch Lighthouse, 406 F. Supp. 2d 507 (D. N.J. 2005). Lighthouse appealed to the Third Circuit as to its Equal Terms, RLUIPA. 42 U.S.C. §2000cc, et seq. and Free Exercise Clause claims, all of the other claims (and parties) having been settled, dismissed or since dropped by Lighthouse.

By opinion of November 27, 2007 the Third Circuit court affirmed in part and reversed in part this Court's decision, with the majority opinion written by Judge Roth and Judge Jordan concurring and dissenting. Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 510 F. 3d 253 (3d. Cir. 2007), writ of cert. denied, 2008 U.S. LEXIS 4497, 76 U.S.L.W. 3628 (U.S., May 27, 2008)[hereinafter known as "Lighthouse II"] Relevant to this remand, the Third Circuit reversed the grant of summary judgment for the City as to Lighthouse's RLUIPA Claim as to the C-1 Zoning Ordinance, 20-6.13 ("C-1 Ordinance") finding this ordinance to be violative of RLUIPA and remanded this claim for a determination of compensatory damages from the time Lighthouse sought a waiver (April 2000) to the date the C-1 Ordinance was repealed and superseded by the Redevelopment Plan (October 2002). The Third Circuit otherwise affirmed this Court's Order granting summary judgment to the City of Long Branch as to Lighthouse's other claims that the Redevelopment Plan violated RLUIPA's Equal Terms provision and the Free Exercise Clause and awarded costs on appeal to the City. (Exhibit "B").[1]

Lighthouse sought a writ of certiorari from the United States Supreme Court by Petition For A Writ of Certiorari filed on February 27, 2008, which the City opposed. The United States Supreme Court denied Lighthouse's Petition For A Writ of Certiorari by Order dated May 27, 2008.

[1] Specifically, the Third Circuit held that the Redevelopment Plan did not violate the "Equal Terms" provision of RLUIPA and affirmed the dismissal of Lighthouse's First Amendment Free Exercise claim as to the Redevelopment Plan and the C-1 Ordinance holding that its religious exercise was not burdened by that fact that it was excluded from this area of the City. The Third Circuit also held that the Redevelopment Plan was a neutral regulation of general applicability. (Exhibit "B").

II. Relevant Factual History

A. The Parties

Plaintiff Lighthouse describes itself as a not-for profit religious organization formed in 1991 and existing to "administer its congregation while living, practicing and proclaim the teachings of the New Testament and the gospel of Jesus Christ," to "operate a ministry school," to ordain individuals seeking "formal ministry" and to "operate benevolent services and agencies to the community through outreach of membership." (See Exhibit "A," para. 1). Lighthouse describes "its most sacred and sacramental functions" as including "caring and providing for the poor, feeding the hungry, clothing the naked, and providing shelter for those without." (Exhibit "A," para. 10). Reverend Brown is described as the Lighthouse Mission's "presiding minister." (See Exhibit "A," para. 2). However, the issue of whether Lighthouse is actually a "church" is unresolved and neither this Court nor the Third Circuit has ever addressed or ruled upon the issue of whether Lighthouse is a bona fide religious entity. The Third Circuit never ruled that Lighthouse is capable of conducting the worship services or other church activities that it envisions or that Lighthouse could actually construct its proposed facility for religious assembly. [2]

The Lighthouse Mission states that it originated as a soup kitchen located at a rented property at 159 Broadway in 1992. (see Exhibit "A," para. 10). The Lighthouse "church" at 162 Broadway is actually a retail store with an illegal upstairs apartment inhabited by Reverend Brown, which hosts internet sites including a solicitation to individuals to become "ordained" for a fee. (see Appraisal Report of September 5, 2007

[2] The Third Circuit simply ruled that Zoning Ordinance 20-6.13 violated RLUIPA's "Equal Terms" provision and remanded for Lighthouse to prove compensatory damage for a closed period.

attached as "Exhibit "D"; Resolution Hearing Notes attached as Exhibit "E," p. 14). Lighthouse has conceded that 162 Broadway property has never been used as a religious institution and there is no evidence of a congregation, or that church services, Sunday School, youth meetings or other events were ever planned, advertised, undertaken or occurred. (Exhibit "E," pp. 4-6).

The record shows that Lighthouse never possessed or applied for an independent tax exemption as a church/charitable organization during any period relevant to this litigation and has faced tax sale foreclosure on this basis. Lighthouse's status as a tax exempt religious institution is presently the central issue in Lighthouse Mission For Evangelism vs. City of Long Branch, Tax Court of New Jersey, Mercer County, at No. 005909-2005 [hereinafter "Tax Court Litigation"] which is presently pending before the Honorable Gail L. Menyuk, J.T. as set forth in more detail below. (See Tax Court Litigation, Notes of Testimony, 1/10/08-Vol. I, 1/11/08 - Vol. II, attached as Exhibit "F").

Defendant, the City of Long Branch is a political subdivision of the State of New Jersey located in Monmouth County. The City has a population of approximately 35,000 and encompasses 26 square miles. The City hosts 33 churches, synagogues and other religious institutions which it permits in 90% of the City subject only to lot size, set backs and parking requirements, if any, for those zones. The record shows that these areas can accommodate the religious use requested by Lighthouse. (Exhibit "E," pp. 11, 12, 16, 18).

B. The Lighthouse property at 162 Broadway and C-1 Ordinance 20-6.13.

Lighthouse purchased 162 Broadway on November 8, 1994 at which time the property was located in the City's C-1 Commercial District and subject to C-1 Zoning

Ordinance 20-6.13 (now superseded) which set forth certain uses permitted as of right or by Conditional Use Permit, including assemblies. (See Real Estate Contract attached as Exhibit "G"; C-1 Ordinance attached as Exhibit "H."). Churches have never been listed as permitted or conditional uses in the C-1 District without a variance. The record shows that Lighthouse was fully aware of the zoning restrictions at the time of purchase; the real estate contract for 162 Broadway reflects that the parties redacted the provision addressing zoning and building laws. (See Exhibit "G"). Also, prior to purchase the City rejected Lighthouse's mini grant application advising that Lighthouse's proposed use of the building may not be legal.[3] (Exhibit "I").

At the real estate closing on 162 Broadway on November 8, 1994 Lighthouse was represented by former Co-Defendant Attorney Falvo. Approximately *one (1) year* after purchasing 162 Broadway, on August 1, 1995, Attorney Falvo submitted an application on behalf of Lighthouse to the Long Branch Planning Board seeking sought a variance for use as a soup kitchen, mission, job skills training, counseling center, Bible classes, and life skills classes, *but not as a church*. By letter dated August 21, 1995, the City Zoning Board/Planning Board Secretary advised Lighthouse that its application was incomplete because: (1) it was not completely filled out; (2) the plans had no title block, date, seal or signature; (3) the surveys were not sealed; and (4) the required fees were not paid. The letter further advised that "[t]his is the minimum required to process this application. Until such time as these items have been submitted, it cannot be determined

[3] There is no evidence that the City thwarted Lighthouse's attempt to use the property as a "church;" the record shows that commercial zoning pre-dated the purchase of 162 Broadway in 1994 and was not enacted or enforced to frustrate Lighthouse's use of the property and that delays in the application process were caused by the inaction of Lighthouse or its attorney and Lighthouse's serial failure to submit even minimally compliant use applications.

what other information will be necessary." (See 8/21/95 letter attached as Exhibit "J"). Lighthouse did not pursue this application. In late 1996, Mr. Falvo resigned as Lighthouse's counsel and was replaced by Co-Defendant Eugene M. LaVergne, Esq. in January 1997.

Lighthouse's subsequent application for a zoning permit to use of part of the first floor as "corporate offices" for the Lighthouse Mission was granted by the City in March 1997. (See Corporate Office/Retail Application/approval of 3/26/97 attached as Exhibit "K"). The permit was issued to Reverend Brown and the Mission with the condition that "no church services/soup kitchen/classes/residential uses [would] be allowed with this permit." Further, "Applicant understands and agrees that if these uses are anticipated for this site that he will obtain all required approvals prior to beginning operation of said uses at this site." The City also granted approval for use of 162 Broadway as a retail store. Reverend Brown's 1999 application to use the second floor as a pastoral residence was denied, although the denial was ignored as Reverend Brown continued to illegally reside at 162 Broadway until the City obtained possession of the premises by resorting to Court proceedings ni 2008. (See 9/24/99 letter regarding illegal residential use attached as Exhibit "L"; See Exhibit "K"; See Order of 8/15/08 granting immediate possession of 162 Broadway to City attached as Exhibit "M"; See Order of 8/15/08 denying Stay and attached as Exhibit "N."

