

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	No. 66 C 1459
	)	
v.	)	No. 66 C 1460
	)	
CHICAGO HOUSING AUTHORITY and	)	(Consolidated)
GEORGE W. ROMNEY, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR FURTHER RELIEF AGAINST HUD

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December 21, 1971

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INTRODUCTION

In the CHA case this Court, without question or argument, directed the parties to prepare a proposed plan for relief. 296 F.Supp. at 914. Precisely the same step is now sought in the HUD case. The question is, why should that step not be taken?

HUD's basic answer to this question is that HUD doesn't build housing. This answer totally ignores what the Court of Appeals has said in this case: "... a decree utilizing certain HUD programs still remains a possible form of relief not already available through the other [CHA] case." (Slip opinion p.8.)

It also ignores the view of the Court of Appeals that "[HUD's] decisions pertaining to this matter may prove to be among the best means of insuring full compliance with the 'aims and objectives' of the CHA decree." (Slip opinion p.9.) In any event, the simple response is that if HUD can't build housing, HUD's plan won't call for HUD to do so. But that is no reason not to provide the Court with a plan respecting HUD "programs" and "decisions pertaining to this matter."

The remainder of this reply is largely designed to clear away the underbrush with which HUD has tried to obscure that simple issue now before the Court.

I. HUD'S DUTY IS NOT LIMITED TO "EVALUATION"

Ignoring the many cases in our opening memorandum showing HUD's duty to come forward with a plan for relief, HUD says,

"The responsibility to draft a comprehensive plan rests with the City of Chicago and the Chicago Housing Authority since they possess the power to plan and construct housing within the City of Chicago. HUD's responsibility is limited to evaluating said plan."
(p.9.)

The only authority HUD gives for limiting its responsibility to "evaluating said plan" is Crow v. Brown, a case plainly not relevant since, as HUD's own memorandum notes, HUD was dismissed from that action and found not liable. (p.9, n.6.) Obviously it would therefore have been inappropriate in Crow v. Brown to order HUD to do anything.

The case which is relevant is Hamtramck, the opinion in which was supplied to the Court by our letter of November 30, 1971. There HUD was ordered to do exactly what plaintiffs here seek to have HUD ordered to do:

"... in cooperation with the plaintiffs, [to] present to this Court within ninety (90) days from the date of this order a program designed to remedy the wrongs suffered by virtue of defendants' conduct."

HUD's memorandum fails to mention Hamtramck. It seems ostrich-like for HUD to ignore Hamtramck and the other cases cited in our memorandum while referring only to a case like Crow to support its argument that its responsibility for the correction of wrongs it helped to perpetrate is limited to evaluating other peoples' plans.

Inconsistently, HUD then announces it already has a plan:

"That plan is the one outlined by Secretary Romney in his testimony." (p.5.)

Moreover, we are told that joining the City as a defendant is all that is needed to make the plan effective.

"All that is needed to make it fully effective in Chicago is to join the City as a party-defendant in these proceedings." (p.5.)*

We are of course pleased to learn that HUD already has a plan. (Why then does it protest so strongly when asked to file

*HUD not only urges that the City, the Mayor and the Aldermen should be added as parties (p.4.), but says plaintiffs should explain why they have not done this sooner (p.9.), even though HUD agrees "there is ample precedent for by-passing State statutes which would impede justice to parties who have not obtained relief." (p.4.)

its plan with the Court?) We are also pleased to learn that the plan can be made "fully effective" by the simple step of joining the City. If this is all that is needed, we do not understand why HUD itself has not made the appropriate motion, which it is entitled under Federal Rule 21 to do. Indeed, under that rule, the Court is expressly empowered "of its own initiative" to add parties. Plaintiffs think it premature to join the City, the Mayor and the Aldermen at this point, and have explained why they hold that view in their brief filed in support of their motion for further relief against CHA.

(Part IV of Supplemental Memorandum in the CHA case, filed December 1, 1971.) But HUD and the Court are of course free to act under Rule 21 if they believe that plaintiffs' judgment in this respect is wrong. In any event, none of this supports the view that HUD's responsibility is limited to evaluating the plans of others.

In this connection, presumably as part of the "plan ... outlined by Secretary Romney" (see pp. 24-28, Statement of George Romney, Appendix A to HUD's memorandum), HUD has submitted to the Court its proposed "Project Selection Criteria." (Appendix C to HUD's memorandum.) It may be of interest to the Court to know that these criteria have been severely criticized by the United States Commission on Civil Rights as "doomed to failure" precisely because they do not constitute a plan, and precisely because they suggest "incorrectly that Department officials have

no alternative but to rely exclusively on the receipt of individual proposals drawn up in isolation from other such proposals." (Exhibit A to this memorandum, pp. 2, 3.) The Commission, making specific reference to the decision in this case, says:

"Unless the location of subsidized housing is determined on the basis of a metropolitan-wide analysis of the various social and economic factors involved, the result will be a perpetuation of the chaos and irrationality that characterizes the racial residential patterns we now have in metropolitan areas ..."
(Exhibit A, pp. 2-3.)

