

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs	)	
	)	Nos. 66 C 1459
v.	)	66 C 1460
	)	(Consolidated)
CHICAGO HOUSING AUTHORITY and	)	
JAMES T. LYNN, Successor to	)	
George W. Romney, Secretary of	)	
the Department of Housing and	)	
Urban Development, et al.,	)	
	)	
Defendants	)	

FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFFS'
REPORT TO THE COURT PURSUANT TO ORDER OF MAY 6, 1974

The plaintiffs, in their "Report to the Court" dated July 10, 1974, do not contend that HUD has failed to comply with this Court's final judgment order of September 11, 1973. This purposeful omission exists because the facts, even as "succinctly and non-perjoratively /sic/" stated by the plaintiffs, do not support such a contention. On the contrary, the facts make it very clear that the Department has been and is continuing to furnish its best efforts to the Chicago Housing Authority for the development of low-rent housing in Chicago, and that the Department is in full compliance with both the letter and spirit of this Court's orders.

As the federal defendants have continuously advised the plaintiffs, HUD does not have the legal authority to initiate or develop plans for the implementation of the federally assisted low rent housing programs. The federal program role as the Housing Act of 1937, as amended, 42 U.S.C. §§1401, 1409, makes clear, is essentially one of responding to local initiatives. The federal role is basically a funding one. Where local authori-

ties fail to initiate, i.e., where no programs are submitted, HUD is not in a position to be able to render assistance.

Plaintiffs' footnote, on page two of their memorandum, states:

"The development programs for 63 units were hand-delivered to HUD on the morning the CHA deposition commenced, May 28, 1974. The remaining development programs were delivered shortly thereafter."

The subject 63 units comprise Development Programs 2-90, 2-91, 2-93, and 2-94. Thus, the relevant time factor relating to HUD review, commencing May 29, 1974, is a period of 8 weeks, 2 weeks to review the program, 6 weeks to review construction contracts. Such a time frame for review is certainly not unreasonable, and not even plaintiffs have so contended. The review itself is necessary to prevent the waste of taxpayers' money. Housing Corp. of America v. United States, 468 F.2d 922 (1972). As the plaintiffs will recall, the final September 11, 1973 order against HUD requires the Secretary "to use his best efforts to cooperate with CHA in its efforts to increase the supply of dwelling units in conformity with:

- (a) all federal statutes applicable to the low rent housing program,
- (b) rules and regulations promulgated by HUD for the administration of said program, and
- (c) [all final court orders in this litigation]."

HUD rules and regulations require Departmental review of development programs and construction contracts. Such a review is not only not unreasonable, but is entirely necessary to the proper administration of the low

rent housing program. Plaintiffs not only have not proved but have not even alleged that the subject reviews, or their estimated times for completion, are either unnecessary or unreasonable. Reviews which are required by Departmental rules and regulations should hardly be construed by plaintiffs as evidence of a failure to provide "best efforts".

Development Program 2-85, involving 204 units, was not submitted for HUD review until after May 28, 1974. Although CHA submitted sites for approval in March, 1974, HUD has withheld approval pending completion of an environmental review. As part of that review, HUD is awaiting comments on the site from the Northeastern Illinois Planning Commission (NIPC). The NIPC, in its turn, is awaiting comments on the sites from the Department of Development and Planning of the City of Chicago. While HUD could approve sites without NIPC comments, the NIPC is a body politic created by the Illinois General Assembly for the purpose of adopting and developing a comprehensive plan for the future growth of the Northeastern Illinois metropolitan area, 85 S.H.A., §§ 1101 et seq. It is reasonable and prudent, therefore, for HUD to await the recommendations of the Commission.

Development Programs 2-86, 2-87, and 2-92, involving 1233 units, were also submitted to HUD by CHA after May 28, 1974. However, CHA submitted no sites for HUD approval. While HUD might be able to give approval to such development programs, a refusal to permit this unusual procedure, i.e., approval of siteless development programs, can hardly be construed as a failure of best efforts.^{1/} A proposal for development of a housing program,

^{1/} This is particularly true when there is viable alternative available to CHA--application for a preliminary loan. While such an application would require the approval of the Chicago City Council, there appears to be no valid reason why such approval should not be sought. Most local housing authorities utilize preliminary loans in the planning and development of low rent public housing projects. ✓

which does not include the siting, is obviously incomplete. Moreover, the central issue of the litigation is the location of housing. Approval of a development program without knowledge of its siting would not be a "best effort" on the part of HUD to cooperate with CHA in its efforts to increase the supply of low rent dwelling units in a nondiscriminatory way.