On April 26, 2000 approximately *six(6) years* after purchasing the property, Lighthouse applied *for the first time to use 162 Broadway as a church.* Lighthouse has previously attributed any delay in applying for or obtaining church use during this period, not to the City, but to malpractice by its former attorney Falvo and defendant Falvo Law

Firm (which has since settled out of this action) and Attorney La Vergne. (Exhibit "A," para. 75-103). The April 26, 2000 application for a zoning permit and construction permit was denied by the Zoning Officer's Letter of Denial dated April 27, 2000, in that the proposed use was not specifically permitted in the C-1 zone, pursuant to Sections 345-30, 345-14 and 345-42 of the City of Long Branch Zoning Ordinance. The April 27, 2000 letter further advised that the proposal "would require prior approvals from the Zoning Board of Adjustment, including but not limited to, a use variance, site plan approval, and parking variance." However, the letter stated that "Relief may be sought by making application to the Zoning Board of Adjustment" and that "Variance applications are available at the Planning Office." Additionally, "Appeals of the decision must be filed within 20 days."(Exhibit "O"). Lighthouse did not seek a variance or appeal the decision, however and simply instituted this lawsuit.

On October 22, 2002, during the pendency of this litigation, the C-1 Ordinance 20-6.13 was superseded by the City's enactment of the Redevelopment Ordinance, No. 47-02 approving the Broadway Redevelopment Program and officially designating 162 Broadway, Block 283, Lot 9 as part of the Redevelopment Program [hereinafter "The Redevelopment Plan" or "The Plan"]. As determined by the Third Circuit, the enactment of the Redevelopment Plan closes the period for which damages are to be assessed on remand. [4]

[4] This was the culmination of the City's long term redevelopment initiative which originated with an August 8, 1995 resolution authorizing investigation of the City's waterfront as an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5 and -6.

III. Related litigation relevant on remand.

A. Tax Court litigation.

Presently pending is the related Lighthouse Mission For Evangelism vs. City of Long Branch, Tax Court of New Jersey, Mercer County, No. 005909-2005, Honorable Gail L. Menyuk, J.T. presiding. Lighthouse's status as a "church" is directly at issue in this litigation and the record, testimony, evidence and assertions of Lighthouse in the Tax Court litigation impact directly upon the issues here and are subject to judicial notice.[5] Contrary to its assertions to this Court, that it was *unable* to operate as a church at 162 Broadway, Lighthouse asserts the exact opposite in the Tax Court Litigation in which it maintains that it *has continuously operated as a church at 162 Broadway*. (Exhibit "F," Vol. I, p. 7 [00015], lines 8-25 [00016], lines 1-7.)

The unrebutted record in the Tax Court litigation shows that Lighthouse has never obtained a tax exemption as a church. Lighthouse asserted in this litigation that it first applied for a tax exemption in 2005 (Exhibit "F", Vol. I., p. 3 [0006], line 18-25 [0007], line 1. Lighthouse has also admitted in the Tax Court Litigation that in lieu of obtaining its own tax exemption, it has been using a tax exempt letter on "temporary" loan from a local church, the AME Zion Church of Shrewsbury *for the past decade*.

The Tax Court litigation record shows an intermingling of funds between Lighthouse and Reverend Brown disqualifying Lighthouse for a tax exemption as a religious entity. Plaintiff Reverend Brown testified at the Tax Court trial on January 10, 2008 that he and Lighthouse share a bank account and that he uses donations which are

[5] Judicial proceedings, court opinions and court filings from prior litigation between parties are subjects of judicial notice as matters of public record. *See Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001); *Biomedical Patent Mgmt. Corp. v. California,* 505 F.3d 1328, 1331 (Fed. Cir. 2007); *Southern Cross Overseas Agency v. Wah Kwong Shipping Group Ltd.*, 181 F.3d 410 (3d Cir. 1999). F.R.E. 201(b).

made to Lighthouse, for his personal expenditures, including credit card payments, liquor purchases, travel, clothing for relatives, meals and other non-"church" personal and business expenditures. (Exhibit "F," Vol. I, p .21 [00048], lines 10-12; p. 32 [00074], lines 1-20; p. 51 [000118], lines 10-12; p. 60 [00140], lines 1-18; p. 78 [00182], lines 14-17.)

B. Eminent Domain case.

The City has recently received a favorable ruling in the related eminent domain proceeding City of Long Branch v. Lighthouse Mission, Inc., et. al., Superior Court of New Jersey, Monmouth County-Law Division, No. L-4778-07 [hereinafter "Eminent Domain case] commenced by the City against 162 Broadway by Order To Show Cause. By final judgment of April 2, 2008 the New Jersey Superior Court denied Lighthouse's challenges to the Redevelopment Plan and authorized the City to acquire 162 Broadway pursuant to the New Jersey Eminent Domain Act. The court found that the City's redevelopment designation of the properties, including 162 Broadway, was supported by substantial evidence and was not arbitrary or capricious (See Eminent Domain Opinion attached as Exhibit "P," p. 14). The court also rejected Lighthouse's challenge to the City's condemnation authority under RLUIPA and designation of BAC as a developer and denied a stay to the eminent domain proceedings during the instant appeal. (Exhibit "N," pp. 20-23).

IV. Issues on Third Circuit remand

1. Has Lighthouse suffered an actual injury as a result of the provisions of the C-1 Ordinance requiring a religious assembly to obtain a variance, from the period commencing with its application for use of 162 Broadway as a church on April 26, 2000 through the period of October 2002, and can

Lighthouse prove that the monetary damages it seeks are appropriate relief?

2. Was Lighthouse a bona fide religious entity/church/ religious assembly, or qualified to be or capable of operating as the same at 162 Broadway from April 2000 to the date the C-1 Ordinance was repealed and superseded by the Redevelopment Plan (October 2002)?

3. Can Lighthouse prove that it suffered any actual injuries as a result of the C-1 Ordinance's prohibition of use of 162 Broadway for religious assembly without a variance, when the record shows that it was able to operate church offices and continue its fundraising, charitable, religious and other church activities at 162 Broadway?

4. Is Lighthouse judicially estopped or otherwise prohibited from asserting and proving a claim for compensatory damages here for its alleged *inability* to use 162 Broadway as a church, when it has asserted to the contrary in the related Tax Court Litigation that it has *continuously operated as a church*?

5. Can Lighthouse assert and prove a claim for its alleged inability to operate as a church at 162 Broadway for the period from April 2000 to October 2002 when Reverend Brown has conceded that the "church" could have effectively functioned elsewhere in the City?

6. Whether Lighthouse can prove a loss of income or other damages, when the record shows that its donations and other funding were tied to its charitable activities, not to any provision of religious assembly or worship services?

7. Whether Lighthouse can prove a loss of income or other damages, when the record shows that donations and other funding precipitously declined in 1995 for reasons

unrelated to the C-1 Ordinance, and pre-dating its April 2000 application for church use by five years?

8. Whether Lighthouse's and Reverend Brown's assertions of monetary losses have no evidentiary support in light of this Court's previous rejection of Lighthouse's expert's "Wojack Report" and Reverend Brown's admissions that his testimony as to monetary damages is purely guesswork?

9. Whether Lighthouse did not suffer damages, because Lighthouse never applied for a variance to the C-1 Ordinance?

10. Whether Lighthouse's claims relating to the withdrawal of AT&T funding pre-date the relevant damages period here, relate to volunteer labor alone and otherwise fail because Lighthouse's own failures to timely pursue necessary permits, provide a construction plan or obtain significant funding caused AT&T to withdraw its promise of funding?

11. Whether Lighthouse can assert a claim against the City for damages related to the tax assessment which were caused by Lighthouse's and Attorney Salvo's conduct alone and predated the period from April 2000 to October 2002?

12. Whether Lighthouse's legal malpractice settlement of $140,000. against its co-defendant Attorney Falvo judicially estops its same claims for damages here and/or should be considered a set-off/credit to avoid a double recovery?

13. Whether Lighthouse's own conduct failing to "cure," forestall or otherwise mitigate its alleged injuries here by applying for a variance as to the C-1 Ordinance or

to otherwise use 162 Broadway for its permitted uses preclude an award against the City?

14. Whether this Court should consider that the record shows that Lighthouse, as well as Reverend Brown personally, realized considerable income and other quantifiable benefits from the use of 162 Broadway during the period from April 2000 through October 2002?

15. Whether Lighthouse can assert a claim for damages on the basis that it was allegedly enticed to purchase the property at 162 Broadway and subsequently betrayed by the City?

16. Is Lighthouse entitled to attorneys' fees inasmuch as it cannot prove any damages?

V. STANDARD FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment bears the initial burden of showing that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).

However, once the moving party has met its initial burden, the non-moving party must present evidence to show that a genuine issue of material fact exists Id. at 324; Jersey Cent. Power & Light Co. v. Lacey Township, 772 F.2d 1103, 1109 (3d Cir. 1985). The non-moving party must present actual evidence that creates a genuine issue of

material fact and cannot rely on mere allegations. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).