A copy of the Commission's letter to Secretary Romney, dated November 4, 1971, is attached hereto as Exhibit A.

II. HUD'S LACK OF POWER TO BUILD HOUSING DOESN'T PRECLUDE IT FROM PLANNING RELIEF

The basic argument for limiting HUD's duty to "evaluation" is, as noted above, that HUD has no power to build housing. The basic answer has already been given, but two additional matters should be noted.

The first is that testimony before this Court shows that HUD is already engaged in developing a low income housing plan for Chicago. Plaintiffs' Exhibit 26 (in the model cities proceeding), the HUD-City Preliminary Report on Chicago Housing Supply, dated November 19, 1970, states that the joint HUD-City team was given three tasks, one of which was:

"Develop a strategy for increasing the supply of low income housing in the Chicago metropolitan area." (Ex. 26, p.2.)

Mr. Vavoulis testified that this planning activity was now being carried on by HUD. (Tr. pp. 206-07.)*

The second is that HUD's memorandum on the subject of HEW's role in school desegregation cases is disingenuous. HUD implies that HEW's aid to the courts has been confined to "analyzing plans proposed by school boards." (p.9., n.5.) The fact of the matter is that in the very case referred to by HUD and discussed in our initial memorandum, HEW did propose not one but two plans of its own. Its role was not confined to analyzing plans proposed by others. See United States v. School District No. 151 of Cook County, 301 F.Supp. 201, 224, 234 (N.D. Ill. 1969). A decree adopting HEW's plan and ordering its implementation was affirmed. 432 F.2d 1147 (7th Cir. 1970).

HEW has no power to build schools or run school systems, but it submits school desegregation plans to the courts. Similarly HUD, which says it has no power to build housing or run housing systems, may submit housing desegregation plans to

* "Q. ... Has this city HUD team been working on that function [to prepare intermediate and longer term recommendations as part of a housing strategy] since November 19, 1970? ...

"THE COURT: ... The question is a simple question that doesn't refer to the May 12 letter or the June 21 letter or any other letter. It is a question have they been doing what this function, have they been performing this function to your knowledge.

"BY THE WITNESS:

"A. The answer is yes." (Tr. 206-07.)

the courts.

HUD in effect argues that, since it does not itself build housing, its decisions are irrelevant to the problem with which the Court is confronted. It forgets that the Court of Appeals said HUD's role is "equally important," and that "[HUD's] decisions pertaining to this matter may prove to be among the best means of ensuring full compliance with the 'aims and objectives' of the CHA decree." (Slip opinion p.9.) HUD's asserted lack of power to build housing is plainly no reason for not submitting a plan to the Court.*

III. A DECISION ON THE METROPOLITAN SCOPE OF
THE PLAN IS PREMATURE

HUD also asserts vigorously that a plan of metropolitan scope is beyond the power of the court. The answer is that if HUD believes a metropolitan plan is undesirable or improper, it need not submit one. Plaintiffs' proposed order does not require a plan of metropolitan scope unless HUD deems such a plan "necessary or appropriate to provide full relief." (p.2. of proposed form of order, attached to plaintiffs' motion for further

*In his First Annual Report on National Housing Goals the President of the United States, speaking of the location of HUD's subsidized housing programs, particularly outside of central cities, said:

"The evidence suggests that sufficient sites can be made available to accommodate the required housing if the federal programs which help provide the sites are pursued vigorously." (House Document No. 91-63, p.5, emphasis added.)

relief.) At this stage, therefore, argument about a metropolitan plan is a red herring.

But HUD has not been silent on the need for metropolitan relief.* We have already noted that HUD personnel are presently engaged, according to Mr. Vavoulis, in the following task:

"Develop a strategy for increasing the supply of low income housing in the Chicago metropolitan area." (Ex. 26, p.2, emphasis added.)

In the statement of Secretary Romney attached to HUD's memorandum the following appears:

"[T]he impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding community. The City and the suburbs together make up what I call the 'real city'. To solve problems of the 'real city', only metropolitan-wide solutions will do." (Appendix A, pp. 15-16, emphasis added.)

