

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 71-1732-33-34

DOROTHY GAUTREAUX et al.	)	
	)	
Plaintiffs-Appellees,	)	On Appeal From The
	)	United States District Court
v.	)	for the
	)	Northern District of Illinois
.GEORGE W. ROMNEY,	)	
	)	
Defendant,	)	
	)	
and	)	Honorable
	)	Richard B. Austin,
THE CITY OF CHICAGO, CENTRAL	)	District Judge.
ADVISORY COUNCIL, and CHICAGO	)	
HOUSING AUTHORITY,	)	
	)	
Intervenor-Appellants.	)	

BRIEF FOR INTERVENOR-APPELLANT
CENTRAL ADVISORY COUNCIL

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STATEMENT OF FACTS

The Statement of Facts as prepared by the City of Chicago and Chicago Housing Authority, taken together, are essentially sufficient, except as specifically noted, under appropriate points in this appellant's argument.

STATEMENT OF THE CASE

The Statements of the Case as prepared by the City of Chicago and Chicago Housing Authority, taken together, are essentially sufficient, except as specifically noted, under appropriate points in this appellant's argument.

ISSUES PRESENTED

1. Whether HUD's approval of the City's Letter of Intent dated May 12, 1971, together with HUD's Letter dated June 21, 1971, constitute prohibited methods of setting conditions for termination or refusal to grant federal assistance, and are therefore illegal, void and of no effect, and cannot be enforced by an order of the District Court.

2. Whether the District Court erred in entering the order appealed from without an express finding that the specific Model Cities Programs [the federal assistance for which are ordered terminated (temporarily)] had been administered in violation of Sec. 2000-d of Title 42 U. S. C. A.

3. Whether the District Court abused its judicial discretion by choosing, among all possible injunctory or mandatory reliefs, the only one which will maximize the damage to the innocent beneficiaries of the specific federally assisted programs.

ARGUMENT

I.

The Letter Of Intent And The Letter Of
June 21, 1971 Constitute Prohibited Meth-
ods Of Setting Conditions For Termina-
tion Or Refusal To Grant Federal Assis-
tance, And Therefore Are Illegal, Void
And Of No Effect, And Cannot Be En-
forced By An Order Of The District Court.

The evidence in the record shows that the plaintiffs based their proof on two documents: one, a "letter of intention" dated May 12, 1971, the other a letter from HUD dated June 21, 1971 (hereafter referred to sometimes as The Letters). The first letter signed by the Mayor of the City of Chicago, concurred in by the Chairman of Chicago Housing Authority was "approved" by the Regional Director of HUD. This first letter defines its purpose:

"This letter of intention is submitted delineating the proposed activities to be undertaken by the City of Chicago to accomplish the objectives of providing increased housing opportunities for all of its citizens. . ."

and continues:

". . . upon acceptance of this letter of intent HUD will approve the 2nd year Model Cities Program. . . ending December 31, 1971, provided the City by June 15, 1971 has approved sites for 500 units of public housing.

The second letter, HUD's letter dated June 21, 1971, modified the condition for release of assistance to the Model Cities Program. After a lengthy recital of the progress made by the City, and notwithstanding the fact that the 500 sites had not been approved by the City of Chicago by June 15, HUD released the twenty-six million dollars for the Model Cities Program, with a caveat:

"Should the progress not continue the Model Cities Letter of Credit will be cancelled."

thereby setting a condition (subsequent) for termination of assistance to the Model Cities Program for failure to comply with Section 2000-d of Title 42 U. S. C. A.

Stripped of all the surplusage in the record, the plaintiffs' case rests on either or both of the two theories below:

1. That the City of Chicago and HUD, having conditioned the continuation of the grant (this is the 2nd year program) of assistance upon the City's approval of a certain number of sites, and the City having failed to approve the stipulated number of sites, HUD should be enjoined from performing unless the City first fulfills its undertakings.

2. That The Letters do not constitute by themselves grounds for the relief prayed for, nonetheless

they, at least, do constitute an administrative "connection" of the Model Cities Program with the Public Housing program of the City of Chicago, thus becoming effectually, a bridge linking the Model Cities Program with Gautreaux I and Gautreaux II.

