

(1)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CHICAGO HOUSING AUTHORITY,)
)
 Petitioner,)
)
 vs.)
)
THE HONORABLE RICHARD B.)
AUSTIN, JUDGE, UNITED STATES)
DISTRICT COURT FOR THE NORTHERN)
DISTRICT OF ILLINOIS)

PETITION FOR WRIT OF MANDAMUS

To the Honorable Judge of the United States Court of
Appeals for the Seventh Circuit:

Chicago Housing Authority, the above-named petitioner
respectfully petitions this Court:

(a) To issue a rule upon respondent, Honorable Richard
B. Austin, Judge, United States District Court for the Northern
District of Illinois, to show cause why a writ of mandamus
should not issue in this case;

(b) To issue a writ of mandamus compelling respondent
to vacate his order dated November 7, 1974 (App.p.6-A) which
referred the case of Gautreaux v. Chicago Housing Authority,
et al., No. 66 C 1459 and 66 C 1460 consolidated, to a United
States Magistrate to serve as a Master, which referral directed
the Master:

***to study and review the existing patterns of racial segregation in Chicago public housing to determine and identify the precise causes of the five year delay in implementing my judgment orders, and to recommend a plan of action that will expedite the realization of my various orders and judgments."

The Master, Respondent directed, "shall not be limited to determining whether HUD and CHA have employed their 'best efforts' but shall examine all possibilities to expedite the mandate of this Court***" (App. p.6-D). The Master, "with the Court's approval, may employ and consult with, such persons as he deems necessary for the performance of his prescribed duties including particularly persons not affiliated with any of the parties, who possess specialized knowledge concerning federally-subsidized housing programs."

(c) To issue an order staying respondent's order of November 7, 1974, pending disposition of this petition for writ of mandamus; */

(d) To issue an order granting petitioners leave to file a brief in support of this petition within 15 days thereafter, and establishing a schedule for the filing of an answering brief in opposition to this petition and a reply brief in support of it.

*/ Magistrate Jurco has been designated as the Master and has set the matter for a "status report" on November 19, 1974.

STATEMENT OF FACTS

This is the sixth time that some aspect of this litigation has been before this Court. That fact, however, must be put in perspective by noting that the CHA did not appeal the District Court's rulings on the motions for summary judgment (296 F.Supp. 907, 1969) nor from the Judgment Order against it (304 F.Supp. 736, 1969).

This petition for a writ of mandamus concerns the following portion of the 1969 Judgment Order:

"A. CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development."

In the spring of 1971 there were evidentiary hearings before the District Court. These hearings were over the objection of defendant CHA which protested that CHA did not know what issue or issues were being considered (App. p.1-B). The Trial Judge replied that the issue was:

"***what haven't you done lately" (App. p.1-B). Those 1971 proceedings terminated on April 16, 1971, with an order, suggested by CHA, pursuant to which CHA was directed to

file quarterly reports of its progress pursuant to the basic Judgment Order of July, 1969 as amended. The order read as follows:

"A hearing was held in chambers and is continued until further motion by either of the parties. The Chicago Housing Authority has agreed to make quarterly reports, commencing June 30, 1971 concerning its progress in complying with the court's order, and it is so ordered".

CHA filed its first quarterly report on June 30, 1971 and it has been filing such reports ever since.

On February 11, 1974 plaintiffs' attorneys filed a motion seeking a hearing in open court in which officials of CHA and HUD would be examined as to what they were doing to carry out the judgment orders. Defendants objected for, among other reasons, that discovery, whether pre-trial or post-trial, had no place in a courtroom. The District Judge agreed and entered an order on May 6, 1974 setting a schedule for discovery of CHA and HUD by plaintiffs' attorneys (A.p.4). Plaintiffs' attorneys then examined CHA and HUD officials about their activities pursuant to the Judgment Order.

On September 11, 1974, plaintiffs filed a motion seeking an order on defendants which, among other things, would direct them to file recommendations with the District Court as to how

the process of providing dwelling units pursuant to the Judgment Orders could be speeded up. CHA opposed this motion for, among other reasons, the reason that "with the wealth of information available to plaintiffs it is high time that if they have anything realistic, practical and specific in mind, that it would be appropriate for plaintiffs to spell out such specifics", and CHA reiterated its position that it "is moving as best as it knows how to do".^{*/}

Plaintiffs then abandoned their motion of September 11 and, on September 30, 1974, relying upon the decision of this Court on August 21, 1974 in U.S. v. Board of School Commissioners of Indianapolis, __F.2d__, filed a motion seeking the appointment of a Commissioner. Plaintiffs stated that they had no reason not to believe that defendants were not acting in good faith but that they had lost all confidence in the ability of either defendant to progress at the rate desired by plaintiffs' attorneys.

A hearing was held before the District Court on October 8, 1974 on which occasion plaintiffs' attorneys again stated (Tr.p.27) they had no reason to doubt the good faith of either

^{*/} Memorandum of CHA in Opposition to the Order Proposed by Plaintiffs on September 11, 1974, pp. 2,3.