The key to progress in the implementation of this Court's order for 1500 units of housing is CHA. As plaintiffs readily admit, HUD is pursuing the normal processing of Development Programs 2-90, 2-91, 2-93, and 2-94, because all required data is available to HUD. Where complete data has not been submitted, HUD cannot responsibly approve those programs.

Plaintiffs correctly state that regulations for the new Section 23 Program were finally published on April 22, 1974. This is a new and complex program of national import. At this time, HUD personnel throughout the Department are undergoing intensive training in the administration of this program. Under these circumstances, a three month time period between the publication of the regulations and the first meeting between HUD and CHA to discuss the Section 23 Program and whether it can be utilized to implement the Court's decree is not unreasonable. Although CHA has recently been advised by the HUD Chicago Area Office that it is not eligible to participate in the first allocation of Section 23 units (due to the fact that CHA presently has unused units available under prior leasing programs), discussions are continuing as to CHA's participation in future Section 23 allocations.

Throughout their Report to the Court, the plaintiffs have utterly failed to show how HUD has in any way violated this Court's order that it "use its best efforts to cooperate with CHA in its best efforts to increase

the supply of low rent public housing" on a nondiscriminatory basis. Plaintiffs have also failed to show that any HUD actions connected with the subject development programs have been either unreasonable or irresponsible. Therefore, as it lacks any legal, factual or evidentiary support, plaintiffs' motion should be denied.

Federal defendants would like to call the Court's attention to the fact that when plaintiffs first made their Motion for a Hearing, on February 14, 1974, there was an inference to the Court that HUD was not complying with the "best efforts" order. Further, in subsequent statements to the Court, particularly on April 2, 1974, plaintiffs' counsel stated that he thought such a hearing would disclose that a more stringent final order against the Department was necessary, more specific than the general "best efforts" order, which had been suggested by the Court of Appeals in its 1971 opinion and entered by this Court on September 11, 1973.

On May 6, 1974, when this Court granted plaintiffs 45 days in which to conduct discovery relative to the issues plaintiffs had raised in their motions, it was assumed that plaintiffs would use discovery to determine whether HUD was, in fact, complying with the "best efforts" order. It was further assumed that if plaintiffs were dissatisfied with HUD's "best efforts", they would so inform the Court in their brief and make therein specific suggestions to the Court. Plaintiffs' attorney took the depositions he sought and now in his brief he sets forth a recitation of the relevant facts which utterly fails to show any lack of "best efforts" on the part of HUD. Despite any evidentiary basis, he unilaterally asserts dissatisfaction with the status of HUD's "best efforts"; but rather than informing the Court as to any specific steps it should take, he then

blithely attempts to transfer to HUD the burden of making specific recommendations as to appropriate actions to be taken. There has thus been a full cycle beginning with Mr. Polikoff suggesting to the Court that upon conclusion of discovery, he will recommend remedial steps to his present suggestion to the Court that HUD assume that task. HUD has no recommendations, as it is in full compliance with this Court's order of September 11, 1973, and for that reason there is no basis whatever for modification and/or amendment of that final order.

The Federal defendants do not believe it is necessary to reiterate the arguments which the government has previously set forth in its Brief in Opposition to Plaintiffs' Motion for a Hearing and which were further set forth in letters to the plaintiffs' attorney concerning the current status of HUD's "best efforts", copies of which were furnished to the Court. However, the federal defendants would like to incorporate by reference all of those arguments herein as further basis for denial of plaintiffs' present motion.

Respectfully submitted,

JAMES R. THOMPSON
United States Attorney

AFFIDAVIT OF MAILING

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

being first duly sworn on oath, deposes
and says that he is employed in the Office of the United States
Attorney for the Northern District of Illinois; that on the 31st day
of July, 1974, he placed a copy of

FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFFS'
REPORT TO THE COURT PURSUANT TO ORDER OF MAY 6, 1974

in a Government franked envelope addressed to each of the following
named individuals, and deposited each envelope in the United States
mail chute, located in the United States Courthouse, Chicago, Illinois,
on said date at the hour of about 3:30 P.M.

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SUBSCRIBED AND SWORN TO before me
this 31st day of July, 1974

NOTARY PUBLIC