VI. LEGAL ARGUMENT

This remand was ordered by the Third Circuit to allow Lighthouse the opportunity to prove compensatory monetary damages. Importantly, the Third Circuit did not direct the entry of any damages, even nominal damages. While the Third Circuit ruled that RLUIPA was violated, it never specifically ruled that Lighthouse was, has ever been, or is capable of operating as a church, religious assembly or bona fide religious organization. In fact, the record shows the contrary and that its damages claims are purely speculative.

The record in this and the related Tax Court litigation further shows that the C-1 Ordinance did not prevent Lighthouse, which was permitted other use of the property including "church" offices as well as commercial rentals, from fulfilling its alleged corporate and religious missions. Significantly The Third Circuit did not have the benefit of Lighthouse's contradictory position in the Tax Court, ie. that it has continuously used 162 Broadway as a "church" when it ordered this remand. Finally, the record shows that any loss of donation or donor support commenced in 1995 and pre-dated the damages period of April 2000 through October 2002, and were caused by parties and other factors unrelated to the C-1 Ordinance.

A. The Third Circuit's remand is limited to the issue of what damages, if any, Lighthouse sustained as a result of its inability to use 162 Broadway for religious assembly without obtaining a variance, for the period between Lighthouse's application for a waiver as a church (April 2000) and the City's enactment of the Redevelopment Plan (October 2002).

The Third Circuit held that the C-1 Ordinance violated RLUIPA because it treated religious assemblies on less than equal terms with non-religious assemblies or institutions that caused equivalent harm to its governmental objectives. Lighthouse II, 510 F. 3d at 272. (Exhibit "B"). The Third Circuit remanded the case for this Court "…to determine compensatory damages for the period between Lighthouse's application for a waiver as a church and the enactment of the Plan:"

> We will therefore remand this claim to the District Court to enter summary judgment for Lighthouse and to determine compensatory damages for the period between Lighthouse's application for a waiver as a church and the enactment of the Plan. The District Court may also, at its discretion, award appropriate attorney's fees…Since Lighthouse's claim for injunctive relief under the ordinance is moot, however, only monetary relief is available to it.

Lighthouse II, 510 F. 3d at 273.

1. The relevant period for damages runs from April 26, 2000 to October 22, 2002.

Lighthouse filed its first complete application for a zoning permit pursuant to C-1 Ordinance 20-6.13 to use the property as a *church* on April 26, 2000. Lighthouse II, 510 F. 3d at 272)(referencing April 26, 2000 application as first for use as church).[6]

[6] Initially, it is the City's position that Lighthouse never filed an appeal/application with the Zoning Board of Adjustment for a *waiver (*as described by the

Therefore, if the damages period commences with Lighthouse's application for a *permit (*the Third Circuit stated "waiver"), it would commence from *April 26, 2000* and conclude on *October 22, 2002* when the City adopted/enacted the Redevelopment Plan, superseding the original C-1 Ordinance as to the subject property and Broadway Corridor.

2. Lighthouse can only assert damages claims for its inability to use 162 Broadway for religious assembly from April 26, 2000 to October 22, 2002.

The Third Circuit directed the entry of summary judgment for Lighthouse on its RLUIPA Equal Terms claim relating to the C-1 Ordinance. The Third Circuit held that the City failed to create a genuine issue of material fact as to whether the C-1 Ordinance treated religious assemblies on less than equal terms with non-religious assemblies or institutions that caused equivalent harm to its governmental objectives. Lighthouse II, 510 F. 3d at 272, 273. (Exhibit "B"). Therefore, pursuant to the Third Circuit's ruling Lighthouse can only assert damages claims on remand for *its inability to use 162 Broadway for religious assembly, ie. worship services*. Lighthouse cannot assert claims for damages based upon any alleged inability to operate as, or raise funds as a religious/charitable organization or otherwise use the property for other religious or non-religious purposes, such as a soup kitchen or homeless shelter.

3. This Court is not required to award any damages on remand without proof that Lighthouse suffered an "actual injury" as a result of the inability to use 162 Broadway for religious assembly from April 2000 to October 2002 and that any

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Third Circuit) or use variance, so the damages period described by the Third Circuit never commenced and no damages were incurred.

money damages that it seeks constitute "appropriate relief."

Although the Third Circuit's opinion states that "only monetary relief is available" to Lighthouse because injunctive relief is moot, the opinion does not expressly state that damages must be awarded. Rather, the remand is for the District Court "…to determine compensatory damages for the period between Lighthouse's application for a waiver as a church and the enactment of the Plan." 510 F. 3d at 273. (Exhibit "B"). There is no directive to this Court from the Third Circuit to award compensatory damages in the absence of any proof by Lighthouse. The specifics of Lighthouse's damages claims were not raised, discussed or analyzed at all on appeal. The Third Circuit did not identify any particular activities of, or claims by Lighthouse, for which damages could be awarded, instead leaving any damages award to this Court's discretion. The Third Circuit's mandate on remand is to only "determine" monetary compensatory damages for the relevant period---if they are proven.

In order to sustain its burden of proof, Lighthouse must prove that it suffered an "actual injury" as a result of the inability to use 162 Broadway for religious assembly from April 2000 to October 2002 and that any money damages that it seeks constitute "appropriate relief." RLUIPA provides for "appropriate relief against a government" at 42 U.S.C. § 2000cc-2(a):

> (a) Cause of action. A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain *appropriate relief* against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

42 USCS § 2000cc-2 (emphasis added). RLUIPA itself does not mandate any automatic awards of damages, nominal or otherwise. RLUIPA doe not reference monetary damages at all and there is little or no caselaw concerning calculation of money damages pursuant to RLUIPA in a land use context, if money damages are even available. The relevant language simply references the ability to obtain "appropriate relief." The Third Circuit has held that the C-1 Ordinance violated RLUIPA 's Equal terms provision; consequently on remand, in accordance with the above-quoted language, Lighthouse must prove that it sustained a compensable injury directly attributable to this RLUIPA violation, that money damages constitute "appropriate relief" for this injury and the amount of monetary damages claimed.

Generally, in similar constitutional claims involving deprivation of religious exercise, compensatory damages may not be awarded absent proof of "actual injury." Allah v. Al-Hafeez, 226 F.3d 247, 250-251 (3d Cir. 2000)(abstract value of a constitutional right may not form the basis for damages pursuant to 42 U.S.C. 1983 which may only be awarded to compensate for actual injury). Lighthouse must therefore prove that it suffered an actual, quantifiable injury as a result of the C-1 Ordinance during the period from April 2000 through October 2002 in order to recover compensatory damages.

B. Lighthouse cannot satisfy the threshold inquiry by proving that it qualified, existed or operated as a bona fide religious institution or "church" capable of carrying out any functions which would allow a suit for damages.

The Third Circuit did not hold that Lighthouse was a "church" or capable of conducting a religious assembly. Lighthouse must negotiate this threshold and show that it qualified as a bona fide religious organization/church capable of carrying out the

functions which it maintains were impaired during this period. However the record shows that 162 Broadway *has never been used as a church or for religious assembly* and the Lighthouse "church" did not and could not exist or operate as described by the Plaintiffs. In fact, Lighthouse did not even own 162 Broadway until October 16, 2007 when a corrective deed was filed.

As set forth above, Lighthouse originally operated as a soup kitchen at a rented property located at 159 Broadway. The property at 162 Broadway which Lighthouse purchased on November 8, 1994 has never been used as a church. The Lighthouse "church" at 162 Broadway is a retail store with an illegal apartment upstairs, occupied by Reverend Brown. Lighthouse has never provided any evidence to show that it had a congregation, or conducted church services or other church activities prior to or during April 2000 to October 2002, or to this day. There is no evidence that any formal church service was advertised or that services or Sunday school were ever scheduled. There is no evidence that a congregation exists-no list of members, no mailing list, no-list of church groups, no list of donors to the "church." There is no evidence of any prospective students or candidates for ordination or other educational services envisioned by Lighthouse. Although the City has argued this utter lack of evidence of a qualifying, operational "church" throughout this litigation, Lighthouse has *never* attempted to fill in these gaps or presented the slightest rebuttal.

Lighthouse currently has no federal status as a church/charitable organization pursuant to 5013 and no tax I.D. During the period from April 2000 to October 2002 Lighthouse did not even apply for, much less possess, a tax exemption as a religious organization. In fact, Lighthouse has likely been engaged in tax fraud, having admitted

in the Tax Court Litigation that in lieu of obtaining its own tax exemption, it has been using a tax exempt letter on "temporary" loan from a local church, the AME Zion Church of Shrewsbury *for the past decade*. Lighthouse's status as a qualifying church is further cast into doubt by the Tax Court litigation record which shows an intermingling of funds between Lighthouse and Reverend Brown which suggest that it does not qualify as a tax exempt religious entity. Reverend Brown's testimony shows that Lighthouse funds are primarily employed for his personal use; that they share a bank account and that Reverend Brown uses donations to Lighthouse for his personal expenditures. The Tax Court record, shows that among Reverend Brown's personal expenditures are credit card payments, liquor purchases, travel, clothing for relatives, meals and other non-"church" personal and business expenditures. (Exhibit "F"; Vol. I, pp. 21, 32).