This statement of Secretary Romney followed hard upon a quotation from the President of the United States to the effect that HUD and other federal agencies, "will administer their programs in a way which will advance equal housing opportunity for people

*The Court may recall that plaintiffs' counsel met with a rather vigorous response when he stated orally that he believed all the parties had agreed that full relief in this cause would involve a plan of metropolitan scope. While the transcripts have not been checked to find support for that statement, and plaintiffs' counsel apologized if he had misstated, the material referred to in the text above should be read against this background.

of all income levels on a metropolitan area wide basis." (Id., p.15, emphasis added.)

Nor should HUD's assertion (without supporting authority) that this Court lacks the power to go beyond Chicago's geographic boundaries to afford full relief be allowed to go unanswered. It is basic that federal constitutional rights do not stop at city or county boundaries.

"Political subdivisions of States - counties, cities, or whatever - never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities, created by the State to assist in the carrying out of state governmental functions." Reynolds v. Sims, 377 U.S. 533, 575 (1964).

"The United States Constitution recognizes no governing units except the federal government and the states. A contrary position would allow a state to evade its constitutional responsibilities by carve-outs of small units." Hall v. St. Helena Parish School Bd., 197 F.Supp. 649, 658 (E.D. La. 1961), aff'd 287 F.2d 376 (5th Cir. 1961), aff'd per curiam, 368 U.S. 515 (1962).

"Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights." Haney v. County Board of Education, 410 F.2d 920, 925 (8th Cir. 1969).

"[P]olitical subdivisions of the states, whether they be 'counties, cities or whatever' are not 'sovereign entities' and may readily be bridged when necessary to vindicate federal constitutional rights and policies." Jenkins v. Township of Morris School District, 279 A.2d 619, 628 (S.Ct. N.J. 1971).

Thus, where necessary to afford full relief, federal courts will enter orders not confined to the boundaries of political

subdivisions of the state. One such case was referred to in our opening memorandum (p.6.) and, typically, was not commented on in HUD's responsive memorandum. (The order referred to is attached hereto as Exhibit B.) There are other such cases. See, e.g., Haney v. County Board of Education, 429 F.2d 364 (8th Cir. 1970), and Bradley v. School Board of City of Richmond, 324 F.Supp. 396 (E.D. Va. 1971). Indeed, in this Circuit Judge Dillin, of the Southern District of Indiana, grappling with the question of remedial orders respecting Indianapolis' segregated school system, joined several suburban school districts as parties at the relief stage of the case. The suburban districts sought writs of prohibition, contending that Judge Dillin lacked the power to order their joinder, but the Seventh Circuit Court of Appeals denied the writs. Carmel-Clay Schools v. Honorable S. Hugh Dillin, No. 71-1702 (7th Cir., October 1, 1971), and Avon Community School Corp. v. Honorable S. Hugh Dillin, No. 71-1695 (7th Cir. September 27, 1971).

Nonetheless, even though HUD's unsupported assertion about the Court's lack of power is clearly erroneous, at this stage of the case the metropolitan question is a red herring. If HUD honestly believes that metropolitan relief is unnecessary or improper, it is not obligated to submit a metropolitan plan under plaintiffs' proposed form of order.

IV. THE ORDER REQUESTED IS NOT BARRED BY THE
DOCTRINE OF 'SEPARATION OF POWERS'

HUD's final argument is to talk repeatedly about "separation of powers." Again, the argument is premature. It will be time enough to consider such an argument when a decree is proposed which orders HUD to administer its programs in a particular way. Clearly there can be no separation of powers question with respect to an order to submit a plan merely to aid the court in formulating a decree.

However, notwithstanding the argument's prematurity, it should be noted that HUD does not deign to comment on the numerous cases cited in our opening memorandum in which courts have entered orders providing many different forms of relief against federal agencies, including agencies of cabinet level. The Court's attention is also directed to Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971), involving correction of the racially discriminatory provision of services by the Town of Shaw, where this was said about separation of powers:

"The separation of powers principle assumes that we have a system of checks and balances. In Madisonian terms, each department or power center is to act as a curb on other departments or centers. Indeed, 'unless these departments be so far connected and blended, as to give to each a constitutional control over the others, the degree of separation which the maxim requires as essential to a free government, can never in practice, be duly maintained.' Madison, The Federalist, No. 48." 437 F.2d at 1292.

In any event, at this point the separation of powers issue is prematurely and, lacking even a cursory effort to deal with the

many cases granting relief against federal agencies, hardly even seriously, raised.