CHA or HUD but again urged the appointment of a Commissioner. The appointment of such was resisted by the attorneys for both CHA and HUD for, among other reasons, that the condition precedent for the appointment of a Commissioner - the violation of an order of the District Court to prepare "plans" - did not exist.

On November 1, 1974 the parties appeared before the District Court who handed them a draft "Memorandum Opinion and Reference Order" (App. p.5-A). He asked the parties to appear before him on November 6, 1974, to give the Court the benefit of their reactions to the draft. In this draft opinion the District Court stated, among other things:

"Since there is no evidence of record that defendants Chicago Housing Authority (CHA) and United States Department of Housing and Urban Development (HUD) have directly contravened my prior judgments and since plaintiffs' request is over broad, the motion [for the appointment of a Commissioner] must be denied" (App.p.5-A).

A little later in the draft, the District Court stated:

"For reasons that are manifestly unclear to me, my orders in this case have been avoided and frustrated for over five years" (App.p.5-C).

The draft opinion also contained the following statement:

"For the past five years and four months, no public housing construction has been undertaken by any party" (App. 5-B).

The District Court's draft opinion stated that the appointment of a Master was appropriate to bring "this dispute to a prompt and just conclusion" and to "pin point the responsibility for this apparent lack of diligence and the different methods for achieving compliance with [the court's] orders" (App. p.5-C).

At the hearing on the draft Memorandum and Order of Reference CHA expressed the following fundamental objections to the District Court's reference proposal:

- a. It seemed to be based upon a failure to read the quarterly reports which CHA had been filing since 1971 about its progress e.g. CHA's September 30, 1974 report stated "actual construction has been started" under four separate construction contracts for 63 units, yet the draft stated "no public housing construction has been undertaken".^{*/}
- b. The draft order constituted an abdication of the district court's decision making responsibility, citing TPO, Incorporation v. McMillen, 460 F.2d 348 (1974) and LaBuy v. Howes Leather Co., 352 U.S. 249, 77 S.Ct. 309, L.Ed. 2d 290 (1957).
- c. There was no showing of an exceptional condition as is required by Rule 53(b) F.R.Civ.P. before a matter may be referred to a Master.
- d. It is not for a court to engage in a prospecting quest for other evidence to add to a record, nor to appoint a Master to make such a discovery pursuit for him, citing Arthur Murray, Inc. v. Oliver, 364 F.2d 28 (8th Cir. 1966).

^{*/} The long series of events that lead to the commencement of construction were set forth in earlier reports.

CHA offered as its exhibits two volumes containing its 14 quarterly reports, filed pursuant to the order of April 16, 1971 and they were received into evidence (CHA Ex's 1 and 2). Also accepted into evidence was an interim report from CHA dated November 6, 1974 which contained photographs showing that housing in fact was under construction (CHA Ex.3, Nov. 6, Tr.p.73).

The interim report also related that hundreds of proposed units had been submitted to HUD and that CHA was awaiting HUD's approval.

Over petitioner's objections, respondent issued its referral order of November 7, 1974.

The hearing of November 6, 1974 resulted in some changes in the draft Memorandum Opinion:

1. Originally the District Court stated there was no evidence that CHA and HUD "have directly contravened my prior judgments". This was changed to read: "It has not been established that***CHA and***HUD have directly contravened my prior judgments" (App. p.6-A).

2. The draft Memorandum Opinion stated: "For the past five years and four months, no public housing has been undertaken by any party". This was changed to state: "For the past five

years and four months, no public housing construction has been completed by any party" (App. p. 6-B).

3. Where the draft Opinion stated that the District Court's orders "have been avoided and frustrated for over five years", the version signed stated: "***the effect and import of my orders have been avoided and frustrated for over five years" (App. p.6-C).

4. The draft Opinion denied the motion of plaintiffs for the appointment of a Commissioner. That signed by the District Court granted plaintiffs' motion as "modified herein" (App.p.6-E).

ISSUES PRESENTED

Whether mandamus should issue because the District Court exceeded its power and authority, and abused its discretion, by holding:

1. That it is appropriate to have a Master determine whether CHA and HUD have been using their "best efforts" to comply with the Judgment Orders and to recommend a plan to "expedite the realization" of those Orders (App. p.6-D).

2. That the District Court's dubiousness about CHA's "best efforts" and its impatience with the rate of construction of low-income family public housing by CHA constitutes an

"exceptional circumstance" meeting the requirements of Rule 53(b), F.R.C.P., prohibits a reference to a Master unless there has been a "showing that some exceptional condition requires it".

3. That the District Court, on its own initiative in an adversary proceeding, may appoint a Master to engage in a prospecting quest for evidence on the issues of compliance with court orders and whether they should be amended.

STATEMENT OF REASONS WHY
THE WRIT SHOULD ISSUE

1. Petitioner will be prejudiced irreparably if it is not afforded immediate review through mandamus of respondent's extraordinary abdication of his judicial decision making duty. Respondent's referral raises questions of law which are of vital concern to the bar as well as to petitioner.

