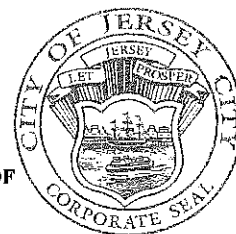


# Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 14.477

Agenda No. 10.J

Approved: JUL 16 2014



TITLE: **RESOLUTION AUTHORIZING THE SETTLEMENT OF THE SUIT OF  
SERAFINA SENGCO v. CITY OF JERSEY CITY, ET AL.**

**NOW, THEREFORE BE IT RESOLVED, by the Municipal Council of the City of Jersey City that:**

**WHEREAS**, Serafina Sengco ("Sengco" or "Plaintiff") having filed suit against the City of Jersey City, et al. in Superior Court of New Jersey, Hudson County, entitled Serafina Sengco v. City of Jersey City, et al., bearing Docket No. HUD-L-3056-13 (the "Lawsuit"); and

**WHEREAS**, the Complaint alleges that Defendants discriminated against Plaintiff on the basis of her age and retaliated against her for complaining about said age discrimination; and

**WHEREAS**, because of the litigation risk involved, the Corporation Counsel has recommended a settlement that: (1) bridges the gap in Sengco's 29 years of service to the City of Jersey City and grants her all rights and privileges of "eligible employees" pursuant to Jersey City Municipal Code §§ 53-12 and 53-13 for her more than 25 years of service to the City of Jersey City; and (2) pays Sengco's attorneys' fees and costs of \$30,000 and all applicable mediation fees and costs; and

**WHEREAS**, Plaintiff has agreed to this settlement and will sign all required releases and a Stipulation of Dismissal with Prejudice; and

**WHEREAS**, the necessary funds for this settlement are available in the City of Jersey City Insurance Fund Commission Accounts.

**NOW, THEREFORE, BE IT RESOLVED** by the Municipal Council of the City of Jersey City, that:

1. The Corporation Counsel be authorized to settle this lawsuit and: (1) credit Sengco for her 25 years of service to the City of Jersey City and grant her all rights and privileges of "eligible employees" pursuant to Jersey City Municipal Code §§ 53-12 and 53-13; (2) pay Sengco's attorneys' fees and costs of \$30,000 and all applicable mediation fees and costs.
2. The Jersey City Insurance Fund Commission is authorized to issue a check in the amount of \$30,000 payable to Plaintiff's attorney.
3. Sengco is hereby granted credit for her 25 years of service to the City of Jersey City and grant her all rights and privileges of "eligible employees" pursuant to Jersey City Municipal Code §§ 53-12 and 53-13.

I hereby certify that funds for this expenditure are available in the City of Jersey City Insurance Fund Commission Accounts.

\_\_\_\_\_  
Insurance Fund Commissioner

MM/dc  
7/9/14

APPROVED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

Business Administrator

APPROVED AS TO LEGAL FORM: \_\_\_\_\_

Corporation Counsel

Certification Required ☐

Not Required ☒

APPROVED 9-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 7.16.14											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	✓			OSBORNE	✓			WATTERMAN	✓		
BOGGIANO	✓			COLEMAN	✓			LAVARRO, PRES	✓		

✓ Indicates Vote

N.V. - Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.

\_\_\_\_\_  
Rolando R. Lavarro, Jr., President of Council

\_\_\_\_\_  
Robert Byrne, City Clerk

4779  
**RESOLUTION FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any Resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the Resolution.

**Full Title of Resolution**

**RESOLUTION AUTHORIZING THE SETTLEMENT OF THE SUIT OF SENGCO V. CITY OF JERSEY CITY, ET AL.**

**Initiator**

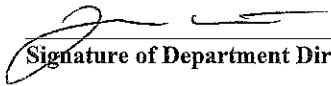
Department/Division	Law Department	
Name/Title	Jason Watson	
Phone/email	4701/jwatson@jcnj.org	

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

**Resolution Purpose**

To resolve the matter of Serafina Sengco v. City of Jersey City et al., bearing Docket No. HUD-L-3056-13.

I certify that all the facts presented herein are accurate.

