

1-10-03

No. DV98-08100

A.E. BREWSTER, ET AL.,

Plaintiffs,

v.

CITY OF DALLAS,

Defendant.

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IN THE DISTRICT COURT

OF DALLAS COUNTY

298<sup>TH</sup> JUDICIAL DISTRICT

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**ORDER AND FINAL JUDGMENT**

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This matter is before the Court on the motion of Plaintiff Jim Lowenberg, both individually and on behalf of the Class previously certified herein (the "Class"), for approval of Class Damages Allocation, Approval of Class Counsel's Fee Application and Entry of Final Judgment. A hearing on all these issues was held on January 10, 2003, pursuant to this Court's Order Granting Preliminary Approval, entered on October 25, 2002.

On the 24<sup>th</sup> day of September, 2002 came on to be heard trial in the above matter. Plaintiff Jim Lowenberg appeared in person for himself and all others similarly situated and through counsel Robert M. Nicoud, Jr. and John T. Cox III and announced ready. Defendant City of Dallas appeared through its representative, and through counsel Mark Goldstucker and James Pinson. All parties announced ready.

A jury was waived by both parties and all matters of law and fact were submitted to the court. Thereafter, the Court proceeded to hear testimony and receive evidence. Following the close of evidence the Court heard the argument of counsel. Upon consideration of the evidence, the argument of counsel and the prior orders of this Court, the Court is of the opinion that the following orders should issue.

Notice of the January 10, 2003 hearing was given in accordance with the Order Granting Preliminary Approval. The parties appeared by their respective attorneys of record. The Court heard and considered evidence in support of and in opposition to the approval of Class Damages Allocation, Class Counsel's Attorneys' Fee Application and Motion for Entry of Judgment. The attorneys for the parties and for the objectors were heard. An opportunity to be heard was given to all other persons requesting to be heard in accordance with the Order Granting Preliminary Approval.

The Court has determined that the notice given to the members of the Class fully and accurately informed all members of the Class of all material elements of the damage allocation, and Class Counsel's attorneys' fee application and entry of judgment; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class members; and complied fully with Texas Rule of Civil Procedure 42, the United States Constitution, the Texas Constitution and any other applicable law. All these matters having been heard and considered by the Court,

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court has jurisdiction over all claims of all Class members as asserted in Plaintiffs' Second Amended Petition (the "Action"). Likewise, this Court has jurisdiction over all members of the Class. The Class is defined as:

All persons who actually paid a "Fire Registration Fee" pursuant to Dallas County Ordinance No. 22206, Art. 5 on or after January 1, 1995.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that commencing on October 25, 2002, copies of the Notice of Application for Damages Allocation, Application for

Class Counsel Attorneys' Fees and Motion for Entry of Judgment and Hearing ("Notice") were mailed to members of the Class in accordance with the Order Granting Preliminary Approval.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that on November 4, 2002 and November 6, 2002, the Notice was published in the Dallas Morning News in accordance with the Order Granting Preliminary Approval.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the best notice practicable under the circumstances having been provided to the Class and full opportunity having been offered to the Class to participate in this hearing, it is hereby determined that all members of the Class who have not timely elected to be excluded from the Class are bound by this Order and Final Judgment.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Class Representative and all members of the Class who did not file timely notices of exclusion, either directly, representatively, derivatively, or in any other capacity, are barred and permanently enjoined from the prosecution against the City of Dallas (in any local, state or federal court, agency or other authority or forum, in any state of the United States) of any and all claims, demands, causes of action of every kind and nature, for any alleged obligations, damages, losses, and costs, whether known or unknown, actual or potential, suspected or unsuspected, contingent or fixed, that were or could have been asserted or sought in the Action, relating in any way to the Fire Registration Fee. A list of the class members who properly and timely excluded themselves from the Class was filed by Class Counsel in the Office of the District Clerk on November 14, 2001.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Fire Registration Fee created in City of Dallas Ordinance No. 22206 is a tax.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Fire Registration Fee is an occupation tax that violates Texas Constitution Art 8, § 1(f).

