

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

MAY 16 1997

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY,
ANDREW CUOMO, Secretary of
the Department of Housing
and Urban Development,

Defendants.

MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT
Nos. 66 C 1459
66 C 1460
(Consolidated)
Chief Judge Aspen

NOTICE OF MOTION

To: See Attached Service List

PLEASE TAKE NOTICE that on **Tuesday, May 20, 1997 at 9:30 a.m.** at the opening of Court or as soon thereafter as counsel may be heard, I will appear before Judge **Aspen** in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there present **FEDERAL DEFENDANT'S MOTION TO TERMINATE CONSENT DECREE** at which time and place you may appear, if you see fit.

Respectfully submitted,

JAMES B. BURNS
United States Attorney

By: Linda A. Wawzenski
LINDA A. WAWZENSKI
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-1994

AFFIDAVIT OF HAND DELIVERY

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

Renee A. Ward, being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois, that on the 16th day of May, 1997, she caused a copy of:

1) NOTICE OF MOTION

2) FEDERAL DEFENDANT'S MOTION TO TERMINATE CONSENT DECREE
to be hand delivered to the following individual(s) on said date at about the hour of 3:30 pm.

To: See Attached Service List

Renee A. Ward

SUBSCRIBED AND SWORN TO before me
this 16th day of May 1997

Michelle Terry

NOTARY PUBLIC
My Commission Expires: _____



SERVICE LIST

1. Alexander Polikoff, Esq.
Julie Elena Brown, Esq.
Jeanne L. Nowaczewski, Esq.
Business & Professional People
for the Public interest
17 East Monroe Street, Suite 212
Chicago, Illinois 60603
2. Jerome Butler, Esq.
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Chicago Housing Authority
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3. Daniel Levin, Esq.
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Chicago, Illinois 60610

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FEDERAL DEFENDANT'S MOTION TO TERMINATE CONSENT DECREE

ANDREW CUOMO, Secretary of the Department of Housing and Urban Development ("HUD"), by JAMES B. BURNS, United States Attorney for the Northern District of Illinois, pursuant to paragraphs 5.1 and 8.2 of the consent decree approved by the court on June 16, 1981 (523 F. Supp. 665, the "consent decree"), move the court to enter an order terminating the consent decree and dismissing HUD.

In support of the motion HUD states:

1. Paragraph 5.1 of the consent decree requires HUD to provide funding for assisted housing until the 7,100 occupancy goal is achieved at which time HUD's obligations end. Gautreaux v. Pierce, 690 F.2d 616, 623 (7th Cir. 1982) ("HUD's obligations under the Decree do not expire until 7,100 eligible persons have commenced occupancy of assisted housing units in the General and Revitalizing Area.") (footnote omitted).

2. Plaintiffs do not dispute that the 7,100 number has been reached.

3. Accordingly, because the remedy that the parties agreed to has been provided, the consent decree must be terminated.

4. Plaintiffs have moved, however, for an order to enforce the consent decree because "HUD is continuing to approve and set aside contract authority for Section 8 Existing housing in the City of Chicago" without assuring that families are compelled to live in particular areas of the city in conformance with ratios described in paragraph 5.8.1 of the consent decree. Plaintiffs' Motion Pursuant to Paragraph 8.1 of Consent Decree Respecting Paragraph 5.8.1 of Consent Decree.

5. Since the remedy for HUD's violations has already been provided, no further relief is appropriate. Accordingly, HUD also seeks to terminate the Consent Decree pursuant to paragraph 8.2.

6. Paragraph 8.2 provides: ". . . HUD. . . may request the Court to review the progress made in providing assisted housing to eligible persons hereunder and, based upon such review, to modify or terminate any or all of the rights or obligations provided herein."

7. Not only has there been progress, but there has been completion of the remedy provided by the consent decree. Under these circumstances, the court should exercise the discretion it retained through paragraph 8.2 of the decree, relieve HUD of any duty to compel Section 8 certificate holders to live in particular areas of Chicago, and terminate the decree.

8. In this regard, HUD regulations governing the Section 8 existing program provide that "a family may receive tenant based

assistance to lease a unit anywhere in the jurisdiction of . . . the initial HA (housing authority)", e.g., the Chicago Housing Authority. 24 CFR 982.353(a). And a "HA may not directly or indirectly reduce the family's opportunity to select among available units". 24 CFR 982.353(f) ("Freedom of Choice").

9. Thus, members of the plaintiff class, African American applicants for and occupants of public housing in Chicago, see Gautreaux v. Pierce, 548 F. Supp. 1294, 1295 (N.D. Ill. 1982), will not be prejudiced, since if they want to live only in the General Areas they can rent there. To the extent the plaintiffs are seeking to force non-class members to live in General Areas of Chicago or to be barred from living in Limited Areas in Chicago, plaintiffs are also not prejudiced, since they are not being injured by the absence of restrictions being imposed on non-parties to this case. Moreover, since such restrictions on where non-class members can live are not needed for a remedy, any further court direction that HUD impose duties to restrict where such families might live would violate HUD regulations and raise Fifth Amendment due process concerns, both on a procedural and substantive basis.

10. Moreover, to the extent HUD may have provided Section 8 Existing funding in the past without assuring that sufficient numbers of families were forced to move into the General Areas, pursuant to paragraph 5.8.1 of the consent decree, it has already been penalized. Conceptually, the 7,100 figure would have been reached sooner, and the millions of dollars that HUD provided to plaintiffs each year pursuant to the "set asides", (see paragraph

5.5.1 of the consent decree), and the comparable relief provision (see paragraph 8.6 of the consent decree), would not have been provided.^{1/}

11. Finally, more than the 7,100 occupancies have been provided by HUD and additional ones will be provided as a result of the consent decree in the future. There is still a pipeline of public housing development units that have not been completed and HUD has agreed with the plaintiffs to extend the term of the contract with the Leadership Council for Metropolitan Open Communities so that it can place families pursuant to the "Gautreaux program" using the hundreds of unused Section 8 certificates that it has received under the consent decree.

WHEREFORE, HUD seeks an order terminating the consent decree and dismissing HUD but retaining jurisdiction solely to consider plaintiffs' application for attorney fees.

Respectfully submitted,

JAMES B. BURNS
United States Attorney

By: 
LINDA A. WAWZENSKI
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
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^{1/} Last year alone through the comparable relief provision HUD awarded CHA approximately \$40 million (of the \$480 million that was available for the whole country) to develop new public housing units in Chicago.

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