CONCLUSION

The cases show that this Court has a duty to provide full, including remedial, relief and that the parties responsible for discrimination have the duty to come forward with a plan to provide such relief. The Court of Appeals has invited this Court to give full consideration to the question of relief. It said plainly that "a decree utilizing certain HUD programs still remains a possible form of relief." (Slip opinion p.8.) It observed that HUD's "decisions pertaining to this matter may prove to be among the best means of ensuring full compliance with the 'aims and objectives' of the CHA decree." (Slip opinion p.9.) Obviously this Court must explore those possibilities.

HUD's real views emerge (from its camouflaging arguments about the power to build housing, metropolitan relief, and the like) where it says, pejoratively, that plaintiffs would have this Court "administer separate requirements in the Chicago Metropolitan Statistical Area." (p.5.) The plain fact appears to be that notwithstanding the adjudication of housing segregation in Chicago, and notwithstanding the Court's and HUD's duty to eliminate the discriminatory effects of that segregation, HUD does not believe that "separate requirements" for Chicago are appropriate. In other words, HUD wishes to conduct its programs

in the Chicago area exactly as it does elsewhere in the country, that is, exactly as it does where there has been no such adjudication, and where there exists no such duty! If this is in fact HUD's real meaning, we trust the Court will consider it utterly irresponsible and, as Hamtramck clearly shows, improper.

Plaintiffs will of course do what they can, with or without HUD, to develop and propose to the Court a plan for comprehensive relief. But we respectfully suggest that the Court would be derelict in its duty "to render a decree which will so far as possible eliminate the discriminatory effects of the past" Louisiana v. United States, 380 U.S. 145, 154 (1965), and unresponsive to the opinion of the Court of Appeals in this case, if it does not require HUD to participate in at least that preliminary process.

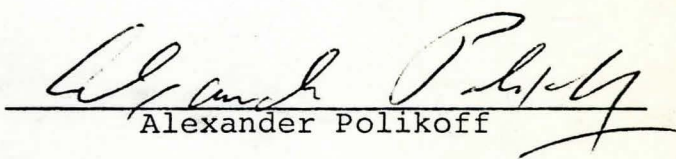
Respectfully submitted,

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December 21, 1971

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UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425



STAFF DIRECTOR

NOV 4 1971

Honorable George Romney
Secretary of Housing and
Urban Development
Washington, D. C. 20410

Dear Mr. Secretary:

On October 8, 1971, the Department of Housing and Urban Development invited this Commission's comments on its proposed "Project Selection Criteria" and "Affirmative Fair Housing Marketing Regulations", dated October 2, 1971. We commented on earlier versions of the regulations and criteria in our letters to you dated July 22, 1971 and July 26, 1971 (copies enclosed), and we appreciate the opportunity to express our views on the revisions of these documents. The following constitute our comments on the criteria and the regulations.

I. PROJECT SELECTION CRITERIA

The regulations would establish a system of rating applications for Federal assistance for homeownership projects under Section 235, for rental projects under Section 236 or rent supplement, and for public housing projects. Under the current proposed regulations, a project will be rated "superior", "adequate", or "poor", with respect to eight criteria (seven for Section 235) which are as follows:

1. Need for low(er) income housing
2. Effect of project on minority housing opportunities
3. Improved location for lower income families
4. Relationship to orderly growth and development
5. Relationship of proposed project to physical environment
6. Ability of sponsor to perform
7. Project potential for creating minority employment and business opportunities

EXHIBIT A

8. Provision for sound housing management (applicable only to rental and public housing and inapplicable to Section 235 ownership projects).

In order to qualify for assistance, a proposed project must obtain at least an "adequate" rating on each of the eight criteria (seven for Section 235).

Basic Policy of the Proposed Regulations

In our July comments to you, we stated that we believe that the basic scheme of the proposed regulations was deficient in presenting an effective solution to the lack of housing opportunities and choices for low income and minority families in metropolitan areas. As we stated earlier, the civil rights laws relied upon as authority for the proposed criteria represent legal requirements of equal housing opportunity which would support HUD in requiring all communities which receive Federal grants to accept federally assisted housing.

The recent decision of the U.S. Court of Appeals for the Seventh Circuit in Gautreaux v. Romney, decided September 10, 1971, followed by Judge Austin's order of October 1, 1971, implementing that decision, clearly illustrate that HUD has an obligation not only to avoid acting in a discriminatory fashion, but to act affirmatively to prevent housing discrimination and segregation. Judge Austin has required HUD not to release Model City funds to the City of Chicago unless the City fulfills its obligation under Title VI of the Civil Rights Act of 1964, and the Constitution, to undo the effects of past discriminatory site selection policies. The proposed site selection criteria, in our view, should proceed to implement the policy of the Gautreaux decision in every metropolitan area in the country.

