

509 F. Supp. 815, \*, 1981 U.S. Dist. LEXIS 11119, \*\*;  
1981-2 Trade Cas. (CCH) P64,165

(c) § 1986 allegations

[HN14] No claim for relief will lie under 42 U.S.C. § 1986<sup>13</sup> until a valid claim has been established under § 1985. *Hamilton v. Chaffin*, 506 F.2d 904 (5th Cir. 1975); *Zentgraf v. Texas A & M University*, 492 F. Supp. 265 (S.D.Tex.1980); *Shore v. Howard*, 414 F. Supp. 379 (N.D.Tex.1976). Plaintiff having established no § 1985 claim, the § 1986 claim must also be dismissed.

13. This section extends liability in damages to those persons "who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 ... are about to be committed, and having power to prevent or aid in preventing the commission of the same, (neglect or refuse) so to do...."

(d) Summary

Whether plaintiff couches his claims for relief under the rubric of due process, equal protection or the civil rights laws, the Amended Complaint alleging violations of plaintiff's civil rights must be dismissed for failure to state a claim **[\*\*27]** upon which relief can be granted.

**V. CONCLUSION**

After a thorough review of the applicable law, the Court concludes that plaintiff has no cognizable claim under either 42 U.S.C. §§ 1983, 1985 or 1986. The Court further concludes that it would be premature to dismiss the Amended Complaint as to the Sherman Act claim without permitting plaintiff an opportunity to conduct limited discovery and respond to the objections raised by the defendants, should they elect to renew them. Accordingly, it is

ORDERED AND ADJUDGED that the defendants' joint motion to dismiss is GRANTED in part and DENIED in part as follows:

- (a) that portion of the Amended Complaint alleging violations of 42 U.S.C. §§ 1983, 1985 and 1986 are hereby DISMISSED with prejudice;
- (b) that portion of the Amended Complaint alleging violations of 15 U.S.C. §§ 1 and 2 presently meet the minimum jurisdictional requirements of the Sherman Act; and
- (c) the remaining objections raised by the defendants to the Amended Complaint are hereby DENIED without prejudice to renew at a later date upon proper motion.

**\*\*\* THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY \*\*\***

**SUPREME COURT CIVIL SUITS FOR KINGS COUNTY, NEW YORK**

**CASE-NAME: BELLER,ANNA & HARRY BELLER**

**v.  
CITY WILLETS POINT CONTRACTING CORP., & FRAND MASCALI**

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