As an Article III judge, it is respondent's duty, not a Master's, to decide "all cases, in Law and Equity" which come before him. Thus, respondent may not abdicate his judicial responsibility to decide whether HUD and CHA have or have not used their "best efforts" to comply with respondent's orders. LaBuy v. Howes Leather Co., 352 U.S. 249, 256 (1957); TPO Incorporated v. McMillen, 460 F.2d 348, 359 (7th Cir. 1972). However,

respondent, by his referral order of November 7, 1974, has abdicated his decision making duty. In his referral order, respondent directed the Master to:

Examine existing patterns of racial segregation in Chicago public housing and determine the cause of the delay in implementing his judgment orders;

Determine whether HUD and CHA have employed their "best efforts"; and

Recommend a plan for expediting the "realization" of his orders.

Thus, it is the Master, not respondent, who will hear the evidence and make conclusions of fact and conclusions of law regarding petitioner's "best efforts". As a result petitioner will be deprived of a trial before an Article III judge on these very important issues - in particular whether petitioner has violated the respondent's orders. And it is equally clear that petitioner is entitled to the decision of a judge of the court before whom the suit is brought rather than that of a special master. TPO Incorporated v. McMillen, supra at p. 360. If respondent's referral order is allowed to stand, respondent will be permitted to abdicate his judicial decision making duty

and deprive petitioner of the right to have respondent not a master, conduct the trial of these issues and decide them.

It might be said that the reference amounts only to the launching of an inquiry as to whether a rule to show cause should issue against defendants. But that, of course, is purely a judicial function and one that cannot be delegated.* /

2. The reference in this case is predicated upon Rule 53(b), F.R.Civ.P., the relevant parts of which state:

"A reference to a master shall be the exception and not the rule. ...in actions tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it."

While Rule 53(b) requires a "showing that some exceptional condition requires" the appointment and reference, respondent has totally failed to make such a showing. The only reference to an "exceptional condition" is the asserted slow progress in the construction of low-income housing (App. p.6-B,C). However, that fact alone cannot be considered an "exceptional condition". All respondent has set forth to support to referral is the bare conclusion of an "exceptional circumstance", that there exists

* / Throughout these proceedings CHA has been often charged with stalling, delaying, etc. On each such occasion CHA has invited those making the charge to institute appropriate proceedings for testing the validity of the charge. To date these invitations have not been accepted.

"unusually complex issues" and that the "interests of justice" require it (App. p.6-C).

However, it is clear that even "delay on the part of the defendants,^{*/} the variety, number, and complex nature of the problems, the issues involved, and the 'best interests of justice'" do not "amount to an exceptional circumstance". Wilver, v. Fisher, 387 F.2d 66, 69 (10th Cir. 1967).

Moreover, respondent has presided over these proceedings for over eight years and has heard various motions and held numerous hearings regarding petitioner's "best efforts" and the appropriate remedial relief. Thus, respondent is the most suited individual to hear and weigh the evidence on those matters. The thrusting of a master into the middle of this complex litigation at a point where he would have to be educated regarding eight years of hearings and orders is contrary to the reason for an appointment of a master - efficiency. Respondent's "knowledge of [these] cases at the time of the references, together with his long experience in the [public-housing] field, points to the conclusion that he could dispose of the litigation with greater dispatch than anyone else." LaBuy v. Howes Leather Co., supra, at p. 256.

^{*/} CHA, of course, has consistently denied that it has been guilty of any delays.

Thus, not only has respondent abdicated his judicial responsibility but has also failed to comply with the requirements of Rule 53(b). And, in any event it is clear that a reference in this matter would be counterproductive.

3. At the time of respondent's referral order there was no motion before the court requesting any hearing regarding the causes for the delays and CHA and HUD's "best efforts". Plaintiffs did not charge CHA and HUD with "bad faith", but asked for the appointment of a housing "commissioner". Thus, the referral order was entered on respondent's own initiative. However, it is not the duty of a court, in an adversary proceeding, "to engage in a prospecting quest for other evidence possibility to add to a record, nor counterpartly to appoint a master to make such a discovery pursuit for him." Arthur Murray, Inc. v. Oliver, 364 F.2d 28, 34 (8th Cir. 1960). Yet, this is precisely what respondent has directed the master to do.

Moreover, there have been numerous hearings regarding the causes for the delays in addition to the 14 reports filed pursuant to the order of April 16, 1971. Respondent is well versed in the sources of the problem - the HUD moratorium on construction, the bureaucratic clearance requirements under HUD regulations and the National Environmental Protection Act. In addition, plaintiffs

in May and June, 1974 had extensive discovery and testimony from HUD and CHA officials regarding the delays and the defendant's "best efforts". Plaintiff's counsel, confronted with the bureaucratic maze of the clearance requirements with which petitioner and HUD must comply, at no time could make any suggestion to expedite the procedure, nor did he claim that CHA and HUD were not using their "best efforts".

