

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	NO. 66 C 1459
CHICAGO HOUSING AUTHORITY,	)	66 C 1460
JAMES T. LYNN, Successor to	)	
George W. Romney, Secretary	)	
of Department of Housing and	)	
Urban Development, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' REPLY TO OBJECTIONS OF
CHA AND HUD TO PLAINTIFFS' PROPOSED
ORDER

This reply is filed pursuant to an agreement of counsel communicated to the Court's law clerk on September 25, 1974. Under the agreement plaintiffs are to file this reply on or before September 30, 1974, and HUD and CHA will file any additional materials they may wish on or before October 7. The matter will then be ripe for action by the Court.

Catch-22

Regretfully we have concluded from the latest documents filed by CHA and HUD that those agencies are now playing

bureaucratic games with the Court. Thus, CHA says sites for the remainder of the 1500 dwelling units will not be chosen until funding is available (CHA memorandum of September 23, pp. 2-3), while HUD says no funding will be available until sites are chosen. (HUD memorandum of July 30, 1974, p. 4.) That, of course, produces a perfect impasse - a "catch-22" situation - in which the plaintiffs are the losers. While each agency firmly maintains its own position, no housing gets built. And responsible government agencies have been content to let the matter rest in that absurd posture literally for years, that is, since April, 1972, when CHA was ordered to "immediately...begin all steps and procedures... to acquire such sites and provide dwelling units thereon." (CHA can bring itself to describe the impasse as "not see[ing] eye to eye [with HUD] as to exact procedures." CHA memorandum, p. 3.)

The point is not who is right and who wrong. The point is that for almost two and one half years both agencies have been content to let the stalemate continue. They have neither resolved their dispute themselves nor asked the Court to do

so. Even now it is not resolved. Unless something is done it could go on two and one half more years, or forever.*

Obfuscation

In the depositions taken in May and June plaintiffs tried to explore what CHA and HUD were doing to utilize the new Section 23 program to implement the Court's decrees.

*/ HUD says that it has been under a judgment order only since September, 1973, and should not be "charged" with time before that date. (HUD response of September 23, pp. 8-10.) In fact, HUD promised its full cooperation to this Court on July 1, 1969 (HUD memorandum filed with the Court on that date); in any event, the more than one year that has elapsed since September 11, 1973 is ample time for the Court to judge the efficacy of orders entered against HUD. The Court of Appeals statement that "it was no abuse of discretion for the District Judge to impose deadlines for submission one year after the entry of the original 'best efforts' order," 436 F.2d 306, 313, is now precisely applicable to HUD.

HUD also argues that its misconduct was "simply a mistake, an error in judgment" (p. 9), and that it should not be bracketed with CHA in formulating remedial steps. HUD seems to have forgotten that the Court of Appeals held specifically that HUD's actions "constituted racially discriminatory conduct in their own right." 448 F.2d 731, 739 (1971). CHA, too, could argue in the same sense that its wrongful conduct was simply a "mistake" or "error in judgment"; we have never contended that CHA was subjectively racist, and this Court said in its original 1969 opinion that CHA's purpose was the laudable one of getting needed housing built under difficult political circumstances. That is the objective now as it has been for years - to get housing supplied to the plaintiff class. HUD has as much responsibility as CHA to see that that result is achieved, perhaps more under the 1974 Housing Act to be discussed infra. The Court has the responsibility to see to it that the agencies, HUD as well as CHA, discharge that responsibility. Now, more than a year after the entry of the most recent best efforts order, it is obvious that something more is needed. We have previously cited authorities to the Court showing that the Court always retains jurisdiction to modify its continuing injunctive orders.

The answer was that the program was new and therefore no final response could be given but both agencies were working on the matter and had a meeting scheduled to talk about it. Then, after the depositions were over, we were told (in HUD's memorandum of July 30) that CHA had been declared ineligible for the first allocation of Section 23 units. Now HUD discloses (response of September 23, p. 3) that it was apparently because of a ruling made on May 8, well before the depositions were taken, that CHA was declared ineligible. No mention of the May 8 ruling was made in the depositions, the last session of which was not until June 20, 1974. Neither the Court nor counsel for plaintiffs have even yet had that ruling explained or been told why CHA could not have been excepted from its terms in view of the need to supply remedial housing to implement the Court's orders. (Indeed, there is no evidence that an exception for CHA was even considered.)

