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4/10/79

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

DOROTHY GAUTREAUX, et al.,)

Plaintiffs,)

-v-)

PATRICIA R. HARRIS, Secretary)
of the U.S. Department of)
Housing and Urban Development)
and CHICAGO HOUSING)
AUTHORITY, et al.,)

Defendants.)

NO. 66 C 1459

66 C 1460

(Consolidated)

APR 10 1979

John F. Woods, Clerk,
United States District Court

MOTION TO RECONSIDER RULING OF MARCH 30, 1979

It is apparent from the Court's ruling of March 30, 1979 that we have failed to make clear the nature of the relief sought by plaintiffs' motion for further relief. We concur in the Court's view that it ought not enjoin the payment of over \$100 million of Year IV CDBG funds because of the City's past housing failures. However, this is not the relief plaintiffs have requested.

By focusing attention upon a remedy plaintiffs do not seek,* the Court risks failing to give fair consideration to the type of remedy plaintiffs do seek. For this reason plaintiffs respectfully ask the Court to reconsider its ruling of March 30, 1979.

* Among other things the Court said, "Basically the plaintiffs are seeking an injunction against HUD which would prevent HUD from providing funds under the City of Chicago's fourth year Community Development Block Grant Program," and "I would have to enjoin the further commitments for the expenditure of that money." (Transcript of Proceedings of March 30, 1979, pp. 2, 7-8, emphasis added.)

Plaintiffs' motion seeks the imposition of conditions upon HUD's approval of CDBG funding for Chicago. Plaintiffs have not asked that even one dollar of the fourth year Community Development grant be withheld from the City at this time. We ask only that HUD's approval of the City's application be made subject to reasonable housing performance conditions to apply to the City's future conduct. (See ¶17 of plaintiffs' motion.)

It must be emphasized that the parties have not yet addressed precisely what conditions might be imposed, the portion of the CDBG funds to be conditioned, or the consequences of any failure of the City to comply with imposed conditions. Plaintiffs contemplate that CDBG funds to the City be withheld only if the City failed to comply with reasonable conditions, and then only to the extent any condition was not complied with and only for so long as non-compliance persisted.

Let us illustrate the range of possibilities open to the Court. First, various conditions HUD could be ordered to impose upon the City's grant are easy to envisage. For example, one condition might be the approval of proposals for the development of a specified number of Section 8 housing units in the General Public Housing Area of Chicago. Other examples appear in HUD's conditional approval letters to other cities (see Appendix A to plaintiffs' Reply Memorandum, filed November 13, 1978).

Second, the time for performance of the conditions can and should be determined by the time reasonably required to perform the acts in question. The City would not be in the

"impossible timetable" situation the Court viewed as being presented in Gautreaux v. Romney.

Third, if any conditions were not complied with the "penalty" could be "spread" among the housing units to be produced. Partial compliance would lead to partial funding, partial non-compliance to partial withholding.

Finally, since the purpose of the conditions would be to help provide relief to the plaintiffs and not to withhold funds from the City, any withheld funds would be released upon performance of the conditions.

Attached hereto as Appendix A is an example of a set of conditions and a timetable which illustrates a type of remedy plaintiffs envision. An effective order of this sort would use HUD's conditioning powers as a stimulant to housing development. It would operate in futuro, over a long period of time (in recognition of the time required for housing development), and it would provide for ultimate receipt by the City of any funds temporarily withheld pending housing performance.

Such a remedial approach is responsible and would be framed carefully to achieve its desired result. In light of the undisputed facts set forth in plaintiffs' motion, we believe plaintiffs are entitled to such a carefully structured remedial approach that would implement their constitutional rights without imposing the forfeiture envisaged by this Court's March 30 ruling.*

* The Court also stated that approximately 11 1/2% of the fourth year community development funds was specifically earmarked for housing activities (as plaintiffs understand
(continued on next page)

More than five years after the entry of a judgment order against HUD, and four and a half years after the enactment of the HCD Act of 1974 - whose primary objective includes the provision of housing for low-income persons, with emphasis on the spatial deconcentration of housing opportunities - HUD's activities within Chicago have provided only a miniscule amount of relief for the members of the plaintiff class. A major vehicle for providing new federally subsidized housing in Chicago, the Section 8 new construction program, might as well not exist so far as remedial housing for the plaintiff class

