U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 14, 2021

VIA ECF and Email
Hon. Nelson Román
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, New York 10601
[redacted]

Re: *Congregation of Ridnik* et al. *v. Village of Airmont* et al.,
No. 18 Civ. 11533 (NSR)

Dear Judge Román:

This Office represents the United States of America, the plaintiff in *United States v. Village of Airmont*, No. 20 Civ. 10121 (NSR) (filed Dec. 2, 2020), a related matter to the above-captioned case ("*Ridnik*") similarly brought by private plaintiffs against Defendant the Village of Airmont. Both suits allege that Airmont has discriminated against its Orthodox Jewish residents in implementing an amended zoning code and related land use practices that violate the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). On September 30, 2019, the Government previously filed a Statement of Interest ("SOI") to correct misleading representations made by Airmont in its brief in support of its motion to dismiss the *Ridnik* complaint. *See* SOI [Dkt. No. 54]. Specifically, the Government explained that, counter to Airmont's bald misrepresentations, the United States never "agreed" to the zoning code amendments at issue, and those zoning provisions were in no way "federally-vetted and judicially approved." *Id*. at 4. After submitting the SOI, the Government continued an inquiry into the allegations made by the *Ridnik* plaintiffs and, determining them to have merit, commenced its own suit. The Government now makes this submission in response to Airmont's recently-served renewed brief in support of its motion to dismiss the *Ridnik* claims, which, remarkably, once again makes the same material misrepresentation as in the Village's first brief.

The Government respectfully refers the Court to the SOI as well as the complaint in *United States v. Village of Airmont* ("Compl.," attached hereto as Ex. 1) for a full recitation of Airmont's troubling, thirty-year history of religious discrimination as well as the genesis and implementation of its current, unlawful land use practices. As relevant here, in its original motion-to-dismiss papers, Airmont misleadingly stated that the unlawful zoning code amendments now challenged in both *Ridnik* and *United States v. Village of Airmont* had been previously approved or otherwise endorsed by a federal court and the Department of Justice—which has now sued Airmont three times for religious discrimination since the Village's incorporation in 1991, the first two suits leading to court-entered judgments against Airmont. *See* SOI at 2-4; Compl. ¶¶ 12-16. No such approval occurred. Instead, in 2000, while Airmont was still under a court-ordered obligation to report any proposed changes to its zoning code, the

United States agreed to allow Airmont to utilize a proposed modified review process to adjudicate the application of a single Orthodox Jewish resident to operate a residential place of worship on a test-case basis; Judge Colleen McMahon, without any endorsement of the ultimate merits of the review process being tested, entered the stipulation, which expressly stated that nothing therein should be "construed as requiring either party to accept the terms" as a permanent amendment to the Village zoning code. *See* SOI at 3 & Ex. A. Airmont, waiting until it was no longer under the judicially-enforced obligation to report zoning changes, then unilaterally adopted the review process on a permanent basis. *See id*. at 3; Compl. ¶¶ 29, 36. Even worse, Airmont also later removed the "residential place of worship" as a recognized category from its zoning code, *see* SOI at 3; Compl. ¶ 38, in contravention of a court injunction, *see United States v. Vill. of Airmont,* 925 F. Supp. 160, 161-62 (S.D.N.Y. 1996)—a violation of the express terms of a final judgment that Airmont, in a further sign of the Village's disregard for its court-mandated obligations, referred to in its response to the SOI as a mere "nominal change." *See* Ltr. dated Mar. 11, 2020 [Dkt. No. 55], at 3.[1]

In its new motion papers, although it has taken out its characterization of the zoning code provisions at issue as "federally-vetted and judicially approved," Airmont again states that the Government "agreed to" the provisions becoming permanent amendments to the Code. *See* Memorandum of Law in Support of Defendants' Motion to Dismiss ("Airmont Renewed Br."), dated Dec. 7. 2020, attached hereto as Ex. 2, at 4, 16. As explained above, that statement continues to be highly misleading. The United States agreed to the test-case review process as exactly and only that: a test case, to see if Airmont would be capable of adjudicating land use applications by Orthodox Jewish residents in good faith and in a non-discriminatory manner. And, as experience has since borne out, Airmont has failed, implementing (once no longer under judicial oversight) the review provisions at issue, as well as taking other actions, in a manner designed to purposefully obstruct the Hasidic religious practice of home worship. *See* Compl. In no way did the Government give its imprimatur to the amendments "before they became law," as Airmont implies. Airmont Renewed Br. at 4.

Accordingly, the Court should reject Airmont's renewed inaccurate and misleading characterization about the Government's (and Judge McMahon's) position with respect to the zoning code amendments at issue in the two related cases before the Court.

Thank you for your consideration.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: /s/ Stephen Cha-Kim
STEPHEN CHA-KIM
Assistant United States Attorney
[redacted]

[1] The injunction order provided that "[a]fter five years, the defendant may move the Court to terminate this provision of the order." *Vill. of Airmont*, 925 F. Supp. at 162. The village has never moved to terminate the relevant provision, and the court has not otherwise terminated the order.