

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

KATSUMI KENASTON,)
)
 Plaintiff,)
)
 vs.)
)
 STATE OF ALASKA,)
)
 Defendant.)

Case No. 3AN-04-3485 CI

ORDER GRANTING SUMMARY JUDGMENT
And
DECLARATORY JUDGMENT RE: SPECIFIC PERFORMANCE

Background

Plaintiff moved for summary judgment with respect to the settlement of Weiss, et al, v. Alaska, Case No. 4FA 82-02208 Civil, upheld in Weiss v. State, 939 P.2d 380 (Alaska 1997) (Settlement), that adequate funding and adequate opportunity for the Alaska Mental Health Board, the Advisory Board on Alcohol and Drug Abuse, the Governor's Council on Disabilities and Special Education, and the Alaska Commission on Aging to perform and fulfill the duties and functions mandated by the Settlement are implied material terms of the Settlement.

The Defendant takes the position that specific enforcement is available for breaches of the Settlement other than through legislation which materially alters or repeals Sections 2 through 9, 12 through 40(a) and (b), 41, 43, 46, 49, 50, and 51 of Chapter 5, FSSLA 1994, as amended by Chapter 1, SSSLA 1994, and Chapter 6, FSSLA 1994, as amended by Chapter 2, SSSLA 1994 (Incorporated Legislation).

Summary Judgment

Since the State has so averred, summary judgment is hereby GRANTED that specific enforcement is available for breaches of the Settlement other than through legislation which materially alters or repeals the Incorporated Legislation. Summary judgment is also granted that in the event the State fails to comply with a final judgment granting such specific performance, the beneficiaries of the Settlement approved in Weiss, et al, v. Alaska, Case No. 4FA 82-02208 Civil, and upheld in Weiss v. State, 939 P.2d 380 (Alaska 1997) are entitled to relief from judgment under Civil Rule 60(b).

Declaratory Judgment

The court also GRANTS DECLARATORY JUDGMENT, declaring that specific enforcement is available for breaches of the Settlement other than through legislation which materially alters or repeals the Incorporated Legislation and in the event the State fails to comply with a final judgment granting such specific performance, the beneficiaries of the Settlement approved in Weiss, et al, v. Alaska, Case No. 4FA 82-02208 Civil, and upheld in Weiss v. State, 939 P.2d 380 (Alaska 1997) are entitled to relief from judgment under Civil Rule 60(b).

DATED this _____ day of _____, 2004.

SUPERIOR COURT JUDGE