

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>SUZANNE BISSELL-WISNIOWSKI,</b>	:	
<b>Administratrix of the Estate of KATHI</b>	:	
<b>MCDONNELL-BISSELL,</b>	:	
<b>Plaintiff,</b>	:	
	:	<b>No. 3:03CV1252 (DJS)</b>
<b>v.</b>	:	
	:	
<b>MILFORD COUNCIL ON AGING,</b>	:	
<b>Defendant.</b>	:	

**MEMORANDUM OF DECISION**

\_\_\_\_\_ Defendant, Milford Council on Aging (“Milford Council”) has motioned the court to alter, amend or clarify its judgment dated September 28, 2004. Specifically, Milford Council argues that the court should change the terms of the settlement agreement reached between Milford Council and the original plaintiff, Kathi McDonnell-Bissell, (“McDonnell-Bissell”) to permit the defendant to terminate the medical benefits provided to Betsy Bissell, McDonnell-Bissell’s daughter, prior to May 5, 2008. The motion [**doc. #50**] is **DENIED**.

**BACKGROUND**

\_\_\_\_\_ The parties met with Magistrate Judge Smith on December 18, 2003 to discuss a possible settlement in this employment discrimination action. A lengthy negotiation session at that time resulted in agreement on four key terms and the settlement of the case. Judge Smith instructed the parties that the agreement reached in negotiations before him constituted a binding settlement and oral contract that was not dependent on a writing for enforcement. The oral agreement had four terms. First, the defendant agreed to pay \$80,000 to the plaintiff. Second, the defendant agreed to pay \$25,000 in legal fees. Third, defendant agreed to provide health care to the plaintiff until McDonnell-Bissell’s 65<sup>th</sup> birthday on May 5, 2008. The promised health insurance was to

include the plaintiff's dependents—her husband and daughter. Fourth, the plaintiff would receive a public citation honoring her good work.

Defendant, Milford Council, attempted to re-open negotiations in March 2004, delaying the enforcement of the settlement agreement and leading to a lengthy dispute that began in May 2004, prior to McDonnell-Bissell's death. This court considered cross-motions to enforce the December 18, 2003 settlement agreement. Plaintiff's motion was granted and the defendant was ordered to honor the settlement agreement. The pending motion to alter or amend the judgment was filed on October 7, 2004.

### **DISCUSSION**

Federal Rule of Civil Procedure 52(b) provides that a court “may amend its findings—or make additional findings—and may amend the judgment accordingly.” Fed.R.Civ.P. 52(b). A motion made pursuant to Rule 52(b) will only be granted when the moving party can show either manifest errors of law or fact, or newly discovered evidence.<sup>1</sup> United States v. Local 1804-1, Int'l Longshoreman's Ass'n, 831 F.Supp. 167, 169 (S.D.N.Y. 1993). A Rule 52(b) motion is not an opportunity for parties to relitigate old issues or to advance new theories. Soberman v. Groff Studios Corp., 2000 WL 1253211, \*1 (S.D.N.Y. Sept. 5, 2000); see also, Local 1804-1, 831 F.Supp. at 169 (quoting Fontenot v. Mesa Petroleum Co., 791 F.2d 1207, 1219 (5<sup>th</sup> Cir. 1986)). It is also improper to seek a rehearing on the merits under Rule 52(b). Id. “Similarly, a party who realizes, with the acuity of hindsight, that he failed to present his strongest case...is not entitled to a second opportunity by moving to amend a finding of fact or conclusion of law.” Local 184-1,

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<sup>1</sup>A motion made pursuant to Fed.R.Civ.P. 59(e) is reviewed under the same standard as that applied to Rule 52(b) motions. Soberman v. Groff Studios Corp., 2000 WL 1253211, \*1 n.1 (S.D.N.Y. Sept. 5, 2000); see also, Hard Rock Café International, Inc. v. Morton, 1999 WL 701388, \*4 (S.D.N.Y. Sept. 9, 1999); Air Espana v. O'Brien, 1997 WL 803756, \*1 (E.D.N.Y. Nov. 26, 1997).

831 F.Supp. at 169(quoting Fontenot, 791 F.2d at 1220). The decision whether to grant a Rule 52(b) motion lies within the discretion of the court. Sequa Corp. v. GBJ Corp., 156 F.3d 136, 143 (2d Cir. 1998).

Milford Council makes no effort to argue that there was a manifest error of fact or law in the court's judgment. The defendant also fails to raise any new evidence that was previously undiscoverable or otherwise not available for presentation to the court. No evidence presented suggests that it would be impossible for the defendant to comply with either the terms of the settlement agreement or the court's order. Indeed, Milford Council makes no argument that might justify an amendment to the September 28 judgment that instructed the defendant to comply with its own agreement to provide health care coverage to Betsy Bissell until May 5, 2008.

The only justification Milford Council provides for its motion is the presentation of an eligibility statement from Anthem Blue Cross Blue Shield that purports to terminate coverage for unmarried dependant children at the age of 19, unless the child is a student in which case the child may retain coverage until age 23. The record does not show that Betsy Bissell will, necessarily, become ineligible for health care coverage, under this provision, prior to May 5, 2008. Further, no previously undiscovered evidence that the contract limitations described by Milford Council were incorporated into the December 18, 2003 settlement has been presented to the court. Milford Council fails to explain either how this statement bears upon the settlement agreement reached by the parties or why this court should now alter its judgment and include the contract limitation as a condition of the settlement agreement. Defendant's arguments are not sufficient to show manifest errors of law or fact; at best defendant has re-litigated a previously decided issue.

Regardless of the contract between Milford Council and its insurer, the defendant made an agreement with the plaintiff to provide health care coverage for McDonnell-Bissell's husband and daughter until May 5, 2008. Milford Council offers no evidence that the court's judgment is in any way marred by a manifest error of law or fact, nor does the defendant offer new evidence that terms of the settlement agreement are unenforceable. There is nothing in the record or in the defendant's motion that might lead to a conclusion that the extra limits on health coverage for Betsy Bissell are necessary or justified. Milford Council has failed to meet its burden under either Rule 52(b) or Rule 59(e).

### CONCLUSION

Absent some showing of a manifest defect in either the factual or legal conclusions of the court's September 28, 2004 judgment, there is no basis under either Rule 52(b) or Rule 59(e) for an alteration or amendment of the judgment. Milford Council has also failed to provide any new evidence that would require an amended judgment. At best, the defendant has attempted to relitigate an issue already decided through the presentation of yet another argument in favor of limits on the defendant's obligation to provide dependant health coverage that the court has already implicitly considered and rejected. The motion for an alteration or amendment of the judgment [doc. #50] is **DENIED**.

**IT IS SO ORDERED** at Hartford, Connecticut on this 16th day of November, 2004.

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/s/DJS

**DOMINIC J. SQUATRITO**  
**UNITED STATES DISTRICT JUDGE**