  
Signature of Department Director

7.9.14  
Date



STEVEN M. FULOP  
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY  
DEPARTMENT OF LAW

CITY HALL • 280 GROVE STREET • JERSEY CITY, NJ 07302  
PHONE (201) 547-5229 • FAX (201) 547-5230



JEREMY FARRELL  
CORPORATION COUNSEL

June 3, 2015

Brian F. Curley, Esq.  
1430 US Highway 206 North  
Suite 220  
Bedminster, N.J. 07921

**Re: Serafina Sengco v. City of Jersey City, et al.**  
**Docket No. HUD-L-3056-13**

Dear Mr. Curley:

Enclosed please find fully executed Settlement Agreement and General Release.

Thank you.

Very truly yours,

JEREMY FARRELL  
CORPORATION COUNSEL

*/s/ Scott W. Carbone*

SCOTT W. CARBONE  
Assistant Corporation Counsel

SWC/dc  
Encls.

**RECEIVED**  
6/8/15 AFS

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement"), is by and between: Serafina Sengco ("Plaintiff" or "Sengco"); and the City of Jersey City ("Jersey City"), and which includes its current and past subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees (including, but not limited to, John Kelly a/k/a Jack Kelly), insurers, benefits plan, fiduciaries, agents, or successors. Jersey City and the Plaintiff will sometimes collectively be referred to herein as "the Parties."

**WHEREAS**, Plaintiff filed a lawsuit against the City of Jersey City for purported damages or loss on June 27, 2013, which lawsuit was docketed with the Superior Court of New Jersey as HUD-L-3056-13 ("The Lawsuit").

**WHEREAS**, Jersey City denies the allegations in the Plaintiff's complaint, and denies that it or any of its subsidiaries, agents, or successors are liable for any claims raised by Plaintiff.

**WHEREAS**, the Parties mutually desire to resolve all of their disputes.

**NOW THEREFORE**, in consideration of the foregoing, and of the promises and mutual covenants herein contained, the parties agree as follows:

1. **TERMS OF SETTLEMENT** - In consideration for Plaintiffs agreement to all of the terms, conditions and promises in this Agreement, the parties agree that Jersey City will pay to or on behalf of Sengco the total dollar sum of thirty-seven thousand and five-hundred dollars and zero cents (\$37,500.00) (the "Settlement Payment"), inclusive of any and all costs and attorneys' fees incurred, with the checks delivered to her attorney and the Settlement Payment allocated into separate checks as follows:

- a. The first check will be made payable to "Serafina Sengco" in the total amount

of seven thousand five hundred dollars (\$7500.00), for emotional distress and other damages sustained by the Plaintiff, and including unreimbursed medical and prescription expenses from the date of her retirement. No withholdings or deductions shall be applied to this check and Plaintiff accepts and assumes all tax liability associated with this payment, and agrees to indemnify and hold the Defendants harmless as to any tax consequences attributable to this payment. This payment will be reported for tax purposes as non-wage income on a Form 1099 to the Plaintiff's social security number.

- b.** The second check in the amount of thirty thousand dollars and zero cents (\$30,000), shall be made payable to "Brian F. Curley, Esq." as Plaintiff's attorney, in consideration of the legal fees and costs incurred in the matter, and reported on a Form 1099 to the attorney's Tax I.D. number, without any tax deductions or withholdings.
- c.** In further consideration for Plaintiff's agreement to all of the terms, conditions and promises in this Agreement, Jersey City shall bear sole responsibility for the mediator fees and costs of John J. Harper, J.S.C. (retired) that were incurred during the pendency of this matter.
- d.** The foregoing payments shall be made within sixty-days (60) of the delivery of a copy of this Agreement bearing Plaintiff's original signature and the date of execution;

The parties agree that none of the aforementioned payments by Jersey City pursuant to this Agreement constitutes (i) a fine or penalty under any law or (ii) a payment to settle any actual or potential liability for a fine or penalty under any

law.