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all Class Members who paid the Fire Registration Fee on or after July 28, 1995, except for Victor Ballas, the City of Dallas and any persons who opted out of the class ("Prevailing Class Members") are entitled to a refund.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all Class Members who paid the Fire Registration Fee prior to July 28, 1995 ("Time Barred Class Members") are not entitled to a refund.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Prevailing Class Members have and recover judgment of and against the City of Dallas in the amount of \$1,847,454.36, together with post-judgment interest at the highest rate allowed by law from the date the Order and Final Judgment is signed until paid.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to Texas Rule of Civil Procedure 42, and based on its review of the entire record and all of the evidence before it, the Court hereby grants final approval of the damages allocation and finds that it is, in all respects, fair, reasonable, adequate and in the best interests of the Class. The objections which were filed, timely or otherwise, have been carefully considered and are all overruled. Accordingly, the Court directs that the allocation be consummated in accordance with the Damage Allocation set forth in the Motion and each Prevailing Class Member is entitled to his or her share of the judgment, less Class Counsels' Fees and administrative expenses.

**IT IS FURTHER ORDERED** that Class Counsel's Attorneys' Fee Application is granted and Class Counsel shall receive 30% of the judgment obtained by the Prevailing Class

Members plus administrative expenses of \$ 19,700.00 as well as post-judgment interest on these amounts.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that if this case is appealed to the court of appeals and the Prevailing Class Members are the prevailing party, the Prevailing Class Members shall have and recover an additional \$12,500.00 in attorneys' fees.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that if an application for writ of error is made to the Supreme Court of Texas and the Prevailing Class Members prevail on such writ application, the Prevailing Class Members shall have and recover an additional \$5,000.00 in attorneys' fees.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that if the Supreme Court of Texas grants a writ of error in this case and the Prevailing Class Members are the prevailing party before the Supreme Court of Texas then the Prevailing Class Members shall have and recover an additional \$10,000.00 in attorneys' fees.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that if an application for writ of certiorari is made to the United States Supreme Court and the Prevailing Class Members prevail on such writ application, then the Prevailing Class Members shall have and recover an additional \$10,000.00 in attorneys' fees.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that if the United States Supreme Court grants a writ of certiorari and the Prevailing Class Members are the prevailing party before the United States Supreme Court, then the Prevailing Class Members shall have and recover an additional \$15,000.00 in attorneys' fees.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that without affecting the finality of this Order and Final Judgment and until a Satisfaction of Judgment is filed, the

Court shall retain continuing jurisdiction over this case and the parties, including all members of the Class; the administration and enforcement of the damages allocation; and the benefits to the Class, including for such purposes as supervising the implementation, enforcement, construction and interpretation of the Order and Final Judgment.

**IT IS FURTHER ORDERED** by the Court all costs of Court spent or incurred in this cause are adjudged against the Defendant the City of Dallas.

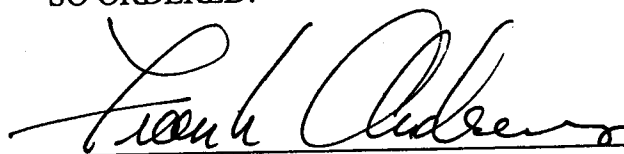
**IT IS FURTHER ORDERED** by the Court this judgment is final, disposes of all claims and all parties and is appealable.

~~**IT IS FURTHER ORDERED** by the Court that execution shall issue for this judgment.~~

**IT IS FURTHER ORDERED** that Counsel for Plaintiffs are directed to serve a copy of this Order on the parties and objectors by first class mail.

Dated: January 10, 2003.

SO ORDERED:



Former Judge, 116<sup>th</sup> District Court  
Sitting for Judge, 298<sup>th</sup> District Court