Lighthouse is also unable to function as an operational religious assembly for financial reasons unrelated to its claim against the City. Lighthouse's expert report (the Wojack Report) has never been able to cover its operating costs and sustained a sharp decline in donations beginning in 1995. (see the Wojack Report attached as Exhibit "Q.") Lighthouse's inability to obtain funding for its construction goals caused the AT&T Pioneers to, in turn, withdraw their support in 1995. (See Testimony of Ralph Wyndrum attached as Exhibit "R"). Due to its declining finances over this period Lighthouse was plainly unable to operate or construct a venue for religious assembly in April 2000, when it first applied to the City to use 162 Broadway as a church.

The issue of whether or not a property has ever been used for the purpose sought has been deemed relevant in RLUIPA cases. See Petra Presbyterian Church v. Northbrook, 2004 U.S. Dist. LEXIS 3910 (D. Ill. 2004)(church, which sought its use to

be "grandfathered," never established a nonconforming legal use of the property before the subject ordinance was passed because it *never actually used the property for religious assembly*, and even if it had, that use would not have been legal at that time.)

Lighthouse must satisfy this threshold inquiry before it can proceed with its damages claims. This Court cannot presuppose that Lighthouse was a bona fide religious organization and that it was capable of operating, much less constructing a church during the relevant time period from April 2000 through October 2002. Again, to the contrary, the record shows that at no point relevant to this remand could Lighthouse operate a church much less carry out it building plans, fiscally or otherwise.

C. Lighthouse cannot demonstrate that the inability to hold worship services without first obtaining a variance, from April 2000 until October 2002, caused it to suffer compensable damages.

The specific inadequacies of Lighthouse's evidence is discussed below, at Section D. However, this record and that of the Tax Court litigation shows that Lighthouse's charitable works, administrative operations and fundraising activities were not foreclosed by the C-1 Ordinance, either on the 162 Broadway premises or through other outlets. The C-1 Ordinance simply prohibited Lighthouse from using 162 Broadway for "religious assembly" without first obtaining a variance. See Lighthouse II, 510 F. 3d 272. Specifics of the property use are illuminated by the remarks of Lighthouse's Tax Court litigation counsel, Attorney Rescino, who admitted the following as to the history its use of 162 Broadway and other activities:

> What we're saying here and what the testimony showed on direct was that there were permitted uses that the church used the building for which it is entitled to a tax exemption, *office, parsonage, storage, education, meetings.*

(Exhibit "F ," Vol. I, p. 7 [00015], lines 16-20 (emphasis added)

1. Lighthouse did not suffer any actual injuries because it was permitted to operate church offices and conduct fundraising, outreach, charitable and other church activities at 162 Broadway.

Lighthouse, which originated as a soup kitchen, not a religious assembly, describes "its most sacred and sacramental functions" as including "caring and providing for the poor, feeding the hungry, clothing the naked, and providing shelter for those without." (Exhibit "A," para. 10). As set forth here, the C-1 Ordinance did not prevent Lighthouse from performing these charitable missions except insofar as they involved religious assembly. Lighthouse could "indeed operate benevolent services and agencies to the community through outreach of membership" (See Exhibit "A," para. 1).[7] In addition to Attorney Rescino's remarks, above, Reverend Brown testified to the Tax Court that Lighthouse was able to fulfill its religious and corporate missions by using the internet for outreach, bible study and conferences despite 162 Broadway's unavailability for religious assembly. (Exhibit "F," Vol. II, p. 31 [00071], lines 4-25; [00071], lines 1-20.) He further testified that after 159 Broadway was no longer used as a soup kitchen, the Lighthouse Mission used local resources such as the Grand Chinese Buffet restaurant as a substitute soup kitchen to provide meals for the needy. (Id., p. 47 [00109], lines 6-23.) Lighthouse could and did give away money and goods, provide food and fund shelter, provide education, .

[7] Again, because the damages remand is based upon a violation of Lighthouse's alleged ability to "religiously assemble" on equal terms with non-religious assemblies, Lighthouse cannot recover for any damages allegedly related to its inability to operate a soup kitchen or shelter.

Even had these functions been impaired, however, they are not monetarily compensable injuries. In fact, these activities depleted, not augmented, Lighthouse's funds. Additionally, Lighthouse realized the fair market value of the office space within which to conduct its activities and did not incur any damages by having to rent space for church offices elsewhere.

The also record shows that the source of Lighthouse's funding was not the collection plate. Lighthouse 's "Wojack Report" states that it obtained funding through numerous *off-site* fundraising events: a concert at the Ocean Grove Auditorium, a show at the Middle School, an outdoor concert in Sandy Hook and an indoor playground. (Exhibit "Q", p. 6). Lighthouse was also the recipient of financial assistance and donations from religious groups. (Exhibit "Q", p. 6). Consequently, Lighthouse cannot identify any quantifiable loss of donations or funds attributable to the C-1 Ordinance as it affected 162 Broadway from April 2000 to October 2002.

2. Lighthouse is estopped from asserting a claim for its alleged *inability* to *operate as a church* at 162 Broadway because it has asserted to the contrary in the related Tax Court Litigation, that it has *continuously operated as a church.*

Lighthouse is also legally estopped from asserting and proving a claim for compensatory damages here for its alleged *inability* to *operate as a church* at 162 Broadway for the period from April 2000 to October 2002. At the Resolution hearing, regarding Lighthouse's RFQ pursuant to the Redevelopment Plan, Lighthouse's Attorney Kasanoff made the following statements regarding Reverend Brown's efforts to "operate some property at 162 Broadway as a church, house of worship." (Exhibit "E," p. 4, lines 4-6):

> Mr. Aaron: All right. Question number 1, in the papers it indicates that this property has been used as a religious institution. Has that been continuous?
>
> Mr. Kasanoff: The, again, he was at 159 Broadway up to, I believe it was, 1994. He acquired the property at 162 Broadway. He was given a $1500. mini grant by this very body to move across there. *He had not used the property at 162 Broadway because he applied, as is set forth in this lawsuit, and has not been granted use as of yet.*
>
> (Exhibit "E," p. 6, lines. l4-14) (emphasis added).

However, as shown above, Lighthouse has asserted the contrary position in the related Tax Court litigation. In the Tax Court litigation, Lighthouse maintains that it *continuously operated as a church at 162 Broadway*, that Lighthouse has able to fulfill its religious and corporate missions during the relevant time periods, and, that Lighthouse has used 162 Broadway for offices, as a parsonage, for storage, for education and for meetings. (Exhibit "F," Vol. I, p. 7 [00015], lines 16-20, Vol. II, p. 31 [00071], lines 1-20.)

A party is not permitted to play fast and loose with the courts by assuming a position in one court entirely different or inconsistent with that taken by him in another court or proceeding with reference to the same subject matter. Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 361 (3d Cir. 1996). The doctrine of estoppel applies when a party has performed acts and admissions inconsistent with its present claim. see Koppel v. Olaf Realty Corp., 151 A.2d 577, 583 (Ch.Div. 1959)(citing Stretch v. Watson, 6 N.J. Super. 456 (Ch. Div. 1949), affirmed and modified, 5 N.J. 268 (1950)); Vogel v. Red Star Express Lines, 73 N.J. Super. 534, 542 (App.Div.

1962)(workers' compensation party estopped from taking factual position inconsistent with that taken at other hearings). Judicial estoppel is an equitable doctrine invoked by a court at its discretion. McNemar v. Disney Store, 91 F.3d 610, 617 (3d Cir. Pa. 1996). This Circuit has court has accepted the doctrine of judicial estoppel and has consistently reiterated that its purpose is to maintain the integrity of the judicial system integrity. Id (citing Scarano v. Central Railroad Co. of New Jersey, 203 F.2d 510, 513 (3d Cir. 1953)). The application of judicial estoppel is not limited to a formula and "'each case must be decided upon its own particular facts and circumstances.'" Id. This Circuit has applied the two-part threshold inquiry articulated in Ryan Operations, supra:" (1) Is the party's present position inconsistent with a position formerly asserted? (2) If so, did the party assert either or both of the inconsistent positions in bad faith -- i.e., "with intent to play fast and loose" with the court?" McNemar, (citing Ryan Operations, 81 F.3d at 361.).

Here Lighthouse is judicially estopped from maintaining that it sustained damages a result of its inability to operate as a church for the period from April 2000 to October 2002 by its representations to the contrary in the Tax Court litigation.