- 2. CONTINUATION OF HEALTH/MEDICAL BENEFITS** - In further consideration of Plaintiff's Agreement to all of the terms, conditions and promises in this Agreement, Jersey City shall, for the purposes of undertaking a contractual obligation by way of this Settlement Agreement, agree to treat the Plaintiff as though she obtained at the time of her retirement on May 1, 2014: 1) at least twenty-five (25) years of credited service in a State or locally administered pension system at the time of her retirement; and, 2) at least twenty-five (25) years of actual service with the City of Jersey City. Thereby, Jersey City shall be contractually liable to treat the Plaintiff as an "Eligible Employee" as set forth under Jersey City Municipal Code § 53-13, and to contractually grant Plaintiff the equivalent rights and privileges of eligible employees under Jersey City Municipal Code § 53-12. Pursuant to these provisions, Jersey City hereby contractually agrees, as a material part of the consideration to the Plaintiff under the Settlement Agreement, to pay the entire cost of Sengco's medical and health benefits, including the premium charges for Part B of the Federal Medicare Program (up to the cap set by City Resolution, which is currently \$115.40 per month), beginning on June 1, 2015 and thereafter consistent with the terms as would ordinarily apply for the same benefits accorded of all similarly situated employees retiring under the applicable laws.
- a.** Jersey City further agrees to reimburse Sengco, by way of a separate check, for any premium charges that she has incurred for Part B of the Federal Medicare Program (up to the cap set by City Resolution, which is currently \$115.40 per month) for the period of May 1, 2014 through May 31, 2015 in

accordance with the procedures unitized for such reimbursements to similarly situated employees.

- b.** Sengco will be entitled to all the rights and privileges of “eligible employees” pursuant to Jersey City Municipal Code §§ 53-12 and 53-13, but nothing in this Agreement will be construed to grant Sengco privileges or benefits greater than those enjoyed by “eligible employees” as set forth in Jersey City Municipal Code §§ 53-12 and 53-13.
  - c.** Jersey City shall commence actual payment of the foregoing medical and health expenses from June 1, 2015 forward in accordance with the procedures employed by Jersey City for all other similarly situated City retirees.
  - d.** Paragraph 2 of this Agreement shall be non-precedential and non-binding regarding any other retiring City employees.
- 3.** Sengco agrees that she shall be liable for the payment of all federal, state and local taxes which may be due as the result of the consideration received in the Settlement Payment described above, and that such Settlement Payment is made for the settlement of disputed claims as set forth herein. Sengco represents that she shall pay such taxes at the time and in the amount required by law. In addition, Sengco agrees fully to defend, indemnify and hold Jersey City, and each of its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees (including but not limited to Jack Kelly), insurers, benefit plan fiduciaries, agents, or successors of each of them, harmless from any liability for payment of taxes, penalties, withholding obligations and interest that are required of her by any government agency at any time as the result of the payment of the consideration set forth herein. In addition, Sengco agrees

fully to defend, indemnify and hold Jersey City, and each of its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees (including but not limited to Jack Kelly), insurers, benefit plan fiduciaries, agents, or successors of each of them, harmless from and against any taxes, penalties, withholding obligations, interest, costs and expenses, including reasonable attorneys' fees, incurred as a result of the IRS or any state or local taxing authority making a claim with respect to the Settlement Payment.

4. **DISMISSAL OF LAWSUIT** – Sengco represents that, other than the Lawsuit, she is not a party in any pending administrative charge, lawsuit, civil action, collective action, class action, or claim of any kind against Jersey City or any of its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees (including but not limited to Jack Kelly), insurers, benefit plan fiduciaries, agents, or successors.

Sengco agrees to promptly dismiss the Lawsuit with prejudice, without costs, and waiving all rights of appeal, and further agrees to take all steps reasonably necessary to facilitate the dismissal with prejudice of the Lawsuit. If there is any administrative charge pending, Sengco shall take all steps necessary to dismiss it with prejudice.

5. **SUFFICIENCY OF CONSIDERATION** – Sengco recognizes that Jersey City and Jack Kelly dispute her claims and have asserted defenses to her claims. Therefore, Sengco acknowledges and agrees that the consideration provided by Jersey City to her pursuant to this Agreement (including but not limited to Paragraphs 1 and 2) constitutes good and valuable consideration for the general release and the other promises and terms in this Agreement. Sengco understands and agrees that she is not eligible for or entitled to any other benefit or consideration from Jersey City except as



provided in this Agreement.

6. **GENERAL RELEASE** – In exchange for the Settlement Payment set forth above in Paragraph 1, and other good and valuable consideration, Sengco agrees, intending to be legally bound, to the maximum extent permitted by law, to release and forever discharge Jersey City and its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees (including but not limited to Jack Kelly), insurers, benefit plan fiduciaries, agents, or successors (collectively, the “Released Parties”) individually and collectively, from any and all claims, causes of action, complaints, lawsuits or liabilities of any kind (collectively “Claims”), which Sengco, her heirs, agents, administrators or executors may have against the Jersey City, Jack Kelly or any of the other Released Parties.