The proposed regulations raise serious questions with respect to whether they will promote balanced housing development. The regulations are much improved in detail over the first proposal, but their fundamental approach, one of passivity, has not changed. If I may, I will repeat our basic objections as we stated them in July:

The proposed criteria would operate on a project-by-project, rather than a metropolitan-wide, basis...

We are convinced that site selection criteria based on a project-by-project approach are doomed to failure. Unless the location of subsidized housing is determined on the basis of a metropolitan-wide

analysis of the various social and economic factors involved, the result will be a perpetuation of the chaos and irrationality that characterizes the racial residential patterns we now have in metropolitan areas....

The project-by-project approach also reflects an unduly passive posture on the part of HUD, suggesting incorrectly that Department officials have no alternative but to rely exclusively on the receipt of individual proposals drawn up in isolation from other such proposals.

While the proposed criteria may have some effect in encouraging builders and sponsors of subsidized housing (including low rent public housing) to seek locations outside areas of existing minority or poverty concentration, they cannot achieve full implementation of the constitutionally and statutorily required desegregation policy enunciated in Gautreaux. The HUD criteria do not address themselves to the role of local governmental agencies, which play such a large part in determining the location of subsidized housing. In the case of low rent public housing and rent supplement, Federal law requires local governmental approval for each project. In the case of 235 and 236 projects, (which were not at issue in the Gautreaux litigation, but which in our view, and in HUD's view also, should be subject to the same site selection criteria as low income public housing) local governments often prevent builders and sponsors from establishing such housing by means of zoning laws and other land use controls. The failure of the HUD criteria to address themselves to these problems may well prevent such criteria from achieving unsegregated site location.

It is our view, in sum, that the Federal government has the duty to force local governments to face up to their obligations to play their part in providing all residents of metropolitan housing areas with meaningful housing choices, regardless of race or income. It is also clearly the obligation of the Federal government to insure that housing built with its assistance plays a role in dismantling the present housing patterns which restrict minority persons to the inner cities. In order to do this, at the minimum, HUD should institute a periodic review of the applications received and approved under these criteria in order to evaluate their collective effect on metropolitan housing opportunities. This would not impose an undue burden on the Department since applications are funded on a periodic basis due to budgetary considerations. Such a review cannot take the place of a carefully prepared plan designed to disperse low and moderate income

housing in accordance with a sound growth pattern. It can, however, prevent a project-by-project approval system from contributing to further irrationality in the development of our cities.

We would also like to repeat one general comment we made in July because of its inherent importance: we believe that the role of HUD's equal opportunity staff in implementing the regulations should be clearly defined in the criteria.

Specific Comments on Criteria

1. Need for low(er) income housing

This criterion, like criterion 2, requires determinations based in part on the character of the local "housing market area". This term is not defined. It seems very important to define this term as including the entire metropolitan area in order to make these regulations effective. We must get away from the notion that housing needs are limited to individual communities--people, not communities, need and choose housing, and in this mobile country, people are not confined by artificial jurisdictional lines.

In determining need for the purposes of criterion 1, the instructions for criterion 1 require that a "poor" rating be given to proposals in a market area where sale vacancies in all price categories exceed 2 ½ percent. It is not quite clear why this information is relevant. One would assume that only the vacancies in the price-size category proposed would be relevant in determining need, especially since most available housing is not within the reach of low or lower income families.

2. Minority housing opportunities

This section is a considerable improvement over the earlier version. It insures that low and moderate income housing will only be located in areas of minority concentration if there is an overriding need for such housing which cannot be met outside that area for reasons that exclude racial discrimination. Such reasons can include zoning obstacles and excessive land costs. Such reasons can also include the preference of minority residents for projects in their own neighborhoods. We hope that the careful definition of "overriding need" will insure that this exception to the requirement of nondiscriminatory location will not serve as an excuse for further impaction in areas of racial concentration.

We would propose as an addition to this criterion that wherever a project is approved because of an "overriding need" which cannot be met outside of areas of minority concentration (for reasons other than residents' desires), HUD should undertake a study of the obstacles that were found to contribute to this circumstance and take

steps to eliminate such obstacles. If the obstacles are exclusionary practices of municipalities, such as, for example, exclusionary zoning ordinances, HUD should institute proceedings to terminate Federal assistance to such municipalities on the basis of the racial effects of their policies.

3. Improved location for low(er) income families

This criterion is considerably improved over the earlier version. The revisions meet our objections to the earlier draft.