Thus, respondent has authorized the master to engage in an extensive discovery pursuit - one which is inappropriate as a matter of law and one which will produce nothing towards the construction of low-income public housing. As long as the requirements of HUD clearance regulations and the National Environmental Protection Act must be complied with, construction of the housing will be too slow for many. But as counsel for HUD and CHA explained on November 6, 1974, due to the experience gained during the period of getting underway, the rate of progress is bound to increase in the future.

CONCLUSION

Wherefore, petitioner, Chicago Housing Authority, prays that for all of the foregoing reasons the relief requested herein be granted.

-16-

Respectfully submitted,

Patrick W. O'Brien

OF COUNSEL:

MAYER, BROWN & PLATT

Steven M. Rasher
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231 South LaSalle Street
Chicago, Illinois 60604
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APPENDIX

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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,	)	
et al.,	)	
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable
RICHARD B. AUSTIN, one of the judges of said Court,
in his courtroom in the United States Courthouse,
Chicago, Illinois, on Thursday, March 11, 1971,
at 2:00 p.m.

PRESENT:

MR. ALEXANDER POLIKOFF,
MR. MILTON I. SHADUR,

on behalf of Plaintiffs;

MR. PATRICK O'BRIEN
MISS KATHRYN KULA
MR. WATSON TUCKER

on behalf of Defendants.

THE CLERK: 66 C 1459, Gautreaux v. CHA,
hearing.

THE COURT: Yes, Mr. O'Brien.

MR. O'BRIEN: Your Honor, I would like,
if it please the Court, to again outline my
objections to this proceeding this afternoon,
briefly.

First, we object to this proceeding --

THE COURT: Have you anything new over what
you said yesterday?

MR. O'BRIEN: Your Honor, it is possibly a
little more thoughtful in my effort to not be
charged with having waived any rights that the
CHA has.

May I proceed?

THE COURT: Go ahead.

MR. O'BRIEN: First, your Honor, this is not
a hearing, because there are no issues before the
Court.

Your Honor said the other day that the
issue --

THE COURT: The issue, as I understand it,
is what haven't you done lately. That is the
issue.

MR. O'BRIEN: That is a question, Judge, and not an issue.

No one has charged us with having violated the order, any order of this Court.

THE COURT: The only thing that I am aware of is they are trying to ascertain whether you have complied with it.

MR. O'BRIEN: And, your Honor, that is a question and not an issue that we can contest.

THE COURT: Well, we will have a lesson in semantics, I guess.

MR. O'BRIEN: Furthermore, your Honor, if we were charged with contempt of court, if we were actually charged, which we have not been, with violating any order of this court, we would have all of the rights that an alleged contemtor has. Moreover, if we were presented with a motion to amend any order of this Court, we would have the right to contest that on notice and motion. We would have the right possibly to agree with any such suggested modification.

The question of elemental procedural due process comes up this afternoon as a separate objection, your Honor.

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THE COURT: That is what has come up all the way from my court to the Court of Appeals to the Supreme Court, this procedural due process.

MR. O'BRIEN: And, your Honor, we insist, as we have always insisted, --

THE COURT: And unsuccessfully.

MR. O'BRIEN: Your Honor, we appealed as is our right. We sought stays as is our right.

THE COURT: Which I have conceded; which I have conceded.

MR. O'BRIEN: Thank you, sir.

But there is another matter that should be mentioned, your Honor, before proceeding, which we intend to do, and that is that we are here on this inquiry as defined by your Honor on March 9, but your Honor, on March 1, charged that CHA has not complied with your Honor's order of July of '69.

THE COURT: Had you on July 1st?

MR. O'BRIEN: Yes, sir.

The fact that there is no issue --

THE COURT: I thought you complied on the 5th of July.

MR. O'BRIEN: Yes, sir, and we have never been charged by our adversaries to the contrary.

THE COURT: I mean, you complied with part of the order of the 5th of March.

MR. O'BRIEN: Your Honor, we have complied with every order entered by this court. The fact that there is no issue before the court prejudices CHA as follows; we have been unable to properly prepare because we don't know what, if anything, we are being called upon to prove.

THE COURT: And I indicated to you the other day that if you needed a continuance for the purpose of further preparing, after whatever is disclosed or not disclosed today, you would have ample time to do that.

MR. O'BRIEN: And, your Honor, there has got to be an issue before we can be prepared to meet it.

THE COURT: Maybe the issue will develop as a result of this non-hearing.

MR. O'BRIEN: When our witness or when Mr. Polikoff's witness or the court's witness, I don't know whose witness it is, takes the stand --

THE COURT: I have not subpoenaed him. I am not calling anybody as a court's witness.

MR. O'BRIEN: We will be unable to formulate objections on the ground of relevance because we won't know what is or is not relevant. We have been unable to prepare cross examination because we don't know what -- in what direction, there has been some hints in the press, the direct examination will lead.