7. **RELEASED CLAIMS** - By agreeing to this General Release, Sengco is waiving, to the maximum extent permitted by law, any and all causes of action, lawsuits, proceedings, complaints, charges, debts, contracts, judgments, damages, claims, and attorneys’ fees against the Released Parties, whether known or unknown, which Sengco ever had, now has or which Sengco or Sengco’s heirs, executors, administrators, successors or assigns may have prior to the date this Agreement is signed by Sengco, due to any matter whatsoever relating to Sengco’s employment, compensation, benefits, and separation of Sengco’s employment with Jersey City (collectively, the “Released Claims”) including but not limited to the following:

Any Claims relating to or arising out of Plaintiffs employment with Jersey City and/or any of its departments, agencies and/or affiliated entities;

Any Claims for unpaid or withheld wages, severance, benefits, bonuses, commissions and/or other compensation of any kind;

Any Claims for reimbursement of expenses of any kind;

Any Claims arising under the Employee Retirement Income Security Act;

Any Claims for attorneys' fees, costs or expenses;

Any Claims of discrimination and/or harassment based on age, sex, race, religion, color, creed, disability, handicap, citizenship, national origin, ancestry, sexual orientation, political affiliation, political association or any other factor protected by Federal, State or Local law (such as the Age Discrimination in Employment Act, 29 U.S.C. §621 et. seq. (ADEA), Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Equal Pay Act, the New Jersey Law Against Discrimination, the New Jersey Civil Rights Act, 42 U.S. Code § 1983, and any Claims for retaliation under any of the foregoing Laws;

Any Claims regarding leaves of absence under federal, state or local law [including any Claims under the Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA)];

Any Claims under the National Labor Relations Act;

Any Claims under the Sarbanes-Oxley Act;

Any Claims for violation of public policy;

Any Claims for retaliation and/or any whistleblower Claims [including any Claims under the Conscientious Employee Protection Act];

Any Claims of political retaliation;

Any other complaints filed by Plaintiff with or against the City of Jersey City Department filed prior to the execution of this Settlement Agreement;

Any Claims for emotional distress or pain and suffering; and/or

Any other statutory or common-law Claims, now existing, including, but not limited to, breach of contract, libel, slander, fraud, wrongful discharge, promissory estoppel, equitable estoppel and misrepresentation.

8. **NON-RELEASED CLAIMS** - It is important that Sengco understand that this

General Release includes all Claims known or unknown to her, including those that

she may have asserted or raised previously as well as those that she has not raised or asserted previously. The General Release in Paragraph 6 above does not apply to:

Any Claims for vested benefits under any City retirement and/or 401(k) plan;

Any Claims to require Jersey City to honor its commitments set forth in this Agreement;

Any Claims to interpret or to determine the scope, meaning or effect of this Agreement;

Any Claims relating to any conduct, matter, event or omission occurring after she signed this Agreement;

Any past, pending or future claims for Worker's Compensation benefits and awards.

Any claim which cannot be waived as a matter of law.

9. **COVENANT NOT TO SUE** - Plaintiff agrees not to file or initiate a lawsuit in any

court, initiate an arbitration proceeding, or opt into any collective action or class action, asserting any of the Released Claims against any of the Released Parties.

Plaintiff further agrees that she will not permit herself to be a member of any class in any court or in any arbitration proceeding seeking relief against the Released Parties based on claims released by this Agreement, and that even if a court, arbitrator, or government agency rules that Plaintiff may not waive a claim released by this Agreement, Plaintiff will not accept or be entitled to any money damages or other relief in connection with any other action or proceeding asserting any of the Released Claims against any of the Released Parties. Plaintiff agrees to reimburse the Released Parties for any legal fees that incur as a result of any breach of this paragraph by the Plaintiff.

10. **NO FAIR LABOR STANDARDS ACT CLAIM/UNPAID WAGES CLAIM** -

Plaintiff represents that she is not aware of any facts that would support a claim against any of the Released Parties for unpaid overtime or any other alleged violation of the Fair Labor Standards Act or comparable state or city law. Plaintiff represents and agrees that she has been paid all of her normal and customary wages for services rendered during her employment with Jersey City, and is not due and owing any additional monies/holidays or vacation days for services rendered.

11. **NO ADMISSION OF WRONGDOING** - The Parties agree that this Agreement does not constitute an admission by Jersey City or any of the Released Parties of any of the matters alleged in the Lawsuit or of any violation by them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Jersey City or any of its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees, insurers, benefit plan fiduciaries, agents, or successors. This Agreement may be introduced, however, in any proceeding to enforce this Agreement.