4. Relationship to orderly growth and development

This criterion is also an improvement over the earlier version. It gives preference to projects that conform to a regional plan, and it requires HUD to consider whether an application is consistent with "sound growth" if no local plan exists. On its face, it appears to meet some of the objections we raised in July and reiterated above. The Commission is uncertain, however, that this criterion will in fact lead to a metropolitan-wide dispersal of low and moderate income housing. If HUD relies on the existence of a plan, it must take steps to assure that the plan has adequate housing provisions. The planning process as it is presently conducted in many local and regional areas does not include detailed provisions for the location, type, or occupancy of assisted housing units. Often plans are made with little regard for minority group concerns, without the opportunity for more than nominal citizen participation, and with no equal opportunity review. Although the Commission approves of the inclusion of criterion 4, we feel that it should be more detailed, and incorporate safeguards to assure that any plan relied upon is sound. Similarly, we would recommend guidelines defining the phrase "sound growth patterns", which is the standard to be applied in assessing a project application from a community which does not have a plan.

5. Relationship of proposed project to physical environment

The revised criterion meets our objections to the earlier version.

6. Ability to perform

The revised criterion meets our objections to the earlier version.

7. Minority employment and business opportunities

Again, the revised criterion is an improvement over the earlier version. We are concerned, however, with the exception for proposals which cannot satisfy the minority employment requirement because the "area from which

labor would customarily be recruited has a very low minority population." This exception may make sense in many rural areas but it could be abused in suburban areas which may be the customary recruiting source for all-white labor, but are in fact accessible to minority persons. The instructions for this criterion should be revised to prevent such abuse.

8. Sound housing management

No comment.

Conclusion

As our comments indicated, we find the regulation substantially improved over the earlier draft and we appreciate HUD's apparent receptivity to public comments on its proposals. We still retain fundamental reservations concerning the policy embodied in the criteria, as explained above.

II. AFFIRMATIVE MARKETING GUIDELINES

The purpose of HUD's "Affirmative Fair Housing Marketing Regulations" is to promote fair housing by requiring applicants for participation in FHA subsidized and unsubsidized housing programs to pursue affirmative fair housing marketing policies in the sale and rental of federally assisted housing.

The revised regulations are an improvement over the earlier version in that they broaden the coverage of the regulations to cover housing in excess of five units (as opposed to the 25 units provided by the earlier draft). They are also improved in the specificity of their provisions (for example, the regulations now specify, as the earlier draft did not, developers' responsibility for the acts of their marketing agents).

In addition, the regulations spell out more clearly the sanctions for noncompliance. However, they do not state what procedures would be followed. In the case of proceedings under E.O. 11063 which may result in the termination of Federal insurance, public notice of such proceedings would seem important to protect potential buyers of properties which may no longer be covered by Federal mortgage insurance.

On the whole, however, the revised draft does not meet most of the Commission's concerns with respect to the earlier version, which were set forth in our letter of July 22, 1971. Instead of explaining those concerns fully, I will summarize the most important ones and refer you to the above letter:

1. The regulations still only apply to projects "hereafter developed" under FHL programs. We believe that coverage could be considerably broader (p. 3 of July 22 letter).
2. Only assisted housing of assisted developers or sponsors is covered. Again, we feel that this limitation is unduly restrictive. (Id.)
3. The regulations still do not require affirmative recruiting of minority sales or rental staff. (Id.)
4. The regulations do not require affirmative marketing plans to contain specific goals and timetables. (p. 4 of July 22 letter)

Conclusion

In contrast to the site selection criteria, the affirmative marketing guidelines do not seem to us deficient in their basic approach but rather in the details of their requirements. We hope that their further revision will result in making them a really effective device in combatting the pernicious effects of discrimination in the housing market.

Sincerely,



JOHN A. BUSS
Acting Staff Director

Enclosures

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al.,

Plaintiffs

v.

WILLIAM G. MILLIKEN, et al.,

Defendants

DETROIT FEDERATION OF TEACHERS,
LOCAL #231, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO,

Defendant-
Intervenor

and

DENISE MAGDOWSKI, et al.,

Defendants-
Intervenor

A TRUE COPY

FREDERICK A. JOHNSON, Clerk

By *Beverly L. Berulski*
DEPUTY CLERK

CIVIL ACTION NO:
35257

ORDER

At a session of said Court held in
the Federal Building, City of
Detroit, on this 4th day of
OCTOBER, A.D. 1971.