THE COURT: I think there are some hints in the motion and in the request of the subpoena duces tecum. I think there is more than a hint.

MR. O'BRIEN: Yes, sir. The plaintiffs have been playing cat and mouse with us, hints but no motions, hints but no specific complaints.

THE COURT: But a minute ago you said you had no hints. Now you acknowledge that there are hints.

MR. O'BRIEN: I will acknowledge there are hints.

THE COURT: I mean, you shift your ground too fast. Mr. O'Brien.

MR. O'BRIEN: I will acknowledge a hint, Judge, but due process entitles --

THE COURT: Don't say there wasn't any when you now acknowledge that there are some.

MR. O'BRIEN: I will withdraw that. There have been hints.

THE COURT: All right.

MR. O'BRIEN: What actually is going on, we suggest here, your Honor, is a very novel form of discovery.

THE COURT: Everything has been very novel in the past two weeks in this town.

MR. O'BRIEN: I suggest it has not been novel, your Honor

I suggest that filing applications for stays is not novel. I suggest that we proceeded by rules of court

THE COURT: That has not happened in the last two weeks. I am talking about what has happened since the 5th of March has been novel.

MR. O'BRIEN: We do not know, your Honor, what rules are applicable here.

Let's assume that the discovery rules are applicable.

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THE COURT: I assume that you will make objections and then you will find what rules are being invoked and ruled upon.

MR. O'BRIEN: But we won't know, perhaps even when this over, your Honor, what rules have been applied here.

THE COURT: I will try and make it perfectly clear as to what rules are being applied.

MR. O'BRIEN: Your Honor is aware of Rule 12(d) of this court, which says there should be no discovery such as this in open court.

THE COURT: You are the only one that calls it discovery

MR. O'BRIEN: I say that if it is discovery, it violates Rule 12(d), and I don't know what else it might be or might not be.

THE COURT: You are the only one that says it is discovery.

MR. O'BRIEN: Then perhaps the Court could advise the CHA and Mr. Humphrey as to what it is.

What is the issue this afternoon?

THE COURT: I would suggest that you read the motion and read the subpoena duces tecum and you

mf
will find out.

I know that you are a very able lawyer, Mr. O'Brien, from a very prestigious firm, and I cannot believe that the purpose of this escapes you, unless it is deliberate.

MR. O'BRIEN: It does escape me, your Honor. I see from what is happening this afternoon --

THE COURT: That makes it deliberate, in my opinion.

MR. O'BRIEN: -- is a violation of the adversary system where one party makes a charge, the other party denies it, you then have an issue which a judge hears and resolves.

What is happening this afternoon, we submit, your Honor, is a reversion to the European inquisitorial system which has no place, we submit, in America.

Before we submit to your Honor's order and the subpoena, I want to make it crystal clear that we waive nothing. We submit to your order of March 9th, as I insisted we have submitted to every order that was not stayed, and we preserve all of our objections and we rely on your Honor's assurances of March 9 that this is merely an inquiry that might or might not involve any other proceedings.

THE COURT: This, I think, perhaps an analogy might be a supplemental proceeding after a judgment.

A judgment order was entered, as it is in other cases, and when the -- there is no evidence that the judgment debtor, in this case the CHA, has fulfilled the terms of the judgment, we have a supplemental proceeding calling the judgment debtor in to find out what his intentions are and what his assets are in regard to paying the judgment.

This, I think, is a proper analogy as to what we are about to have in this courtroom.

Do you have a witness that you would like to call, Mr. Polikoff?

MR. POLIKOFF: Yes, sir.

THE COURT: You have made your record, Mr. O'Brien. It is crystal clear, perfectly clear, any kind of clear that you want.

DOCKETED
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of presiding Judge, Honorable Richard B. Austin

Cause No. 66 C 1459

Date April 16, 1971

Title of Cause Dorothy Gautreaux, et al. vs. The Chicago
Housing Authority, et al.

Brief Statement
of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and
Addresses of
moving counsel

Representing

Names and
Addresses of
other counsel
entitled to
notice and names
of parties they
represent.

Reserve space below for notations by minute clerk

a
A hearing was held in chambers and is continued
until further motion by either of the parties.

Custodian
The Chicago Housing Authority has agreed to
make quarterly reports, commencing June 30, 1971
concerning its progress in complying with the
court's order, and it is so ordered. *a*

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

DOCKETED
APR 20 1971

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	)	(Consolidated)
George W. Romney, Secretary	)	
of Department of Housing and	)	
Urban Development, et al.,	)	
	)	
Defendants.	)	

MOTION

NOW COME PLAINTIFFS, by their attorneys, and move the Court to enter an order, in the form attached hereto, requiring defendants CHA (through its Chairman, Charles Swibel) and HUD (through its Chicago Area Office Director, John Waner) to report to the Court what each is doing, separately and cooperatively, to carry out this Court's continuing injunction orders of July 1, 1969, against CHA, and September 11, 1973, against HUD, respectively. Such orders require that CHA should use its best efforts to increase the supply of dwelling units as rapidly as possible (and take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development), and that HUD should use its best efforts to cooperate with CHA in that endeavor.