12. **WAIVER OF DAMAGES** - Nothing herein is intended to or shall interfere with the Plaintiff's right and/or obligations to participate in a proceeding with any appropriate federal, state or local government agency enforcing federal or state discrimination laws and/or cooperating with said agency in its investigation. Plaintiff, however, shall not be entitled to receive any relief, recovery or monies in connection with any complaint or charge brought against any of the Released Parties, without regard as to who brought any such complaint or charge for any claim released herein.

13. **GOVERNING LAW** - This Agreement shall be governed by and conformed in accordance with the laws of the State of New Jersey without regard to its conflicts of law provisions.

14. **COUNTERPARTS** - This Agreement may be executed in counterparts and each counterpart will be deemed an original.

15. **REPRESENTATION BY COUNSEL; UNDERSTANDING OF AGREEMENT** -

Plaintiff agrees and represents that:

- a. She has read carefully the terms of this Agreement, including the General Release;
- b. She has had an opportunity to and have been encouraged to review this Agreement, including the General Release, with an attorney;
- c. She understand the meaning and effect of the terms of this Agreement, including the General Release;
- d. The decision to sign this Agreement, including the General Release, is of her own free and voluntary act without compulsion of any kind;
- e. No promise or inducement not expressed herein has been made to Plaintiff; and,
- f. Plaintiff has had adequate information to make a knowing and voluntary waiver.

16. **EMPLOYEE RIGHTS UNDER THE OLDER WORKERS BENEFIT**

**PROTECTION ACT** - Plaintiff acknowledges that she has been afforded 21 days to consider this Agreement. If Plaintiff signs this Agreement before the expiration of such 21 days, Plaintiff is representing that she has elected to waive her rights with respect to the entire 21 days to consider this Agreement; she acknowledges that she has done so voluntarily and with the full understanding that she is waiving her statutory right to do so. If Plaintiff chooses to execute this Agreement, she has the

right to revoke his acceptance at any time within seven (7) days of the date on which she signed the Agreement. Any revocation within the applicable seven (7) day period must be signed and submitted in writing (which shall include transmission by e-mail) to Jersey City's Assistant Corporation Counsel, Scott Carbone (scarbone@jcnj.org) and state, "I hereby revoke my acceptance of our Settlement Agreement and General Release." If Plaintiff decides to revoke the Agreement, the revocation shall make this Agreement and its terms and conditions null and void. This Agreement shall not become effective and enforceable until the seven-day revocation period has expired ("Effective Date"). Jersey City advises Plaintiff to consult with her attorney prior to executing this Agreement.

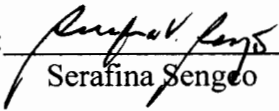
17. **DISMISSAL OF THE LAWSUIT** - Sengco agrees to have her attorney immediately execute and deliver to Jersey City's Counsel, without fees or costs and waiving all rights of appeal, a Stipulation of Dismissal that shall fully and finally dismiss with prejudice all claims in The Lawsuit.
18. **SECTION HEADINGS** - Section headings contained in this Agreement are for convenience of reference only and shall not affect the meaning of any provision herein.
19. **SEVERABILITY** - Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by any court of competent jurisdiction and if such provision cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

20. **ENTIRE AGREEMENT** - This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the parties concerning the subject matter of this Agreement. The Plaintiff acknowledges that she has not relied on any representations, promises or agreements of any kind made to them in connection with their decision to accept the terms of this Agreement, except for the representations, promises and agreements herein. Any modification to this Agreement must be in writing and signed by Plaintiff and Jersey City's Corporation Counsel.\

**(rest of page intentionally blank)**

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and General Release as of the date set forth below.

**PLAINTIFF**

BY:   
Serafina Sengco

Date: 4/1/15

**WITNESS**

BY: 

Date: 4/1/15

**CITY OF JERSEY CITY/JEREMY FARRELL**

BY:   
Scott W. Carbone  
Assistant Corporation Counsel

Date: 6/3/15



CITY OF JERSEY CITY  
DEPARTMENT OF LAW  
City Hall  
280 Grove Street  
Jersey City, N.J. 07302

Brian F. Curley, Esq.  
1430 US Highway 206 North  
Suite 220  
Bedminster, N.J. 07921

PRESORTED  
FIRST CLASS



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