Now that it has been proposed that CHA be included in the first allocation of Section 23 units HUD implies that the issue is moot because Section 23 processing, it says, has ceased: HUD's most recent response advises that under the Housing and Community Development Act of 1974, signed into law on August 22, 1974, the Section 23 program "will be replaced by January 1, 1975 with a Section 8 Program." (p. 2.) HUD then says, "HUD is no longer processing appli-

cations for revised Section 23 new construction units." (p. 4.)

Plaintiffs are informed and believe that HUD's statement is not correct. The September 1974 bulletin of the Section 23 Leased Housing Association states:

"Despite questions raised in some area offices as a result of the HUD memorandum on the leased housing provisions of the new Housing and Community Development Act ... HUD has made clear that Section 23 processing for new and rehabilitated units is continuing under the present Section 23 Program HUD will shortly issue a clarifying memorandum indicating that processing will continue." (Section 23 Leased Housing Association Bulletin, September, 1974, pp. 1-2, emphasis added.)

On September 17, HUD in fact issued such a clarifying memorandum. It states that, "Applications for new construction or substantially rehabilitated [Section 23] housing may continue to be processed...except as follows..." (HUD Notice HPMC-FHA 74-31, dated September 17, 1974, p. 1.) The exceptions referred to do not preclude processing in any instance, but spell out the situations under which the provisions of the new Section 8 program and regulations under it would be made applicable to pending Section 23 applications.

To sum up: (1) HUD told CHA it was not eligible for Section 23 allocations based on a May 8 ruling it did not mention in depositions that continued until June 20; (2) HUD first disclosed its action after the depositions were over (having said in the depositions only that it was

discussing the Section 23 program with CHA) and has declined so far to explain its action or why CHA could not have been excepted from it; and (3) HUD now asserts that the question of CHA's eligibility for the first Section 23 allocation is moot because processing of Section 23 applications is no longer going forward, but that is apparently not the case.

Where Do We Go From Here?

Under all the circumstances, including particularly the disingenuity of the latest HUD and CHA documents, plaintiffs' proposed order filed September 11 is obviously inadequate. A massive new public housing program is scheduled to go into effect on January 1, 1975 (the Housing and Community Development Act of 1974 is Public Law 93-383). The way in which HUD and CHA have played Catch-22 with the 1500 units for which funding is authorized under the former public housing program, and the way they fended off inquiry about, and have so far failed to utilize, the Section 23 Program, give no reason to believe that the new public housing program will be handled any better. Plaintiffs have now lost all confidence in, and suggest that it is simply no longer rational for the Court to rely on, the recommendations of HUD and CHA. Plaintiffs' proposed order of September 11 was in error in suggesting that the Court do so. Something

new is now plainly needed to assure that the housing program under the new law scheduled to go into effect on January 1 will be utilized promptly and effectively to implement the Court's outstanding judgment orders.*

But if the Court can no longer rely on HUD and CHA to develop and implement an effective plan, where is it to turn? Plaintiffs are not equipped to do the job. Moreover, their suggestions merely engender hostility and further argument; they produce no housing.

There is only one answer that suggests itself to us: the Court must appoint an independent Commissioner as an officer of the Court to make the needed specific recommendations and, after an appropriate order is entered, monitor

*/ This is especially so because under the new law HUD is given a much more direct role than it has had previously in the development of housing. For example, the new law provides that HUD may itself select developers for subsidized housing and need not go through the local public housing authority. The new law also provides, "In areas where no public housing agency has been organized or where the Secretary determines that a public housing agency is unable to implement the provisions of this section, the Secretary is authorized to enter into such contracts and to perform the other functions assigned to a public housing agency by this section." (Section 8(b)(1) of Public Law 93-383, emphasis supplied.) Thus, HUD can no longer assert, as it has done throughout this litigation, that its posture is merely passive and that it has no role but to respond to local initiative. Moreover, HUD and CHA have never reacted positively to suggestions that they make further recommendations to implement the Court's decrees. They have always said that they have nothing more to recommend than what they are already doing. (E.g., "HUD has no recommendations..." HUD response of September 23, p. 4.)