3. Reverend Brown has conceded that the "church" could have functioned elsewhere in the City

Reverend Brown has repeatedly acknowledged that there is no compelling reason for the Lighthouse Mission to be located at 162 Broadway and that it could effectively function at an alternate location. In light of these concessions, Lighthouse's claim for damages is obviated and it sustained no injuries as a result of its alleged inability to use 162 Broadway for "religious assembly."

At the Resolution Hearing on the Mission's application to amend the Plan, Reverend Brown made these concessions, as follows:

> MR. DESTEFANO: And you have, one additional question, if you don't mind, given the fact that according to Mr. Turner 90 % of the city is amenable to houses of worship and that there are 33 currently existing, can you tell me why, what compelling evidence is there that that specific location is the only location that it is, you know, useful for your purposes?
>
> REVEREND BROWN: Good question. *I do not make that it's the only location*. The city has not approached me with an alternative.
>
> (Exhibit "E," p. 51, line 16-p. 52, line 1)(emphasis added).

When asked a second time if there is any compelling reason why the Mission must be in that particular location, Reverend Brown responded:

> MR. DESTEFANO: But, then the answer is there is no compelling reason why it has to be that particular location?
>
> REVEREND BROWN: *Nothing is etched in stone.* I want to see it admirably resolved. I want to exist in a location that's welcomed. I'm not looking to force myself into any situation. It's unfortunate we had to see it come this far.
>
> MR. BROWN: Reverend Brown, what you're asking, councilman is asking, is that you would not have a compelling objection to another location. You're stating…
>
> REVEREND BROWN: *If somebody wanted to bring me someplace and show me and tell me how we go from where we are to where we could be, I would listen, most definitely, with an open mind.* What the final decision would be would be based on members of my board of directors, and including counsel, and what the terms of that move would be. But, I'm willing to listen to any resolve.
>
> (Exhibit "E," p. 53, line 12-p. 54, line 6)(emphasis added).

Reverend Brown gave similar testimony in his deposition, when he acknowledged that a relocation the location of the Lighthouse Mission a few blocks distant would not greatly affect his constituency. (See Reverend Brown Deposition Transcript of 8/3/04 attached as Exhibit "S.," p. 31, lines 20-24) While Lighthouse has continued to argue that the 162 Broadway location is necessary to serve its constituency, the binding admissions of Reverend Brown show the contrary. Consequently Lighthouse has

conceded that precluding use of 162 Broadway as a religious assembly did not injure Lighthouse.

4. Lighthouse cannot connect its receipt or loss of "income" to use or the inability to use 162 Broadway for religious assembly as opposed to its other charitable endeavors.

Again, Lighthouse originated as a soup kitchen at 159 Broadway. Lighthouse has never conducted a "religious assembly" at 162 Broadway. Lighthouse has never presented evidence tying donations directly to the operation of 162 Broadway as a religious assembly as opposed to Lighthouse as a charitable organization. Plainly, any previous donations, funding and grants were made to enable Lighthouse to engage in its charitable activities, such as provide food, not based upon Lighthouse as a provider of worship services or a place for religious assembly. Notably, when Lighthouse applied for its much-cited "mini grant," (which it claims caused it to purchase 162 Broadway) it specifically stated that the funds were for a "short term emergency shelter program." (Exhibit "U"). When Lighthouse made its first application for use of 162 Broadway on August 1, 1995 it sought a variance for use as a "soup kitchen, mission, job skills training, counseling center, Bible classes, and life skills classes" *but not as a church*.

Lighthouse has presented no evidence to show that its inability to use 162 Broadway for religious assembly from the period of April 2000 until October 2002 caused it to sustain monetary damages. No evidence shows that the inability to hold worship services caused Lighthouse any loss of funding or donations or other losses which comprise any element of damages on remand.

5. The alleged decline in donations/income to Lighthouse began in 1995, predating Lighthouse's April 27, 2000 church use

application by five years and was caused by factors unrelated to the C-1 Ordinance.

By Lighthouse's own admissions donations and other income to Lighthouse began a sharp decline from 1995 forward. Lighthouse had not even applied to use the property as a church at that time. Not only did this "fall-off" predate Lighthouse's April 26, 2000 application for use as a "church" by five years, it was caused by factors unrelated to the C-1 Ordinance. In short, the "well" had already been poisoned by causes unrelated to the City's C-1 Ordinance, including Lighthouse's lack of financial support in the community and its own inaction with regard to obtaining funding, permits and make applications for its building project.

In his deposition Reverend Brown testified that donations to Lighthouse started dipping from 1995 and 1996 forward:

> Q: What happened in 1995?
> Reverend Brown: Donations fell off.
>
> Q: Why?
> Reverend Brown: What did they call us, Brown's Folly? Is that correct?
>
> Attorney Kasanoff: Yeah.
> Reverend Brown: The building across the street, without use, became Brown's Folly and it does affect our donations.

(See Reverend Brown Deposition Testimony of 7/29/03 attached as Exhibit "I", p. 181, lines 6-13).

The report of Lighthouse's expert (The Wojack Report) also attributes a fall off in donations (as explained in greater depth in Section D, below) to some "bad publicity" in 1995 (Exhibit "Q"). The AT&T Pioneers withdrew their support in 1995 because Reverend Brown had not pursued the necessary permits, construction plans and funding

(Exhibit "R"). obtained It was these events and Lighthouse's own inaction, not the C-1 Ordinance, that caused any decreases in Lighthouse's "income" from 1995 forward, including the period from April 2000 to October 2002. Any attempt to ascribe monetary damages to Lighthouse for the period from April 200 to October 2002 would be purely speculative.

It should not be overlooked that prior to and during the relevant damages period, Reverend Brown led a high profile existence both locally in the City of Long Branch and globally on the internet. He has both held himself out and been portrayed by the media in numerous capacities beyond that of a minister, such as an activist and business person. Therefore, it is equally plausible that adverse reaction to Reverend Brown's very public persona in connection with these other activities caused the alleged drop in contributions.

Consequently, if donations to Lighthouse suffered during the relevant time period, April 2000 through October 2002, the reason lies not with the City and the C-1 Ordinance, but elsewhere.

6. Lighthouse did not sustain other compensable injuries.

Lighthouse cannot recover for claims for emotional or spiritual injuries. Not only are these not elements of compensatory damages but Lighthouse was able to carry out its corporate, charitable and benevolent missions regardless of the C-1 Ordinance.

D. Lighthouse's damages expert report has been rejected by this Court and its speculative assertions of monetary losses have been acknowledged to be "guesses" and otherwise have no support in the evidentiary record.

1. This Court has rejected Plaintiff's expert's "Wojack Report."

Lighthouse has previously submitted a report written by its damages expert Joseph G. Wojack, JGW Associates, L.L.C. dated December 4, 2003 which purports to assess damages to the Lighthouse Mission and Reverend Brown for the period from October 1996 through November 14, 2003 ("the Wojack Report"]. (Exhibit "Q"). However, this Court has already expressly rejected the calculations in Plaintiff's Wojack Report as unsupported speculation in its November 23, 2005 opinion denying Falvo's Motion for Summary Judgment. (See District Court Opinion-Denial of Falvo Summary Judgment, 11/25/05 attached as exhibit "W").

2. This Court ruled that the Wojack Report does not provide a reasonable basis for calculating an alleged loss of income by the Lighthouse Mission or Reverend Brown.

The Wojack Report attempted to make a damages calculation as to loss of income to the Lighthouse Mission and Reverend Brown. This Court ruled as to the Wojack Report's inadequacy with regard to the Lighthouse Mission:

> While the Wojack Report provides some background to support a determination that plaintiffs may be entitled to lost income damages for the Mission and Reverend Brown, the Wojack Report provides no information from which a jury could draw "reasonable basis for the computation of alleged lost profits" with regard to the Mission. Specifically, the Wojack Report makes the unsupportable assumption that event income would reach $1000,000 within five (5) years along with significant in creases in organized contributions and individual contributions in that same time period. *However, these assumptions provide no reasonable basis for how the damages could be calculated absent the bald assertion that the damages are what the plaintiffs claim them to be. This assumed lost income provides no reasonable methodology with which a jury could determine appropriate damages and as such, this damage claim must be dismissed.*

(Exhibit "Q"; Exhibit "W," p. 23)(emphasis added).

The Wojack Report must be rejected for the same reason with regard to Lighthouse's damages claims against the City for the periods from April 2000 through October 2002.

The Wojack Report likewise provides no reasonable basis for Reverend Brown's alleged loss of pastoral salary. Reverend Brown's claims for loss of a salary as the pastor of the Lighthouse "church," as a result of the now-superseded C-1 zoning ordinance, for the period from April 2000 to October 2002 likewise have no evidentiary support. Reverend Brown claims the loss of a pastoral salary of $41,000. per year. However, Reverend Brown and Lighthouse's expert) conceded that this estimate of Reverend Brown's compensation package *was never paid by to Rev. Brown by Lighthouse in any given year*. (Exhibit "Q").

