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

DOROTHY GAUTREAUX, et. al.,	)	
	)	
Plaintiffs,	)	Nos. 66 C 1459
	)	66 C 1460
v.	)	(Consolidated)
	)	
CHICAGO HOUSING AUTHORITY,	)	
PATRICIA ROBERTS HARRIS,	)	
Secretary, et. al.,	)	
	)	
Defendants,	)	

MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION TO RECONSIDER
RULING OF MARCH 30, 1979

On April 10, 1979, plaintiffs asked the court to reconsider its ruling denying their motion for further relief against the Department of Housing and Urban Development on the alleged basis that the court had misunderstood the relief plaintiffs had requested and thus had failed to give proper consideration to plaintiffs' motion. The federal defendant submits that, it is obvious, in the context of the filed pleadings, that this court correctly ruled, after full briefing, that further relief, as sought by plaintiffs' motion, was not appropriate under the facts and circumstances of this litigation.

Webster's New Collegiate Dictionary defines a "condition" as "something established or agreed upon as a requisite to the doing or taking effect of something" and as "that which exists as an occasion of something else." Thus a condition by its very nature infers a consequence, a "something else", and both the prerequisite condition and resulting consequence must be clearly held up to light in order to fully understand the totality of the condition. Thus in attempting to focus on the reality of plaintiffs' motion for

further relief, the federal defendant characterized it as one "for an order enjoining HUD from providing FY '78 CDBG funds to the City of Chicago, unless HUD agrees to impose specific enforceable conditions on the City's funding approval." The Special Master in her March 19, 1979 Report to the Court on plaintiffs' referred motion described it as a request "to order the Secretary of Housing and Urban Development to impose clear and positive conditions on disbursement to the City of Chicago of its Fourth Year CDBG funds." Although plaintiffs' two reply memoranda protest that the specific conditions to be ordered to be imposed by HUD have not been addressed by the parties (Plaintiffs' Reply Memorandum in Support of Motion for Further Relief, filed November 13, 1978, p. 13; Plaintiffs' Response to Recommendation of Magistrate, filed March 27, 1979, p.3), plaintiffs' pleadings did not claim that either the federal defendants or the Special Master incorrectly identified the nature of the relief plaintiffs' motion was seeking.

However, after the court entered its ruling of March 30, 1979, plaintiffs latching on to isolated sentences taken from the transcript of the March 30 proceedings, assert that the court misunderstood their requested relief as seeking only "the Draconian remedy of an immediate injunction against payment of all CDBG funds." We submit that the court in its consideration of plaintiffs' motion did not "envisage" it as seeking "forfeiture", but rather the court refused to consider a decreed exercise of HUD's conditioning powers under the Housing and Community Development Act (HCD Act) in isolation from the possible consequences of that Act. It is plaintiffs, and not the court, that is trying to erect an artificial separation between the act of conditioning and the threatened consequences of such conditioning.

The court's reluctance to judicial imposition of funding conditions on the City of Chicago might well be due to the fact that such an action would remove the breadth and flexibility to the exercise of discretionary judgment by the Secretary in her administration of the HCD Act. Under the legislation, of course, Congress specifically conferred such wide discretion on the Secretary. (See Memorandum in Opposition to Plaintiffs' Motion for Further Relief, filed October 28, 1978, pp. 12-13). Rather than the type of constraints envisaged by plaintiffs' motion handcuff Secretarial discretion to administer HUD programs on the basis of altered facts and changing circumstances. Indeed, as stated in the federal defendants' prior memorandum, it was only after a full review of all relevant factors, that the Secretary's delegate, HUD Chicago Area Manager Elmer C. Binford determined that the modifications he had imposed on the City's CDBG application, together with a proper application of the new regulatory provisions, provided a suitable framework for obtaining improved HAP performance by the City of Chicago in accomplishing the goals set forth in its Housing Assistance Plan. The court's ruling is correct in refusing to upset that exercise of sound discretionary judgment which Congress delegated to appropriate administrative officials of the Department.

It is also instructive and supportive of the court's ruling that the Special Master, who is charged under the November, 1974 Order of Reference, as amended, with the responsibility "of examining all possibilities to expedite the [Court's] mandate that the supply of dwelling units in Chicago . . . be increased as rapidly as possible including, without limitation utilization of the new housing programs

established by the HCD Act of 1974," did not recommend entry of plaintiffs' motion for further relief. Indeed the Special Master, noted the many parallels between plaintiffs' present motion for further relief and plaintiffs' unsuccessful prior attempt to enjoin the disbursement of Model Cities funds until the City met certain specific court-imposed conditions on housing performance (See Gautreaux v. Romney, 332 F.Supp. 366 (1971), rev'd and remanded 457 F.2d 124 (1972), and affirmatively recommended to the court that plaintiffs' motion for further relief be denied.

For the above cited reasons, and for the reasons stated in the federal defendants' prior opposition memorandum, and for the reasons stated in the March 19, 1979 Report to the Court from the Special Master, the federal defendant respectfully request the court, in the proper exercise of its broad equitable discretion, to deny plaintiffs' motion for reconsideration.

Respectfully submitted,

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A F F I D A V I T O F M A I L I N G

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

_____ 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 20th
day of April, 1979, he placed a copy of

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO
RECONSIDER RULING OF MARCH 30, 1979, and NOTICE OF FILING

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

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SUBSCRIBED AND SWORN TO BEFORE ME

this 20th day of April, 1979

NOTARY PUBLIC

DCMurray:eh
353-8449
04/20/79

4/20/79

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