its implementation. There is recent precedent in this Circuit for such action. In U.S. v. Board of School Commissioners of Indianapolis, _____ F.2d _____ (7th Cir. August 21, 1974), a school desegregation case, the Court of Appeals approved the appointment by the District Court of two independent Commissioners to formulate a school desegregation plan and the assignment to the Commissioners of the planning staff of the Indianapolis school system. The Court said:

"Faced with a totally unacceptable plan a few days before the beginning of the 1973-1974 school term, the court turned to two independent commissioners to perform a herculean task within a miniscule period of time. The court said 'in sorrow and with regret' that 'never, since this thing started...has any [IPS] board gone very far to do anything, really, unless they were pushed and ordered' and then 'when they are ordered, they usually... come up with an alternative idea that doesn't go quite as far as the order, or you want a stay or something - anything to put it off.'

"In appointing the two commissioners to formulate a plan, the district court followed the procedure approved in Swann v. Charlotte-Mecklenburg Board of Education [402 U.S. 1, 16, 25]...

"We conclude that the district court acted properly in rejecting the IPS plan, in holding the IPS board in default, in appointing the commission and in temporarily assigning the planning staff of IPS to the commission." (Slip opinion, 12-13.)

We think the same course should be followed here. The best efforts of HUD and CHA have produced virtually no progress on the conventional program and literally a blocking of any progress on the Section 23 Program. Against the background of that sorry record both agencies object to plaintiffs' proposed order which calls upon them to come forward with a plan for speeding up the 1500 units and for fully utilizing the Section 23 Program because, they say, they have nothing further to recommend than what they are currently doing. Obviously there is no point in asking for a plan from agencies which say they have no plan, and obviously too what is currently being done is inadequate.

Accordingly, plaintiffs believe that an independent Commissioner must be appointed as an officer of the Court and that appropriate staff resources of HUD and CHA must be temporarily assigned to him, as was done in the Indianapolis case. The Commissioner should be ordered to formulate and submit to the Court a specific plan for speeding up the provision of the 1500 conventional units and for utilizing fully the Section 23 Program and the new public housing program created by the Housing and Community Development Act of 1974 to implement the Court's judgment orders. Enclosed with this reply, therefore, is a proposed form of order which basically employs the provisions and language

of the order approved by the Seventh Circuit in Indianapolis. Plaintiffs now ask the Court to enter this order instead of the order proposed on September 11. Plaintiffs also request the opportunity to make recommendations to the Court respecting the Commissioner to be appointed. Accordingly, we are serving notice on CHA and HUD that we will appear before the Court on October 8, 1974, the day after any responsive material of CHA and HUD is to be filed pursuant to the agreement of counsel, and move for the entry of the enclosed order and for leave to make recommendations concerning the identity of the Commissioner.*

Respectfully submitted,


Alexander Polikoff
One of the Attorneys for Plaintiffs

Dated: September 30, 1974

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*/ HUD "dissents" from the statement of the Court of Appeals in the metropolitan remedy phase of this case that the "intra-city portion of the plan may proceed without any further delay," and urges the Court to await the outcome of the metropolitan appeal before doing anything further. (HUD response of September 23, p. 10.) That counsel should of course be rejected, and gives further evidence of the recalcitrance of HUD. Whether plaintiffs win or lose on the metropolitan phase of the case (for the Court's information we are delivering to the Court's law clerk copies of the papers filed with the Court of Appeals on HUD's petition for rehearing, consisting of HUD's petition and the plaintiffs' answer), there is absolutely no reason for further delay in trying to implement a remedy within the city. It is a measure of how seriously HUD takes its remedial obligations in this case that it does not even deign to offer a reason why there should be any such further delay in doing so.

September 30, 1974
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CERTIFICATE OF SERVICE

Alexander Polikoff, one of the attorneys for plaintiffs, hereby certifies that he served a copy of the foregoing Notice, Reply to Objections of CHA and HUD to Plaintiffs' Proposed Order and the Proposed Order referred to therein upon the parties named in the Notice at the addresses there shown, by delivering a copy to Messrs. O'Brien and Schaefer, this 30th day of September, 1974.