PRESENT: HONORABLE STEPHEN J. ROTH
United States District Judge

The Court having entered its findings of fact and
conclusions of law on the issue of segregation on
September 27, 1971;

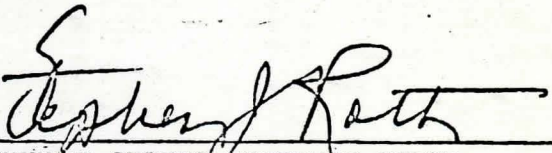
IT IS ORDERED that the Detroit Board of Education
submit a report on and an evaluation of the so-called
Magnet Plan within 30 days; and that other parties litigant
may within 10 days thereafter file responses to such
report and evaluation.

EXHIBIT B

IT IS FURTHER ORDERED that the Detroit Board of Education submit a plan for the desegregation of its schools within 60 days.

IT IS FURTHER ORDERED that the State defendants submit a metropolitan plan of desegregation within 120 days.

IT IS FURTHER ORDERED that as to both the Detroit and the State plans, other parties litigant shall have an additional 30 days in which to submit objections and/or alternate plans.


UNITED STATES DISTRICT JUDGE

DATE November 5, 1971.
SIGNED:

10

BUSINESSMEN FOR THE PUBLIC INTEREST
109 NORTH DEARBORN STREET
SUITE 1001
CHICAGO, ILLINOIS 60602
(312) 641-5570

GORDON SHERMAN
President
ALEXANDER POLIKOFF
Executive Director
MARSHALL PATNER
General Counsel
DAVID DINSMORE COMEY
Director of
Environmental Research
THOMAS R. MEITES
Associate Counsel

December 21, 1971
BY MESSENGER

The Honorable Richard B. Austin
United States Judge
219 South Dearborn Street
Chicago, Illinois 60604

Re: Gautreaux v. Romney

Dear Judge Austin:

Enclosed is a reply memorandum relating to plaintiffs' pending motion for further relief against HUD, set for hearing this Thursday, December 23, at 10:00 A.M.

The briefing schedule did not provide for a reply memorandum, but we have concluded that filing one might shorten the oral presentation. As I informed you in open court last Friday, Mr. Murray and I agreed that any reply memorandum should be filed by tomorrow. Delivery of this memorandum today is well within that schedule and should afford an adequate opportunity for review prior to the hearing Thursday morning.

Very truly yours,

Alexander Polikoff

ALP:eo
Enc.

cc: James Murray, Esq.
Patrick O'Brien, Esq.
(By messenger)

JCM:ew

December 21, 1971

Honorable Richard B. Austin
Judge US District Court
United States Courthouse
219 South Dearborn Street (25th Floor)
Chicago, Illinois 60604

Dear Judge Austin:

Enclosed is a copy of a opinion in Boston Public Housing Tenants Policy Council, Inc., et al v. George W. Romney, et al, Civil Action No. 70-1626-F, United States District Court of Massachusetts, which came to my attention on December 21, 1971. This opinion outlines the responsibility of HUD in the area of public housing. On page 2 of the Memorandum Opinion, the Court stated:

"The basic purpose of the Act 'is to provide 'a decent home and a suitable living environment for every American family' that lacks the financial means of providing such a home without governmental aid." Thorpe v. Housing Authority, 393 U.S. 268 (1969). Just how the federal government is to carry out this purpose is stated in Section 1401 of the Act, the Declaration of Policy:

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this Chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban, rural nonfarm, and Indian areas, that are injurious to the health, safety, and morals of the citizens of the Nation. . . . It is the policy of the United States to vest in the local public housing agencies

the maximum amount of responsibility
in the administration of the low-rent
housing program . . .

"The key words of the statute appear to be "to assist".
If the federal defendants are merely "to assist" the
local housing authorities, then the federal defendants
can only be sued if they failed to carry out this
responsibility.

"The plaintiff does not allege that the Federal defendants
have failed to assist the local housing authority, but
rather the plaintiff alleges that it is the duty of the
federal defendants to provide the type of housing every-
one desires. This is not so. The federal defendants
only responsibility is to assist the legal authorities
in providing desirable low-rent housing, and this
assistance comes in the form of financial aid to the
local authorities. Since, by statute, the federal
defendants are limited to providing aid to local author-
ities, they cannot be sued for failure to provide the
desired housing."

Certainly in this case the primary responsibilities for the develop-
ment of a plan for public housing rests with the defendant Chicago Housing
Authority and the City of Chicago.

Very truly yours,

JAMES R. THOMPSON
United States Attorney

BY:

James C. Murray
Assistant United States Attorney

enclosure

cc: Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602

Patrick O'Brien
Mayer, Brown, and Platt
231 South La Salle Street
Chicago, Illinois 60604

RECEIVED OFFICE
U. S. ATTORNEY
DEC 3 1971

BOSTON
REFERRED LPC

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.
76-1626-F

BOSTON PUBLIC HOUSING TENANTS
POLICY COUNCIL, INC., ET AL,
Plaintiffs,

v.