In its 11/25/05 Opinion denying Falvo's Motion for Summary Judgment this Court also rejected the Wojack Report's calculations with regard to Reverend Brown's alleged loss of income:

> Plaintiffs have not provided sufficient information from which a jury could reasonably calculate appropriate lost profits. The Wojack Report points to the $42,000 average salary for Baptists ministers in 2002 and based on that number, discounted "at a reasonable rate," the report arrives at an acceptable base salary level for 1995 of $30,000. The Wojack Report does not, however, disclose "the reasonable rate" used to determine the 1995 salary level. *The Court is constrained to consider his $30,0000 determination as speculative.* How does one know that the proper level was not $40,0000, $35,000, $25,000 or any other amount? No jury could rely on this opinion to reach a reasonable determination of damages, if necessary.

(Exhibit "W," p. 23)(emphasis added).

3. The Wojack Report actually demonstrates that Lighthouse's alleged loss of income pre-dated April 2000 was caused by factors other than the C-1 Ordinance.

The Wojack Report actually undermines Lighthouse's damages claim for April 2000 through October 2002 inasmuch as it reports that Lighthouse's financial losses were caused by events which preceded the April 2000 permit denial by five (5) to six (6) years. At page 6 under the heading "Lost Income to the Mission" Mr. Wojack notes a dramatic decline in yearly total net revenue from $38, 833. beginning as of the close of the fiscal year in October 31, 1995. (Exhibit "Q"). Mr. Wojack attributes this decline to the period beginning in October 1995, specifically:

> The following fiscal year [1996], with no success in utilizing 162 Broadway and with some bad publicity, saw net revenue decline to $11, 705. Subsequent years have been absent significant Church income other than the Father Alphonse concerts…

(Exhibit "O," p. 6)(emphasis added)

In addition to the enormous decline of yearly total net revenue from fiscal 1994/1995 to fiscal 1995/1996 and thereafter, Mr. Wojack reports that the Mission has not been able to cover its operating expenses since 1994:

> *Losses have been recorded every year since 1994* with advances from Brown and about $40,000 of loans from Board members of the Mission necessary to meet day to day needs. Brown has not received any compensation since inception.

(Exhibit "Q," p. 6) (emphasis added)

Consequently Lighthouse *operated at a loss beginning in 1994 for five and one-half (5 ½) fiscal years* before it ever applied to use 162 Broadway as a church in April 2000. Beginning in October 1995, four and one-half (4 ½) years before Lighthouse applied for use as a church, it's net revenue precipitously declined by two-thirds to three-quarters of its net revenue for the preceding year. Thereafter Lighthouse continued with a lack of "significant Church income." Lighthouse's own expert report demonstrates that Lighthouse's alleged financial losses were caused by events which occurred five (5) to six (6) years before the April 2000 permit denial, including Lighthouse's lack of success in utilizing 162 Broadway beginning October 1995 coupled with some" bad publicity" at that time. Under these circumstances it is impossible to ascribe fault for any lost income to the City for the period from April 2000 to October 2002.

Lighthouse cannot rely upon the Wojack Report to prove damages inasmuch as this Court has previously ruled that the Report does not provide a reasonable basis for the income allegedly lost by the Lighthouse Mission and Reverend Brown. Additionally, the Wojack Report attributes Lighthouse's losses to events which pre-date Lighthouse's church use application in April 2000 by five or six years.

4. Lighthouse itself acknowledged its damages testimony to be purely speculative and its claims otherwise have no support in the evidentiary record.

Lighthouse's claims for loss of income and pastoral salary also have no other credible or competent support in the evidentiary record. In his deposition, Reverend Brown testified that he arrived at the $11,000,000. damage claim for the Lighthouse Mission by calculating the amount of fines that he would have incurred had he operated

his church in "civil disobedience." However, Reverend Brown conceded that he did not operate the church, thus did not incur any fines. (Exhibit "S," p. 160, lines 4-22). Rev. Brown testified that the claim for $7,777,777. was based on a reference in the Gospel of Matthew: "Well, when asked in the scriptures how much should you forgive, 7 by 7 the gospel says" because he "felt harmed by the process so that to me is a relevant number." (Exhibit "S," p. 161, lines 4-21).

Reverend Brown also freely admits that his $11,000,000. damages estimate is based upon guesswork. Reverend Brown testified that the Lighthouse Mission allegedly lost unidentified contributions in the amount of $1,000,000; bequests in the amount of $5,000,000.00 and gifts in the amount of $600,000.00. (Exhibit "T," p. 176, line 18-p. 177, line 10). However, Reverend Brown conceded in his deposition that the above figures are guesses. (Exhibit "T," p. 178, lines 2-6). He testified that he based his "bequests" estimate upon "..what I see people do…when they die, like I said, some people leave it to cats, lot of people leave it to charitable organizations." He stated "[o]ne person worth millions could have chosen to give it to us…" (Exhibit "T," p. 179, lines 6-25). Reverend Brown also conceded that although his estimate of lost donations amounted to $110,000. per year to the time of his deposition, the Lighthouse Mission actually received less than half of that amount in the years it was operating out of 159 Broadway. (Exhibit "T," p. 183, lines 5-15).

In Samaritan Inns v. District of Columbia, 325 U.S. App. D.C. 19 (D.C. Cir. 1997) the Circuit Court reversed the grant of compensatory damages for lost charitable contributions to the plaintiff housing project for lost and delayed charitable contributions after appellee prevailed on its Fair Housing Act, 42 U.S.C.S. § 3601 et seq against the

defendant municipality. The Court held that the plaintiff did not show with "reasonable certainty" that any contributions were lost as a result of a delayed building permit and remanded for recalculation the determination of compensatory damages. Here Lighthouse's failure to show the loss of contributions with "reasonable certainty" is even more compelling.

Additionally, Lighthouse has provided no evidence of operating expenses to counterbalance its assertions of lost donations. No losses can be calculated in the absence of evidence of expenses. See Cromartie v. Carteret Sav. & Loan, 277 N.J. Super. 88, 103 (App.Div. 1994)(lost rent award unsustainable when plaintiffs did not prove their expenses in operating the property and therefore did not prove their lost profits).

Reverend Brown's claim for pastoral salary of $41,000 is equally unsupported. The record shows that Reverend Brown was never the pastor of a "church;" Lighthouse was originally a soup kitchen at 159 Broadway. Reverend Brown has never drawn this salary from Lighthouse. Additionally, in the Tax Court litigation Reverend Brown tetsified that any pastoral salary that he was to receive was suspended by Lighthouse's Board as of January 1, 2000 forward and that Brown would continue to oversee the organization without drawing a salary. (Exhibit "F", Vol. II, pp. 3 [00006], lines 2-5). Therefore by his own admission he was not entitled to receive a pastoral salary for the damages period here, April 2000 to October 2002.

However, even if the amount claimed for a loss of pastoral salary were viable and provable, presumably the salary would be paid from any contributions/donations claimed and would be a double recovery from any damages awarded to Lighthouse. Additionally, Reverend. Brown has been operating an internet business and has been engaged in other

employment during the relevant time period. Reverend Brown's other income should be offset against the alleged $41,000. salary if it is accepted.

E. Lighthouse did not suffer damages, because it failed to apply for a variance to the C-1 Ordinance, however if it was injured, its own omissions caused these injuries

After use as a church was denied on April 27, 2000 Lighthouse did not apply for a variance as to the C-1 Ordinance or file an appeal. Instead, Lighthouse abandoned the process completely at this stage and choose to file this lawsuit. A variance is not an appeal of a zoning decision or an exhaustion of administrative remedies, it is a first step, the opportunity to seek an individual exception to the zoning code that is otherwise automatically enforced. Without an application for a variance the City was essentially powerless to do anything except rigidly enforce what ever zoning restrictions have been enacted.

Lighthouse could have prevented or diminished its alleged damages by applying for a variance or taking an appeal of the April 27, 2000 permit denial. No evidence suggests that the Zoning Board of Adjustment would not have granted a variance to Ordinance 20-6.13 in April 2000. In fact, in its Opinion of in support of its initial April 2003 Order dismissing Lighthouse's "unripe claims," this Court found that the use of the administrative procedures would not be futile. More specifically, this Court found that there was no evidence before it that the administrative remedies (post April 27, 2000 variance application and appeal) would be inadequate, or, that Lighthouse would suffer from any great delay by using the administrative procedures, and, found that that Lighthouse would not suffer irreparable harm by being required to exhaust its administrative remedies.