* (continued from preceding page)
the facts the correct figure is approximately 30%), and concluded that this percentage provided an insufficient housing nexus to justify granting the plaintiffs' motion. The Court's view overlooks the statutory scheme of the Housing and Community Development Act of 1974. The foundation stone of the Act is that all HCD Act activities are to be mutually coordinated and supportive. This central theme is apparent not only from the statutory scheme (see 42 U.S.C. §§5301(c) and (d)(4), 5304(a)(1) and (4), and 5305(a)) but also from the legislative history. For example, one committee report, speaking of the required relationship between housing and community development activities, says: "The committee bill will put an end to a system of support for community development and housing activities which recognizes their close relationship but fails to provide the mechanisms necessary to permit them to be undertaken on a unified basis." (House Report No. 93-1114, 93rd Congress, 2nd Session, p. 3, June 17, 1974, emphasis added.) HUD's own actions, not only in other cities (see Appendix A to plaintiffs' Reply Memorandum) but in Chicago itself (see the housing condition imposed on the approval of the City's fourth year application), evidence HUD's understanding of this "unified" relationship. The HCD Act is thus a clear break with prior "categorical" programs in which funds were earmarked for different purposes. Day care centers and street repairs are now to be coordinated with housing activities and vice versa. Non-performance of housing obligations thus affects the totality of an application under the HCD Act, not just the specific housing programs.

is concerned. Given the duty "imposed...on the District Court to grant appropriate relief," Hills v. Gautreaux, 425 U.S. 284, 297 (1976), it is submitted that plaintiffs are entitled to some form of further relief with respect to this Section 8 remedial vehicle.

For these reasons plaintiffs respectfully request the Court to entertain reconsideration of the Court's ruling of March 30, 1979. As the first step in such reconsideration plaintiffs request that the Court set a date to hear orally from the parties concerning the types of conditions that might be imposed upon HUD's approval of Chicago's community development application. Without such consideration by the Court of the specific remedial possibilities available to it - so long as the Court focuses only on the Draconian remedy of an immediate injunction against payment of all CDBG funds - plaintiffs believe their entitlement to further relief with respect to the Section 8 new construction program will not have been given the judicial consideration it merits.

Respectfully submitted,


Alexander Polikoff
One of plaintiffs' attorneys

April 10, 1979

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APPENDIX A

ILLUSTRATION OF POSSIBLE CDBG CONDITIONS

- I. Payment Schedule If CDBG Conditions Are Met.
- II. Conditions.
- III. Payment Schedule If CDBG Conditions Are Not Met.
- IV. Explanatory Provisions.
- V. Example

Note: The following assumes that a CDBG grant of approximately \$110 million is subject to the conditions in Section II, that such conditions relate to a 500-unit Section 8 allocation for new construction in the General Public Housing Area of the City, and that subsequent CDBG grants - in this example another \$110 million - are similarly subject to the Section II conditions until they are performed.

I. PAYMENT SCHEDULE IF CDBG CONDITIONS ARE MET

A. HUD will approve the City's CDBG application (in this example for the years beginning October 1, 1979 and October 1, 1980) with the conditions set forth in Section II.

B. If the conditions are met in full, payment of CDBG funds will be made as follows:

- * \$9 million to be paid on the first day of each month from October 1, 1979 through August 1, 1980.
- * \$11 million to be paid on September 15, 1980.
- * \$9 million to be paid on the first day of each month from October 1, 1980 through August 1, 1981.
- * \$11 million to be paid on September 15, 1981.

However, when all units designated in paragraph IIB have reached performance stage 6, payment will no longer be governed by this schedule (i.e., HUD may pay as it desires, subject to any additional conditions that may have been imposed relating to any additional Section 8 allocation).

II. CONDITIONS

A. Performance Stages

Progress on Section 8 new construction proposals in the GPHA is to be identified according to the following stages:

Stage 1 - Acquire and Zone Site(s)

- Ownership of, or option on, properly zoned site(s).

Stage 2 - Receive Initial Agency Approval

- Obtain site and market approval letter from HUD and/or IHDA and Section 8 reservation from HUD.

Stage 3 - Receive Preliminary Financial Commitment

- Obtain conditional commitment letter from HUD and/or feasibility letter from IHDA.

Stage 4 - Receive Final Financial Commitment

- Obtain final commitment from HUD and/or conditional commitment from IHDA.

Stage 5 - Close Mortgage Loan

Stage 6 - Commence Construction

B. Performance Schedule

These performance stages for the following number of units are to be achieved by the following dates, subject only to changes under paragraph IVD:

	<u>125 Units</u>	<u>125 Units</u>	<u>125 Units</u>	<u>125 Units</u>
Stage 1	8/15/79	9/15/79	10/15/79	11/15/79
Stage 2	9/30/79	10/31/79	11/30/79	12/31/79
Stage 3	12/31/79	1/31/80	2/28/80	3/31/80
Stage 4	3/31/80	4/30/80	5/31/80	6/30/80
Stage 5	5/31/80	6/30/80	7/31/80	8/31/80
Stage 6	6/15/80	7/15/80	8/15/80	9/14/80

C. Facilitation of Construction

The City will take all actions within its control in a timely fashion to facilitate the actual construction of units that reach stage 6.