GEORGE ROMNEY, ET AL,
Defendants.

MEMORANDUM AND ORDER

November 30, 1971

DAVIS, M.

This is a complaint brought by the plaintiffs seeking to compel the defendants to perform what the plaintiff alleges is the duty of the defendants under the United States Housing Act of 1937 as amended, to bring public housing projects into compliance with sanitary standards. The Secretary of the Department of Housing and Urban Development and the United States Housing Authority, (hereinafter federal defendants) have filed a motion for judgment on the pleadings; and, Julius Bernstein, Doris Bunte, John Connolly, and Jacob Brier, members of the Boston Housing Authority, and Daniel Finn, Executive Director of the Boston Housing Authority, (hereinafter local defendants) have filed a motion to dismiss for failure to state a claim upon which relief could be granted. The matter was heard on the motions of the defendants.

1. Motion of the federal defendants.

It is clear that any authority or responsibilities exercised by the federal defendants must be in accord with 42 U.S.C. 1401, et seq. (the United States Housing Act). Section 1404(a) of the Act provides that the United States Housing Authority may sue and be sued only with respect to its functions under the Act.

Therefore, we must determine just what the functions are of the federal defendants.

[The basic purpose of the Act "is to provide 'a decent home and a suitable living environment for every American family' that lacks the financial means of providing such a home without governmental aid." Thorpe v. Housing Authority, 393 U.S. 268 (1969). Just how the federal government is to carry out this purpose is stated in Section 1401 of the Act, the Declaration of Policy:

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this Chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban, rural nonfarm, and Indian areas, that are injurious to the health, safety, and morals of the citizens of the Nation. . . . It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, . . .

The key words of the statute appear to be "to assist". If the federal defendants are merely "to assist" the local housing authorities, then the federal defendants can only be sued if they failed to carry out this responsibility.

The plaintiff does not allege that the Federal defendants have failed to assist the local housing authority, but rather the plaintiff alleges that it is the duty of the federal defendants to provide the type of housing everyone desires. This is not so. The federal defendants only responsibility is to assist the local authorities in providing desirable low-rent housing, and this assistance comes in the form of financial aid to the local authorities. Since, by statute, the federal defendants are limited to providing aid to local authorities, they cannot be sued for

failure to provide the desired housing.]

Moreover, the plaintiff asserts that it would take approximately 40 million dollars to bring the housing projects up to standard. This, in effect, is requesting the Court to compel the federal defendants to provide more funds for the local housing authority. The amount of funds provided is controlled by statute as set forth by the Congress, and this Court is powerless to increase or decrease these funds. That to require the expenditure of funds from the federal treasury cannot be maintained in a suit of this nature is so basic that no citation of authority is required.

KNOX
HILL
The plaintiff relies very heavily on the case of Knox Hill Tenants Council v. Washington, D.C. Cir., decided February 4, 1971. However, I choose not to follow the Knox Hill case, as far as the federal defendants are concerned, for the reason that it involved primarily an agency set up by the Congress of the United States to handle public housing in the District of Columbia. Moreover, in that case the position of the government was that the federal ownership of the housing projects insulates those who control and administer them from suit absent consent of the United States. In the case at bar, the federal defendants expressly deny ownership or control of the housing projects. As pointed out before, the role of the federal defendants is to assist the local authority by providing funds for low-rent housing.

Accordingly, the federal defendants' motion for judgment on the pleadings is allowed, and it is ORDERED that judgment be entered for the Secretary and the United States Housing Authority.

2. Motion of the local defendants.

The motion to dismiss filed on behalf of the local defendants specifically asserts that no cause of action has been stated by the plaintiff. To put it another way, the local defendants allege that the complaint fails to state a claim upon which relief can be

wanted. A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Jenkins v. McKeithen, 395 U.S. 411 (1969); Sanley v. Gibson, 355 U.S. 41 (1957). Here the plaintiffs allege that the local defendants have failed to maintain local housing projects in a decent, safe, and sanitary condition even though it is their duty to do so. The local defendants are charged with the responsibility of administering the local housing projects. One would think that part of that job would be to keep the housing projects in good condition. This Court is aware that in order to perform this duty funds are required. However, the lack of funds, or rather the extent of it, is a question which is best left for trial. After a trial on the merits, it could be determined just what relief is appropriate with due consideration of the funds available to the local defendants to meet their responsibility.

The Motion to dismiss is denied.

Willie G. Davis
UNITED STATES MAGISTRATE

APPROVED:

[Signature]
UNITED STATES DISTRICT JUDGE

DATE:

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