In support of this motion plaintiffs state:

1. Federal subsidy funds have been and are available for approximately 267 dwelling units, represented by CHA's Development Program 2-85, but none of such units have been provided in the more than 2-1/2 years since the City Council (in June 1971) approved sites for such program. Currently, as evidenced by reports previously filed with this Court by CHA, HUD is blaming CHA because its costs of construction are said to be unrealistically high and CHA is blaming HUD because its so-called "prototype costs" are said to be unrealistically low. So far as plaintiffs have been able to determine, CHA and HUD have not sat down together to determine the relative validity of their respective contentions so that the impasse can be resolved and these approximately 267 units of housing provided. Plaintiffs' letter of January 16, 1974, inquiring about the resolution of this dispute, a copy of which has previously been sent to the Court (another copy is attached hereto for convenience), has to date gone unanswered.
2. Federal subsidy funds for dwelling units in addition to the 267 units in Development Program 2-85 have been unavailable because of the so-called "moratorium" imposed by President Nixon as of January 5, 1973. (The moratorium has apparently prevented further progress on two CHA development programs for the balance of 1500 dwelling units in a CHA "reservation" for that total number, and on a CHA application for an additional reservation of 3500 dwelling units, all as referred to in this Court's order of September 29, 1972, a copy of which is attached hereto.) However, the moratorium has been or is about to be lifted. Both President Nixon and James T. Lynn, Secretary of HUD, have indicated in public statements that federal subsidy funds have been or are about to be released for new public housing in the form of a so-called "New Construction" program under Section 23 of the U.S. Housing Act of 1937. Regulations to govern this new public housing program were published for comment in the Federal Register of January 22, 1974. (39 Fed. Reg. 2534.) Since a subsidy vehicle for the additional dwelling units the

Court has ordered CHA and HUD to provide is now or shortly will be available, the Court should now be advised - particularly in light of the long delay in carrying out Development Program 2-85 - of the plans the defendants are currently making to utilize the new public housing program as promptly and effectively as possible to implement the Court's orders.

WHEREFORE, plaintiffs request that an order be entered in the form attached hereto.

Respectfully submitted,



Alexander Polikoff
One of the Attorneys for Plaintiffs

February 11, 1974

Alexander Polikoff
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Richard B. Austin

Cause No. 66 C 1459, 1460 (Consolidated)

Date May 6, 1974

Title of Cause Gautreaux v. Chicago Housing Authority and James Lynn

Brief Statement of Motion Plaintiffs' Motion for a Hearing

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and
Addresses of
moving counsel

Representing

Names and
Addresses of
other counsel
entitled to
notice and names
of parties they
represent.

For reasons of judicial economy and expediency and to avoid unnecessary delays, Plaintiffs' motion for a hearing is denied.

Austin J.
Plaintiffs are granted 45 days in which to conduct discovery relative to the issues raised in the motion for a hearing. Plaintiffs are granted 20 days thereafter to file motions or other papers. Defendants are granted 20 days thereafter to answer. Plaintiffs are granted an additional 10 days to reply to Defendants' answer.

This matter is taken off the status report for May 10, 1974 and set for ruling and/or status report on the September Passed Case Calendar.

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

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

vs.

CHICAGO HOUSING AUTHORITY, JAMES T.
LYNN, Successor to George W. Romney,
Secretary of Department of Housing
and Urban Development, et al.,

Defendants.

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)
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) NO. 66 C 1459
) 66 C 1460
) (Consolidated)
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MEMORANDUM OPINION and REFERENCE ORDER

These consolidated cases come before me now on Plaintiffs' motion to appoint a Commissioner to formulate plans for the expeditious construction of new public housing units in the City of Chicago. Since there is no evidence of record that Defendants Chicago Housing Authority (CHA) and United States Department of Housing and Urban Development (HUD) have directly contravened my prior judgments and since Plaintiffs' request is overbroad, the motion must be denied. However, in light of the exceptional circumstances presented here and in the interests of justice, I conclude that this matter must be referred to a Master for immediate attention and proposals.

The history of these lawsuits is long and varied. For an extensive background discussion of this controversy, see Gautreaux v. Romney, 457 F.2d 124, 129 et seq. (7th Cir. 1971) (Sprecher, J., dissenting). After carefully examining the legal contentions and factual proofs of the parties, I

entered a Memorandum Opinion on February 10, 1969, holding that Defendant CHA intentionally and unconstitutionally discriminated, on the basis of race, in its public housing site selection and tenant assignment procedures in Chicago. Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907 (N.D. Ill. 1969). On September 10, 1971, a similar finding was made against Defendant HUD by the United States Court of Appeals for the Seventh Circuit. Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971). Each Defendant was ordered to use its "best efforts" to reverse the effects of its prior unlawful conduct. Gautreaux v. Chicago Housing Authority, 304 F.Supp. 736 (N.D. Ill. 1969), aff'd 436 F.2d 306 (7th Cir. 1971); Gautreaux v. Romney, 363 F. Supp. 690 (N.D. Ill. 1973), rev'd on other grounds Nos. 74-1048, 1049 (7th Cir., August 26, 1974). To that end, on July 1, 1969, I enjoined the further construction of public housing in any "non-white" section of Cook County, unless such action was accompanied by the simultaneous construction of at least 75 percent of all proposed units in "white" areas of the County. Gautreaux v. Chicago Housing Authority, 304 F.Supp. 736 (N.D. Ill. 1969), aff'd 436 F.2d 306 (7th Cir. 1971).