Undergirding these two theories is the plaintiffs' position that the Model Cities Program and Public Housing are "related" and "connected" by the language of the "Comprehensive City Demonstration Programs" Title 42 U. S. C. A. Sec. 3301, et seq., and through relocation plan requirements set forth both in the statutes and in HUD's regulations.

Apparently, the Court adopted the first theory. It devoted three pages of its memorandum opinion to The Letters. It stated on p. 7:

"It is obvious . . . that the drafters and signers of the Letter of Intent knew, or should have known, the improbability of compliance with the undertakings outlined above."

and again on p. 8:

"It is apparent that the planned release of Model Cities funds was conditional. It is also perfectly clear that the conditions set forth have not been met."

and in announcing the substance of the Court's forthcoming order, it stated on p. 9:

"This in no way relieves the City of the balance of its undertakings spelled out in the Letter of May 12."

Thus the Court has adopted a contract theory of The Letters.

This is error. - The Court should first have inquired whether the Regional Director had the authority to enter into the agreement evidenced by The Letters.

E. Frazier

The authority of HUD, in this case, as in the case of "any administrative agency, is delineated by the terms of the statutory grant." Elgin, Joliet and Eastern R.R. Co., v. Benj. Harris & Co., N. D. Ill., (1965) 245 F. Supp., 467, 472. The reason for the exchange of letters was the desire in HUD that the City complies with Sec. 2000-d of Title 42 U. S. C., and more specifically with Gautreaux I. Congress specifically limited the power or authority of HUD to effect compliance with Sec. 2000-d by providing an elaborate administrative procedure in Sec. 2000-d-1.

What about relocation feasibility?

The Congressional history of Sec. 2000-d-1 is amply described in Board of Public Instruction of Taylor County Fla. v. Finch, 414 F. 2nd 1068, 1075, 1076. The Court stated:

"The legislative history of Sec. 2000-d-1 indicates a congressional purpose to avoid a punitive as opposed to a therapeutic application of the termination power . . . "

* * * *

"It is important to note that the purpose of limiting the termination powers to "activities which are actually discriminatory or segregated" was not for

the protection of the political entity whose funds might be cut off, but for the protection of the innocent beneficiaries of programs not tainted by discriminatory practices." (emphasis ours)

The elaborate administrative procedure set forth in Sec.

2000-d-1 includes:

1. an express finding on the record of a failure to comply.
2. direction that the termination or refusal to grant must be limited to the guilty political entity.
3. direction that the termination or refusal shall be limited to the particular program or part thereof, (emphasis ours) in which such non-compliance has been found.
4. filing with appropriate congressional committees.
5. provision that termination or refusal becomes effective 30 days after filing with the appropriate congressional committee.

It is clear that The Letters are means of circumventing the plain and explicit dictates of Sec. 2000-d-1, and thus are beyond the authority of the Regional Administrator to approve, consent to or otherwise be bound by. The letters are nudum pactum.

Compliance, or non-compliance with the terms of these letters by any of the parties cannot be grounds for relief by the District Court. The court relied on the validity of the letters, and in so relying, committed reversible error.

The second theory, implicit in the order of the Court, (District Judge devoted five pages of its ten page memorandum opinion to Gautreaux I, outlining the historical background of this matter) is that The Letters constitute the bridge linking Model Cities Programs to Gautreaux I and Gautreaux II.

The plaintiffs in their objection to a Motion of Intervenor (filed before the mandate issued) To Vacate The Order of The District Court made their theory and that of the District Court very clear.

"We know that HUD itself administratively connected Chicago's second year program and its public housing program, including, with special particularity, Judge Austin's decree with respect to the public housing program. Thus, . . . , HUD ultimately agreed to release the second year Model Cities funds only upon the condition that the City Council continue to approve public housing sites at each regular Council session, and the sites so approved had to comply with Judge Austin's decree in the Gautreaux case." Plaintiffs' objections
p. 16.