In LeBlanc-Sternberg v. Fletcher, 67 F.3d 412, 429 (2d Cir. 1995) a constitutionally based zoning case, a jury finding that the private plaintiffs had not suffered monetary damages as a result of the actions by any defendant, was explainable by the evidence that the plaintiffs had made no applications for pertinent variances or home synagogues under the applicable zoning code. Even though the defendants were found to have conspired to impede the plaintiffs' First Amendment rights and had adopted a zoning code intended to curtail home synagogues and deter Orthodox Jews from purchasing homes in many neighborhoods; the plaintiffs had not suffered an injury for which the jury wished to award damages because they had not applied for HPO or variance approvals under the zoning code.

However, if Lighthouse was injured, its own inaction was the cause of any injuries. By distaining the simple administrative procedure of filing for a variance, Lighthouse caused its own alleged injuries. Were Lighthouse to have applied for a variance, as the City itself suggested, this lawsuit could very well have been obviated.

F. Lighthouse's damages claims based upon loss of funding from the AT&T Pioneers in 1995 pre-date the period from April 2000 to October 2002, relate to funding by volunteer labor, not money, and otherwise fail because Lighthouse lost the funding by its own inaction, not by reason of the C-1 Ordinance.

The AT&T Pioneers provided funding to select charitable tax-exempt organizations. Lighthouse claims that the City's actions caused it to lose the support of the AT&T Pioneers in 1995. This damages claim fails on four bases. First, the AT&T Pioneers promised support in 1994 and withdrew this pledge in 1995-approximately five years *before* Lighthouse even applied to use the property as a church under the Ordinance

(April 26, 2000). The Third Circuit expressly limited compensatory damages to the period from the April 2000 application forward.

Second, Lighthouse did not file for or obtain a tax-exempt certificate during the period in which the AT&T Pioneers considered its funding and would not have qualified for the program. In fact, Lighthouse did not apply for a tax exemption until 2005.

Third, any donation by the AT&T Pioneers, was not to be monetary, but rather light volunteer labor. Ralph Wyndrum, the president of the AT&T Pioneers, testified that the AT&T Pioneers agreed to provide assistance in the renovation of the building Rev. Brown wanted to use as a church in February 1994. The funding was not monetary, rather, it was in the form of the *value of volunteer work* and some monetary funds to pay for the *costs of materials used by its volunteer members*. Mr. Wyndrum specifically testified that these services, rather than cash or heavy construction, were the only support offered by the Pioneers. Exhibit "R").

Fourth, the C-1 Ordinance 20-6.13 was irrelevant to the loss of the AT&T contributions because Lighthouse did not first apply for use as a church until April 2000. Also, Mr. Wyndrum tetsified that the AT&T Pioneers withdrew their support as a result of Lighthouse's failure to obtain the funding/permits/plans to pay for the heavy construction. The funding promised by the AT&T Pioneers was not withdrawn because Lighthouse was required to obtain a variance to Ordinance 20-6.13, it was withdrawn because Lighthouse *did not pursue* the necessary permits, construction plans or the other significant funding that it needed to complete the project. Additionally, the AT&T Pioneers were disbanded in 1996. (See Wyndrum affidavit of December 9, 2004 attached as Exhibit "X").

Significantly, Lighthouse made no further attempts to revive the Pioneers' involvement with the project after the funding was withdrawn. Lighthouse itself could have forestalled or mitigated this alleged loss of funding, but instead did nothing.

G. Lighthouse cannot assert a claim for damages related to tax assessments, in that Lighthouse did not apply for tax exempt status until 2005, the tax assessment claim predates the relevant damages period of April 2000 to October 2002., and, the injuries were caused by Lighthouse's and Attorney Falvo's conduct alone.

Lighthouse's claim for damages allegedly caused as a consequence of the tax assessment fails inasmuch as Lighthouse did not apply for tax exempt status until 2005. The claim for tax assessments in the amount of approximately $20,000. predates the relevant damages period of April 2000 to October 2002. Also, any damages resulting from the tax assessment were caused by Lighthouse's and/or Attorney Salvo's conduct alone. There is also no evidence that the City in any way interfered with Lighthouse's attempt to secure tax exempt status at all, much less during any period relevant to this remand.

In general, a church may qualify for a tax exemption under N.J. Stat. Ann. § 54:4-3.6. City of Newark v. Block 322, 17 N.J. Tax 103 (N.J. Tax Ct. 1997); N.J. Stat. § 54:4-3.6. The initial statement, or application to the assessor of for exemption of real property from taxation is filed pursuant to N.J.S.A. 54:4-4.4. Atl. County New Sch. v. Pleasantville, 2 N.J. Tax 192, 194 (N.J. Tax Ct. 1981). N.J.S.A. 54:4-4.4 requires the filing of an initial statement by November 1 of the pre-tax year if the property is exempt under N.J.S.A. 54:4-3.6 by virtue of its ownership and use by an exempt taxpayer on October 1 of the pre-tax year. Id.

Lighthouse purchased 162 Broadway in 1994 but did not apply for tax exempt status until 2005, well after the period from which compensatory damages might be assessed (April 2000 through October 2002). The Second Amended Complaint alleges that Attorney Falvo's and Attorney LaVergne's were negligent in failing to attempt a tax exemption from the purchase date of 1994 forward and caused the $20,000 tax assessment. (Exhibit "A"). Attorney Falvo is alleged to have failed to obtain tax exempt status following the 1994 purchase of 162 Broadway until his resignation in early 1997. Thereafter, Lighthouse attributes these injuries to the negligence of Attorney LaVergne, who replaced Attorney Falvo as Lighthouse's counsel as of January 16, 1997 through fall, 1999. Any failure to secure a tax exemption after Attorney La Vergne's resignation is attributable to Lighthouse itself which dawdled for five more years until 2005 before applying for a tax certificate.

H. Lighthouse's recovery of $140,000. from the legal malpractice settlement with Co-Defendant Attorney Falvo must be set-off against any damages calculations here and/or estops the damages claims against the City.

Lighthouse's damages claims with regard to its former attorney Attorney Falvo are virtually identical to those asserted against the City. Consequently, any damages calculation against the City should be reduced by the settlement amount of $140,000.

Lighthouse brought a legal malpractice claim against Co-Defendant, Peter J. Falvo, Esquire and the Falvo law firm for its alleged failure to file an application for use of 162 Broadway as a church on behalf of Lighthouse (and to obtain tax exempt status for the Lighthouse Mission, as previously discussed). Attorney Falvo acted as counsel for Lighthouse from 1994 until late 1996/early 1997. In the Second Amended Complaint Lighthouse maintains that Attorney Falvo's negligence was the cause of its loss of income

and Reverend Brown's pastoral salary for the time period of 1996 to 2003. Lighthouse alleged that Attorney Falvo was negligent by failing to file a Development Application for 162 Broadway until August 1, 1995. The Development Application, which did not request church use, was rejected by the City Zoning Board as incomplete. Lighthouse thus attributes the loss of income that the Lighthouse Mission and Reverend Brown allegedly sustained from 1995 through 2003 (per The Wojack Report) for Lighthouse's inability to use 162 Broadway as a church, to Attorney Falvo's failure to diligently pursue the Development Application and the repercussions from this misconduct. Reverend Brown similarly attributed the loss of his pastoral salary for a "minimum" of six years to Attorney Falvo's negligence (Exhibit "T," p. 185). Lighthouse attributes the tax assessment of $20,0000. to Attorney Falvo's failure to obtain a tax exemption. (Exhibit "A").

During the course of this litigation, Lighthouse settled its legal malpractice claim with Attorney Falvo for $140,000. for these damages claims which are identical to those which Lighthouse now asserts against the City. The only difference in the damages claims asserted against the City is that they have been specifically limited by the Third Circuit to the period from April 2000 through October 2002. This sum of $140,000. must be offset against or credited to any damages awarded against the City in order to avoid a windfall and double recovery to Lighthouse of damages that it has already collected.

In general, if a plaintiff is compensated in whole or part for the injuries he contends defendant is responsible for, the defendant is entitled to a credit for such amount against any recovery against him. Zensen v. D'Elia, 94 N.J. Super. 164, 166-167 (App. Div. 1967)(citing Daily v. Somberg, 28 N.J. 372, 386 (1958)). For example, New Jersey

permits indemnification for monies paid in settlement of a lawsuit where the indemnitee to demonstrate that "(a) the indemnitee's claims are based on a valid, pre-existing indemnitor/indemnitee relationship; (b) the indemnitee faced potential liability for the claims underlying the settlement; and (c) the settlement amount was reasonable." Chemical Bank of New Jersey Nat. Ass'n v. Bailey, 296 N.J. Super. 515, 524-525 (App. Div. 1997). Similarly, the New Jersey Tort Claims Act, N.J. Stat. Ann. § 59:9-3 provides that if an entity is determined to be a joint tortfeasor, the amount paid to a plaintiff pursuant to a settlement with an alleged tortfeasor shall be reduced pro tanto from the injured parties' judgment against any other tortfeasor. Ayers v. Jackson Township, 106 N.J. 557, 565, 525 A.2d 287 (1987), affirmed in part and reversed in part, 106 N.J. 557, 525 A.2d 287 (1987). Ayers involved a contamination in a landfill operated by a public entity that poisoned an aquifer supplying the private wells of Jackson Township residents. The New Jersey Supreme Court affirmed the Appellate Division's affirmance of the trial court's determination that plaintiffs' judgment should be reduced by $850,000 the amount for which plaintiffs settled their claims against the named codefendant, the township engineer Ernst as mandated by N.J.S.A. 59:9-2(e), whether or not Ernst was found to be a joint tortfeasor.