Alexander Polikoff

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	No. 66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY,	)	(Consolidated)
JAMES T. LYNN, Successor to	)	
George W. Romney, Secretary	)	
of Department of Housing and	)	
Urban Development, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter coming on to be heard pursuant to the continuing jurisdiction of the Court respecting its judgment orders entered in this consolidated cause on July 1, 1969 (as subsequently modified) and September 11, 1973, respectively, and pursuant to plaintiffs' motion dated February 11, 1974, and proceedings had pursuant thereto, including this Court's order of May 6, 1974, plaintiffs' motion of July 10, 1974, the request contained in the last paragraph of plaintiffs' reply filed August 9, 1974, this Court's order of September 10, 1974, and documents filed pursuant thereto, and plaintiffs' motion of October 8, 1974; and the Court having consi-

dered the oral and written presentations of the parties;
and it appearing to the Court that further orders are
necessary to enforce such judgment orders and to insure that
the purposes thereof are achieved;

IT IS HEREBY ORDERED:

1. Within 7 days of the date hereof, the defendant Secretary of the Department of Housing and Urban Development (HUD) shall allow the defendant Chicago Housing Authority (CHA) to participate in the so-called first allocation of Section 23 units referred to in HUD's response of July 31, 1974, without limitation or restriction by reason of the recent advice of the Chicago Area Office of HUD that CHA was not eligible to participate therein, and shall file with the Court a report on the action taken pursuant to this paragraph;

2. Within 14 days of the date hereof, CHA shall take or commence all steps necessary to utilize such allocation fully for purposes of implementing this Court's previous orders, and shall file with the Court a report on the action taken pursuant to this paragraph;

3. Within 28 days of the date hereof, CHA shall submit to HUD for approval or disapproval all additional sites necessary to provide the 1500 dwelling units referred to in this Court's order of July 20, 1970 and subsequent orders, and shall file with the Court a report on the action taken pursuant to this paragraph;

4. In accordance with the holdings of the Supreme Court in Swann v. Charlotte-Mecklenburg Board of Education 402 U.S. 1

(1971), and of the Court of Appeals for the Seventh Circuit in U.S. v. Board of School Commissioners of the City of Indianapolis, ___ F.2d ___ (August 21, 1974), a Commissioner should be appointed, as an officer of the Court, to draw up a plan for the implementation of the judgment orders of the Court entered July 1, 1969 and September 11, 1973, respectively, as previously modified, and the Court now names and appoints _____ as Commissioner for such purpose.

5. The defendants are directed to cooperate fully with the Commissioner.

a. Such cooperation will include, but not be limited to, providing space at their respective Chicago offices in which he may work; paying all of his fees and expenses as allowed by the Court; providing secretarial and stenographic assistance and the help of business machines, draftsmen and computers if requested, along with telephone and other communication services.

b. The Commissioner shall have full access to maps, drawings, reports, statistics, computer studies, and all information about all phases of the public housing system in Chicago which may be necessary to prepare such plan. He shall be supplied with any studies, plans and partial plans for desegregation of the public housing system which the defendants

individually or collectively may have.

c. The defendants will provide the Commissioner with full professional, technical, and other assistance which he may need in familiarizing himself with the public housing system and the various problems to be solved in implementing the judgment orders of the Court hereinabove referred to, and otherwise complying with the orders of the Court and the responsibilities assigned to the Commissioner. The full cooperation of the staffs of the defendants is hereby requested and will be appreciated by the Court.

6. At such time as the Commissioner shall have completed his draft of a proposed plan for implementing the Court's orders, the same shall be furnished to the parties. The Commissioner shall forthwith meet in executive session with the Secretary of HUD or his designees, the Board of CHA or its designees, and counsel for plaintiffs or their designees, review the same and discuss any suggested revisions. The final plan, as determined by the Commissioner, shall then be submitted to the Court for its review. Until such Commissioner's plan is put in final form after review as provided above, the same shall be deemed a mere draft or work paper. All such drafts and work papers of the Commissioner shall be deemed confidential and such papers, and the contents thereof, shall not be disclosed to others, except that the Commissioner may employ, as approved by

the Court, and consult with such other persons as he deems necessary for the performance of his duties hereunder.

The Court retains jurisdiction over this matter for the entry pursuant to notice of such further orders as may be appropriate to effectuate the provisions of this order or otherwise.

E N T E R:

Judge

October 8, 1974