For the past five years and four months, no public housing construction has been undertaken by any party. Both HUD and CHA contend that they have employed their "best efforts" to fulfill the mandate of my orders and attribute this inordinate delay to "normal bureaucratic procedures."

For their part, Plaintiffs do not charge Defendants with bad faith but maintain that additional Court assistance is necessary to bring this dispute to a prompt and just conclusion. I agree. For reasons that are manifestly unclear to me, my orders in this case have been avoided and frustrated for over five years. To pinpoint the responsibility for this apparent lack of diligence and to develop methods for achieving compliance with my orders, the appointment of a Master is appropriate.

ORDER OF REFERENCE

Pursuant to the discretion vested in me by Fed. R. Civ. Pro. 53(a), this matter is referred to a United States Magistrate to serve as a Master. The Magistrate shall be selected according to the local rules.

The Master is directed to study and review the existing patterns of racial segregation in Chicago public housing, to determine and identify the precise causes of the five-year delay in implementing my judgment orders, and to recommend a plan of action that will expedite the realization of my various orders and judgments.

Defendants shall render their complete cooperation to the Master. By way of example and not as a limitation, the Master shall have full access to maps, drawings, reports, statistics, computer studies, and all other information concerning all aspects of the public housing system in Chicago which may be necessary to accomplish the purposes of this

order. He shall be supplied with any studies, plans, and partial plans for desegregation of the public housing system which Defendants individually or collectively may possess.

Defendants shall provide the Master with whatever professional, technical, and other assistance he may require to familiarize himself with the Chicago public housing system and the problems to be resolved in effectuating my orders and judgments and to otherwise comply with his delegated responsibilities. The full cooperation of Defendants' staffs is requested and will be appreciated.

At such time as the Master shall complete a final draft of his recommendations and comments, he shall furnish copies of the same to the parties. The Master shall then meet in executive session with the Secretary of HUD or his designees, the Board of CHA or their designees, and Plaintiffs' counsel or their designees, and review the same and discuss any suggested revisions. After such session or sessions, the final Report, as determined by the Master, shall be submitted to the Court for its review and possible use. Until the Master's Report is presented to the Court, it shall be deemed to constitute "work papers." All such work papers, and the contents thereof, shall be confidential; such papers shall not be disclosed to others, except as the Court may direct and except that the Master, with the Court's approval, may employ, and consult with, such persons as he deems necessary for the performance of his prescribed duties.

The Court retains jurisdiction over these cases for the entry of such further orders as may be appropriate.

Motion to appoint a Commissioner is denied.

Matter referred to a Master.

Judge, United States District Court

DATED: November , 1974.

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

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

MEMORANDUM OPINION and REFERENCE ORDER

These consolidated cases come before me now on Plaintiffs' motion to appoint a Commissioner to formulate plans for the expeditious construction of new public housing units in the City of Chicago. Since it has not been established that Defendants Chicago Housing Authority (CHA) and United States Department of Housing and Urban Development (HUD) have directly contravened my prior judgments and since Plaintiffs' request is overbroad, the motion cannot be granted as tendered. However, to pinpoint responsibility for Defendants' apparent lack of diligence and to develop methods for achieving compliance with my orders, reference of this case to a Master is appropriate. Fed. R. Civ. Pro. 53(a). See LaBuy v. Howes Leather Co., 352 U.S. 249, 256 (1957); Schwimmer v. United States, 232 F.2d 855, 865 (8th Cir.), cert. den. 352 U.S. 833 (1956).

The history and substance of these lawsuits are extensive and complicated. For an excellent background

discussion of this controversy, see Gautreaux v. Romney, 457 F.2d 124, 129 et seq. (7th Cir. 1971) (Sprecher, J., dissenting). After carefully examining the legal contentions and factual proofs of the parties, I entered a Memorandum Opinion on February 10, 1969, holding that Defendant CHA intentionally and unconstitutionally discriminated, on the basis of race, in its public housing site selection and tenant assignment procedures in Chicago. Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907 (N.D. Ill. 1969). On September 10, 1971, a similar finding was made against Defendant HUD by the United States Court of Appeals for the Seventh Circuit. Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971). Each Defendant was ordered to use its "best efforts" to reverse the effects of its prior unlawful conduct. Gautreaux v. Chicago Housing Authority, 304 F.Supp. 736 (N.D. Ill. 1969) aff'd 436 F.2d 306 (7th Cir. 1971); Gautreaux v. Romney, 363 F.Supp. 690 (N.D. Ill. 1973), rev'd on other grounds Nos. 74-1048, 1049 (7th Cir., August 26, 1974). To that end, on July 1, 1969, I enjoined the further construction of public housing in any "non-white" section of Chicago, unless such action was accompanied by the simultaneous construction of at least 75 percent of all proposed units in "white" areas of the City. Gautreaux v. Chicago Housing Authority, 304 F.Supp. 736 (N.D. Ill. 1969) aff'd 436 F.2d 306 (7th Cir. 1971).