III. PAYMENT SCHEDULE IF CDBG CONDITIONS ARE NOT MET

A. For each day progress on any units fails to meet any performance stage in accordance with the performance schedule in paragraph IIB, \$600 per unit per day is to be deducted from the next CDBG payment that would otherwise be made under paragraph IB.

B. For each day after August 14, 1979, that progress on any unit reaches a performance stage ahead of schedule, one day of delay on another unit is to be offset.

C. Additional sums may be deducted from CDBG payments if a violation of condition IIC occurs.

D. If HUD still retains CDBG funds that are available for payment to the City, sums deducted under paragraph A above with respect to any unit are to be paid to the City whenever that unit reaches performance stage 6.

IV. EXPLANATORY PROVISIONS

A. The burden is to be on the City to supply all evidence necessary to demonstrate to HUD that the performance schedule has been met at each performance stage.

B. No excuse for failure to meet the performance schedule is to be acceptable except delay that is the sole responsibility of HUD or IHDA and is not attributable to any action or non-action of the City or any private or public developer. The burden is to be on the City to demonstrate to HUD such sole responsibility of HUD or IHDA, subject to:

- (1) No refusal of HUD and/or IHDA to waive or modify any regulation or practice is to be a reason for attributing delay to HUD or IHDA.
- (2) No delay is to be attributed to HUD and/or IHDA at performance stages 2, 3 or 4, respectively, until six weeks from the date of written submission to HUD and/or IHDA of all documents and information necessary to obtain initial agency approval, and preliminary and final financial commitments, respectively.

C. The effect of paragraphs A and B above is that the City is to be responsible for its own actions (for example, zoning) and for actions of developers. The City may provide incentives for developer performance by actions within its control, including the following:

- (1) Use of CDBG or other funds for land acquisition, tax arrearages, land option costs, etc.
- (2) Use of CDBG or other funds for capital construction grants, including demolition, site preparations, relocation of utilities, sidewalks, landscaping, etc.
- (3) Use of CDBG or other funds for property management grants.
- (4) Any other incentives to induce private developers to undertake development.
- (5) In default of sufficient private action, development may be undertaken by the City itself or through an appropriate designated agency.

D. When any deduction under paragraph IIIA occurs, the delay that occasioned it is to be carried forward to subsequent performance stages and the performance schedule in paragraph IIB is to be adjusted accordingly. To the extent a demonstration of sole responsibility under paragraph IVB is made, the performance schedule in paragraph IIB is to be adjusted accordingly.

V. EXAMPLE

A. Assuming the availability of authority for 500 Section 8 new construction units in the General Public Housing Area and a CDBG grant of \$110 million, each Section 8 unit is "worth" \$220,000. Dividing \$220,000 by 365 days per year produces approximately \$600 per unit per day.

B. If 100 units are 30 days late at any performance stage, the next CDBG payment will be reduced by 3,000 unit days times \$600 per unit day or \$1,800,000, subject to paragraph C.

C. If earlier in the year (before the delay referred to in paragraph B) any 50 units had reached a performance stage 30 days sooner than called for by the performance schedule, the delay referred to in paragraph B would be offset and the CDBG payment would only be reduced by \$900,000.

D. If later in the year (after the delay and reduction in payment described in paragraphs B and C) any 50 units reached a performance stage 30 days sooner than called for by the performance schedule, the next CDBG payment would be increased by \$900,000 - i.e., the City would recapture the "lost" \$900,000.

E. If any CDBG payment reduction had not been recaptured by the last scheduled CDBG payment date, such amount would be paid to the City whenever the units that occasioned the reduction reached performance stage six - if HUD still retained CDBG funds available for such purpose at such time.

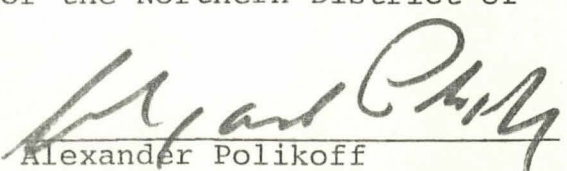
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PATRICIA R. HARRIS, Secretary	)	
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Housing and Urban Development	)	
and CHICAGO HOUSING	)	
AUTHORITY, et al.,	)	
	)	
Defendants.	)	

NOTICE

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PLEASE TAKE NOTICE that we have this day filed the attached Motion to Reconsider Ruling of March 30, 1979 with the Clerk of the Honorable Judge John Powers Crowley in the United States District Court for the Northern District of Illinois, Eastern Division.


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DATED: April 10, 1979

CERTIFICATE OF SERVICE

The undersigned certifies that on April 10, 1979, he caused to be mailed to the offices of the attorneys listed on the foregoing notice copies of said notice and the motion referred to therein.


Alexander Polikoff

April 10, 1979