Even a cursory review of the Comprehensive City Demonstrated Program reveals that it seeks to relieve every aspect of urban problems, not just housing. The purposes of the Act are set forth in detail in the third paragraph of Sec. 3301, Title 42, U. S. C. A.:

"The purposes of this subchapter are to provide additional financial and technical assistance to enable cities . . . to plan, develop and carry out locally prepared and scheduled Comprehensive City Demonstrated Programs containing new and imaginative proposals to rebuild or revitalize large slum or blighted areas; to expand housing job and income opportunities; to reduce dependence on welfare payments, to improve educational facilities and programs, to combat disease and ill health; to reduce the incidence of crime and delinquency, etc., etc.

Public Housing is not the dominant theme in this Act. The specific programs involved in this case were designed to improve educational facilities and programs, to combat disease and ill health; to reduce the incidence of crime and delinquency and to reduce dependence on welfare. Nothing in the record proves either of the two points above. The Letters cannot provide the desired connection.

II.

The District Court Erred In Entering The
Order Appealed From Without An Express
Finding That The Specific Model Cities
Programs [The Federal Assistance For
Which Are Ordered Terminated (Tempo-
rarily)] Had Been Administered In Vio-
lation Of Sec. 2000-d Of Title 42
U. S. C. A.

HUD is prohibited by Congress from terminating or from refusing to grant assistance on grounds of violation of Sec. 2000-c, unless there has been an express finding on the record of a failure to comply. . . and such termination or refusal shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found. Sec. 2000-d-1 Title 42

U. S. C. A.

In Finch, infra, it was clearly shown that the limitations provided by Sec. 2000-d-1 were for the protection of the membership of this appellant.

Absent the express finding described above or sufficient evidence in the record to support such a finding, the order of the Court in effect directs HUD to violate the rights of this appellant, guaranteed by the provisions of Sec. 2000-d-1 and is thus in error.

III.

The District Court Abused Its Judicial Dis-
cretion By Choosing, Among All Possible
Injunctory Or Mandatory Reliefs, The Only
One Which Will Maximize The Damage To
The Innocent Beneficiaries Of The Specific
Federally Assisted Programs.

The District Judge must have taken judicial notice of the fact that the City Council is, by statute, the final determining factor in the selection of public housing sites within the boundaries of the City of Chicago.

Gautreaux I, for all its fame as a landmark case, is ineffectual and the judgment entered therein has not been complied with, and probably may not ever be complied with for the simple reason that the City of Chicago was not a party to Gautreaux I.

In Gautreaux II, the City of Chicago intervened, yet except for the oblique reference in the memorandum opinion to the City and its Chief Executive Officer, the order is directed through HUD against the membership of this intervenor-appellant, innocent beneficiaries of the program.

The District Court erred in not realizing that the membership of this intervenor-appellant is the true party in interest in a matter involving the application of Sec. 2000-d-1. An order of a Court of

Equity should be entered with a view to inflict the least harm to the innocent parties in the case.

It does no good to the membership of this appellant, suddenly deprived of the benefits of existing programs, to know that the Mayor of the City of Chicago and the City Council have been given an opportunity to repent.

It is high time that putative or actual plaintiffs, the District Court and this reviewing Court face squarely the realities of public housing site selections in the City of Chicago. The City of Chicago or individual members of the City Council are indispensable parties in any proceeding where the court orders selection of sites for public housing in Chicago. Any order entered on CHA, HUD, or any administrative agency to implement or effect site selection within the City of Chicago, is a mere exercise in utter futility.

When the District Court, well knowing who has the sole power or authority to approve the sites in question withholds federal assistance to programs benefiting any segment of the population of the City, for the avowed purpose of effecting site selection, and fails to directly order the City to act, such order is a gross abuse of judicial discretion, since it is not intended to provide the relief contemplated.

CONCLUSION

For all of the above reasons, I respectfully submit that the District Court's order of October 1, 1971, should be reversed.

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PROOF OF SERVICE

H. Ernest Lafontant, attorney for Central Advisory Council, certifies that on November 15, 1971, he caused two copies of the above and foregoing brief to be served upon counsel for each party separately represented.

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