For the past five years and four months, no public housing construction has been completed by any party. Both

HUD and CHA contend that they have employed their "best efforts" to fulfill the mandate of my orders and attribute this inordinate delay to "normal bureaucratic procedure." For their part, Plaintiffs have refrained from charging Defendants with "bad faith" but maintain that additional Court assistance is necessary to bring these cases to a prompt and just conclusion. I agree. For reasons entirely unclear to me, the effect and import of my orders have been avoided and frustrated for over five years. During this period of time, the citizens of this City have been deprived of increased low-income housing. In light of these exceptional circumstances, in view of the unusually complex issues presented here, and in the interests of justice, I conclude that this matter must be referred to a Master for immediate attention and proposals. Fed. R. Civ. Pro. 53(a); 5A Moore's Federal Practice § 53.05.

ORDER OF REFERENCE

Pursuant to the discretion vested in me by Fed. R. Civ. Pro. 53(a) and in exercise of my judicial authority, this matter is hereby referred to a United States Magistrate to serve as a Master. See 5A Moore's Federal Practice § 53.05. See also Ex Parte Peterson, 253 U.S. 300, 312 (1920), cited with approval in LaBuy, supra at 256. The Magistrate shall be selected according to the local rules.

The Master is directed to study and review the existing patterns of racial segregation in Chicago public

housing, to determine and identify the precise causes of the five-year delay in implementing my judgment orders, and to recommend a plan of action that will expedite the realization of my various orders and judgments. In so doing, the Master shall not be limited to determining whether HUD and CHA have employed their "best efforts", but shall examine all possibilities to expedite the mandate of this Court that the supply of dwelling units in Chicago shall be increased as rapidly as possible, including, without limitation, utilization of new housing programs established by the Housing and Community Development Act of 1974.

Defendants shall render their complete cooperation to the Master. By way of example and not as a limitation, the Master shall have full access to maps, drawings, reports, statistics, computer studies, and all other information which may be necessary to accomplish the purposes of this order. He shall be supplied with any studies, plans, and partial plans for desegregation of the public housing system which Defendants individually or collectively may possess.

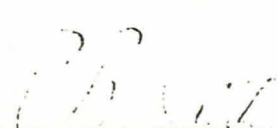
Defendants shall provide the Master with whatever professional, technical, and other assistance he may require to familiarize himself with the Chicago public housing system and the problems to be resolved in effectuating my orders and judgments and to otherwise comply with his delegated responsibilities. The full cooperation of Defendants' staffs is requested and will be appreciated.

At such time as the Master shall complete a final

draft of his recommendations and comments, he shall furnish copies of the same to the parties. The Master shall then meet in executive session with the Secretary of HUD or his designees, the Board of CHA or their designees, and Plaintiffs' counsel or their designees, and review the same and discuss any suggested revisions. After such session or sessions, the final Report, as determined by the Master, shall be submitted to the Court for its review and possible use. Until the Master's Report is presented to the Court, it shall be deemed to constitute "work papers." All such work papers, and the contents thereof, shall be confidential; such papers shall not be disclosed to others, except as the Court may direct and except that the Master, with the Court's approval, may employ, and consult with, such persons as he deems necessary for the performance of his prescribed duties, including particularly persons not affiliated with any of the parties, who possess specialized knowledge concerning federal-subsidized housing programs.

The Court retains jurisdiction over these cases for the entry of such further orders as may be appropriate.

Plaintiffs' motion to appoint a Commissioner granted as modified herein. Matter referred to a Master, according to the rules.



Judge, United States District Court

DATED: November 7, 1974

PROOF OF SERVICE

I, Steven M. Rasher, under oath state that I caused a copy of the foregoing Petition for Writ of Mandamus to be served upon the Honorable Richard B. Austin, 219 South Dearborn Street, Chicago, Illinois, Robert A. Filpi, 219 South Dearborn Street, Chicago, Illinois and Alexander Polikoff, 109 North Dearborn Street, Chicago, Illinois before 5:00 P.M. on November 14, 1974. Copies of transcripts of proceedings of October 8, November 1 and November 6, 1974 and copies of CHA Exhibits 1, 2 and 3 were not served upon Respondent as he already has copies of same.

Steven M. Rasher

Subscribed and sworn to
before me this 14th day
of November, 1974.

Notary Public