Additionally, Lighthouse is judicially estopped by the Falvo settlement from asserting its damages claim for loss of income, tax assessments and other damages previously attributed to attorney Falvo, against the City. Under the doctrine of judicial estoppel, a party is bound by his representations to a court and may not contradict them in a subsequent proceeding involving the same issues or representations. Alcman Servs. Corp. v. Bullock, 925 F. Supp. 252, 257 (D.N.J. 1996), affirmed, 124 F. 3d 125 (3d. Cir.

1997). In Alcman, a judicial estoppel and legal malpractice case which involves the converse situation, the plaintiff Alcman obtained a 7 million default judgment in the Philadelphia Court of Common Pleas, having filed an affidavit swearing that Majek rightfully owed Alcman the full $ 7 million. This Court held that the doctrine of judicial estoppel barred Alcman (the assignee) from arguing the fundamentally contradictory position that Majek did not actually owe the full $ 7 million, but, rather, that some portion of that $ 7 million was a result of the attorney Bullock's malpractice. Id.

Here Lighthouse asserted that its damages for the years 1995 through 2003 resulted from the professional malpractice of Attorney Falvo and settled the case for $140,000. on this basis. Lighthouse is therefore judicially estopped from asserting claims for identical damages against the City.

I. Lighthouse had a duty to mitigate its damages by applying for a variance and by otherwise using 162 Broadway for its permitted uses.

Lighthouse failed to mitigate its damages because it never attempted to "cure" or forestall the alleged injuries claimed here by applying for a variance. The New Jersey Supreme Court recognized a duty to mitigate damages in State by Comm'r of Transp. v. Weiswasser, 149 N.J. 320, 330-331 (N.J. 1997) in the field of property, condemnation and land-lord tenant law. The duty to mitigate has been recognized as the "cost of the cure," in partial condemnation actions:

> The doctrine of mitigation of damages has been applied to condemnation actions, and, in that context, is sometimes referred to as the "cost of cure" or the doctrine of avoidable costs. Most cases that have considered mitigation of damages in a partial-taking condemnation action have done so where the cost of cure is based on actions that can be

> taken by the owner-condemnee relating directly to the remaining property.
>
> Weiswasser, 149 N.J. at 330-331.

Actions "relating directly to the property" include complying with the dictates of local zoning ordinances. Among the cases cited by the New Jersey Supreme Court in Weiswasser are: State v. Birch, 115 N.J. Super. 457, 463, 280 A.2d 210 (App. Div. 1971) (in a partial-taking condemnation that left remaining property landlocked, trial court should have instructed jury that the owner would have to comply with local ordinances in building an access road on the remaining property and that"the cost of ameliorating or curing that condition was an important factor to be considered in arriving at its fair market value"); State v. Sun Oil Co., 160 N.J. Super. 513, 390 A.2d 661 (Law Div. 1978) (property owner had a duty to mitigate damages in a partial-taking condemnation by undertaking work on its remaining property to relocate sewer and water-pipe laterals, electric lines, and underground gasoline storage tank where it was reasonable to do so); Broward County v. Patel, 641 So. 2d 40 (Fla. 1994) (state may submit evidence that severance damages of the condemnee may be cured or lessened by alterations to condemnee's remaining property); Board of Educ. v. Commonwealth, 528 S.W. 2d 657 (Ky. Ct. App. 1975) (finding that school had duty to mitigate damages caused by partial taking of school playground and that duty could be satisfied in part by soundproofing and air-conditioning existing school building). Id.

At the least, Lighthouse would have shown an attempt to mitigate damages by pursuing its zoning application through the variance process. Lighthouse did not attempt

to mitigate the effect of the initial permit denial by obtaining a variance, but rather plunged ahead with litigation hoping for a legal windfall.

Lighthouse also had the duty to mitigate the damages that it allegedly sustained by using its church office facilities at 162 Broadway to solicit donations, for fundraising or for other "church" business. Even if Lighthouse could not use 162 Broadway for religious assembly from April 2000 to October 2002, it was legally permitted to use the property for other church-related, donation and grant-seeking and income-producing purposes such as commercial rentals. Again, the City approved 162 Broadway for multiple uses such as the March 1997 approval *to operate church office*. (Exhibit "K"). This permit was limited by the sole condition that "no church services/soup kitchen/classes/residential uses [would] be allowed with this permit." (Exhibit "K"). On March 16, 1998 the City Zoning Officer also issued a Zoning Permit to Reverend Brown to allow him to convert vacant space in the rear of the retail space on the 1st floor of the premises.

The retail uses and rental income of 162 Broadway are detailed in the September 5, 2007 Appraisal Report prepared by McGuire Associates, LLC to establish the fair market value of the property for acquisition by eminent domain. (Exhibit "D"). The Appraisal Report describes the 162 Broadway property "improvements" as three buildings, "a one and two story mixed use building consisting of a retail store on the first floor and a mixed (sic) of storage space on the second level and rear area of the building" (Exhibit "D," p. 27). On February 28, 1998, the City Zoning Officer issued a Zoning Permit to Nancy Diaz to allow her to operate a retail clothing store at 162 Broadway. The record shows that Lighthouse has had a succession of tenants from that period

forward. The Appraisal Report notes that as of September 2007 the first floor rental unit is presently being used as a retail music store at a rental of $1200. per month. (Exhibit "D," p. 27). The Appraisal Report notes that a second room behind the retail music store was previously rented as a glass repair shop at $500. per month. (Exhibit "D," p. 27). The storage area is a third rental area, last rented to a furniture dealer at $500. per month. (Exhibit "D," p. 27). The value of these rents from April 2000 through October 2002 would be similar.

Lighthouse could also have mitigated its damages by holding a religious assembly at any one of a number of locations in the remaining 90% of the City. Again, Reverend Brown testified that the Lighthouse Mission could operate at another location and still fulfill its primary mission and that there is no compelling reason to be at 162 Broadway (Exhibit "S").

Reverend Brown also personally realized economic value as a residence/apartment and as office space for his personal business activities during the relevant period. Reverend Brown has been illegally residing in an upstairs apartment at 162 Broadway since summer 1999 as well as operating an internet business. His application in 1999 to utilize the second floor of 162 Broadway as a "pastoral residence" was denied and the City ordered him to vacate the building as his living quarters. (See letter ordering Brown to vacate, attached as Exhibit "L.") However Reverend Brown realized the fair market value of a similar rental apartment from 1999 to the time period that he eventually vacated the illegal apartment. Reverend Brown has also realized value from the use of the property for his personal business interests.

Additional considerations in the assessment of damages include the fact that the property value of 162 Broadway has increased since its purchase for $40,000 in 1994 as reflected in the real estate contract. (Exhibit "G"). The Appraisal Report estimates the fair market value of the property to be $355, 000 with its existing retail/residential use as the highest and best use. (Exhibit "D," p. 1). Lighthouse's considerable profit should be considered in offsetting any damages award. It should be noted that if Lighthouse managed to raise sufficient funds beginning in 1994 and had actually constructed a church, Lighthouse would have likely suffered a considerable financial loss on the property.

Neither the Lighthouse Mission nor Reverend Brown were deprived of viable church (or economic) use of the property during the relevant period of April 2000 to October 2002, and in fact they profited from it.

J. Lighthouse cannot assert a claim for damages on the basis that it was allegedly enticed and betrayed by the City.

Lighthouse maintained that the City allegedly "enticed" it to purchase the building at 162 Broadway then subsequently "betrayed" it by enforcing Zoning Ordinance 20-6.13. These allegations are unsupported by any facts to suggest that the City induced Lighthouse to purchase the building, indicated or promised that Lighthouse would be permitted to operate a church at that location or otherwise caused the Lighthouse to detrimentally rely upon its conduct.

Even if, arguendo, any facts suggested "enticement" to buy 162 Broadway in 1994, this conduct would pre-date the period of time set by the Third Circuit as relevant to the determination of compensatory damages.

CONCLUSION

For the foregoing reasons, Defendant the City of Long Branch respectfully requests that this Honorable Court enter summary judgment in its favor, as to all of the remanded damages claims.

RESPECTFULLY SUBMITTED,

MARSHALL, DENNEHEY, WARNER, COLEMAN AND GOGGIN

BY:_/s/ Howard Mankoff
HOWARD MANKOFF, ESQUIRE

Date: January 11, 2010
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