

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 66 C 1459
	)	66 C 1460
PATRICIA R. HARRIS, Secretary	)	(Consolidated)
of the U.S. Department of	)	
Housing and Urban Develop-	)	
ment and Chicago Housing	)	
Authority, et al.,	)	
	)	
Defendants.	)	

RESPONSE OF CITY OF CHICAGO TO MOTION
OF PLAINTIFFS TO RECONSIDER RULING OF
MARCH 30, 1979

I. The Court's Decision of March 30, 1979 Was Correct. HUD's Approval of the Year IV CDBG Was Not an Abuse of the Secretary's Discretion and Significant Progress is Being Made in the Area of Section 8 Housing.

In the briefs earlier submitted to the court by the City and HUD, it was argued that plaintiffs had failed to demonstrate that the imposition of conditions by the Court would be either useful or proper. Although it appears unnecessary to again argue those points, a few remarks may be in order lest discussion of plaintiffs' proposed conditions obscure the fact that no sound basis for injunctive relief against HUD has been shown.

It must be borne in mind that in his letter of September 27, 1978 approving the City's Year IV Community Development Block Grant HUD's Area Manager stated certain requirements for the City's Year IV housing program. It is submitted that plaintiffs' interests are adequately protected by the requirements stated in Mr. Binford's approval letter.

As was stated in the City's brief of October 24, 1978, the approval of HUD was within that agency's discretion and equitable relief would be available only if "the challenged agency action was arbitrary, capricious or an abuse of discretion, or was not in accordance with the law." Broaden, et al., v. Harris, et al., 415 F. Supp. 1215 (1978) at 1225. Plaintiffs have not demonstrated such defects in HUD's actions. Moreover, as was also suggested in earlier briefs, plaintiffs' motion is procedurally inapt in that their proper remedy should have been pursued pursuant to the provisions of the Administrative Procedure Act. As Magistrate Jurco stated in her report of March 19, 1979, the Court's review of HUD's judgment "entails the application of judicial review standards on an abuse of discretion claim and is not properly before the Court."

It was also argued in the memorandum of the City of October 24, 1978, that steps undertaken by the City in support of its Housing Assistance Plan and a strong positive response in the private sector indicated that substantial progress could be anticipated. In support of that argument the affidavit of the Deputy Commissioner of the City's Department of Planning, City and Community Development detailing the implementation of housing objectives was submitted. HUD statistics of March, 1979 show that the responses to Fiscal Year 1979 Section 8 Notices of Financing Availability from the private sector have, as anticipated, been very strong. Those statistics showed a total of 16 proposals comprising 1745 dwelling units. Five proposals for construction in the General Housing Area comprising 43 units and eleven proposals in the Limited Housing Area comprising 1,315 units were submitted. The breakdown on these 1,745 dwelling units is as follows:

New Construction: Goal 662, Allocated

General Area: 3 proposals - 225 Family Units; 20 Large Family Units

Limited Area: 2 proposals - 146 Family Units; 86 Large Family Units

Rehab: Goal 660, Allocated 885

General Area: 2 proposals - 152 Family units; 33 Large Family Units

Limited Area: 8 proposals - 708 Family units; 341 Large Family Units

Combined:

Limited Area:

New: 12 Family Units; 18 Large Family Units

Rehab: 4 Family Units.

It is submitted that these private sector responses to recent NOFA's which in some respects exceed plan goals, justify the expectations of the City indicated in the City's original memorandum and affidavit. More significantly, this progress also strongly supports the administrative discretion of HUD in approving the Year IV grant and the conclusion of this Court that the injunctive relief sought by plaintiffs is unwarranted.

II. The Plan Proposed by Plaintiffs for the Administration of CDBG Funds Would, as the Court Has Concluded, Be Detrimental to the Community Development Program and Undermine the Goals it was Designed to Achieve.

Appendix A of plaintiff's motion to reconsider is a complex program for the administration of CDBG funds which provides for the reduction of payments in the event that certain stages in the area of Section 8 new construction are not met in accordance with a specific timetable. The imposition of such conditions and time restraints, coupled with the proposed piecemeal payment of funds or possible loss of funding, would serve to severely disrupt the

existing Community Development Program and thwart the intent and goals of the Community Development Act of 1974.

The CDBG program funds major, long-term capital investments in urban renewal projects, housing rehabilitation, public improvements, parks, community facilities, and a wide range of social services. In order to embark upon and administer a program of such scope, it is necessary that the availability of funds be assured.

For example, offers to purchase property in an urban renewal project cannot be made unless the City has the funds necessary to complete the purchase. There are numerous factors beyond the control of the City which may prevent acquisition and zoning of sufficient sites for 125 units within the 45 days allotted by the proposed performance schedule. Any resulting loss of funding would jeopardize or completely halt the project.

The proposed program would divide a block grant evidenced by a single letter of credit into numerous grants of \$9 million each. A long-range program of capital investment would thus become a series of \$9 million programs. The goal of funding a long-range coordinated program of community development would be severely hampered.

Under plaintiffs' proposal the amount which would be deducted from the CDBG grant due to tardiness in developing new Section 8 housing is computed on the basis of the entire CDBG grant. As the court pointed out in its March 30th ruling, the federal money which Plaintiffs seek to subject to conditions and possible loss fund a broad range of urban community programs. It would not be in the public interest to curtail other programs and social services if construction of housing did not proceed according to plaintiffs' schedule.

Section 8 of Title II of the Community Development Act places the primary responsibility for developing housing projects in the private sector. However, the program proposed by the plaintiffs clearly envisions housing development by a public entity. Stage 1, for example, is the acquisition and zoning of sites. In private development it is likely that a site would not be acquired until financing has been secured at Stage 5. In addition to being governed by an unreasonable timetable, the plaintiffs would hold the City responsible not only for delays which may be unforeseen and beyond its control, but also for delays attributable to the developers. Section 8 was intended to provide a mechanism to encourage the private sector to produce lower income housing. By depriving the City of funds in the absence of strict compliance to the suggested timetable, the plaintiffs' proposal would have the opposite effect.

The plan proposed by the plaintiffs would radically alter the manner in which the Community Development Program was intended to function and undermine the goals it was designed to achieve.

CONCLUSION

Plaintiffs have failed to show any abuse of HUD's discretion in its approval of the Year IV CDBG and significant progress is being made in the City's housing program. For these reasons and because the injunctive relief requested by the plaintiffs would have a serious detrimental effect on the Community Development Program, it is submitted that the Court's decision not to grant the plaintiffs' motion for further relief was proper in all respects and should not be disturbed.

Respectfully submitted,

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Defendants.	)	

NOTICE OF FILING

To: Alexander Polikoff 109 North Dearborn Street Chicago, Illinois 60602	Richard Flando 300 South Wacker Drive Chicago, Illinois 60606
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PLEASE TAKE NOTICE that on April 20, 1979, I shall file the attached Response of the City of Chicago to Plaintiffs' Motion to Reconsider the Ruling of March 30, 1979 with the Clerk for the Honorable John Powers Crowley, United States District Court for the Northern District of Illinois.

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Of Counsel.

CERTIFICATE OF SERVICE

I certify that on April 20, 1979, I served this Notice by mailing a copy together with a copy of the Response of the City of Chicago to Plaintiffs' Motion for Reconsideration to the persons to whom the notice is directed with sufficient first class postage attached and deposited in the U.S. Mail chute in City Hall, Chicago, Illinois.

KATHLEEN RANSFORD, Attorney