7/8/97

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs	)	
	)	
v.	)	NOS. 66 C 1459
	)	66 C 1460
	)	
CHICAGO HOUSING AUTHORITY	)	(Consolidated)
ANDREW CUOMO, Secretary of	)	
the Department of Housing	)	
and Urban Development,	)	
	)	
Defendants	)	

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR A DECLARATION REGARDING FISCAL YEAR 1997 SET ASIDE AND RESPECTING PARAGRAPH 5.8.1 OF THE CONSENT DECREE

PRELIMINARY STATEMENT

Sixteen years ago this Court approved a consent decree to remedy HUD's knowing acquiescence in the Chicago Housing Authority's (CHA) discriminatory public housing patterns. That remedy was for HUD to produce 7100 assisted housing occupancies for eligible persons in the General Areas and Revitalizing Areas and that, upon reaching that number, HUD's remedial obligations would be considered satisfied.

It is undisputed that the 7100 number has been achieved. Yet, the plaintiffs seek to have this Court declare that HUD still must provide millions of dollars more in funding for assisted housing. See, Plaintiffs' Motion To Declare HUD's Obligation To Provide A Fiscal Year 1997 Set-Aside. Additionally, despite the achievement of the remedy, the plaintiffs also ask this Court to enjoin where Section 8 families can live. See, Plaintiffs' Motion Pursuant to Paragraph 8.1 of Consent Decree Respecting Paragraph 5.8.1 of Consent Decree.

Both motions must be denied. First, as to the plaintiffs' claim for more HUD funding, paragraph 5.1 of the consent decree provides that HUD's obligations expire whenever 7100 occupancies in General and Revitalizing Areas have commenced. To construe the decree as not relieving HUD of any funding obligation once 7100 occupancies have been achieved would be contrary to the literal language of paragraph 5.1. Furthermore, it would vitiate the agreed limit on the remedy that HUD was to provide, namely that HUD would not be required to produce more than 7100 occupancies in assisted housing. Second, a failure to observe paragraph 5.8.1 has not been demonstrated and laches bars the plaintiffs from even pursuing their paragraph 5.8.1 claim. But, in any event, the imposition of geographic restrictions which would limit the choices where holders of Section 8 certificates and vouchers can live is unwarranted.

ARGUMENT

I. HUD's Obligation To Provide Housing Outside Of Its Normal Course Of Business Terminates Once 7100 Occupancies Have Been Achieved For Gautreaux Eligible Families.

Paragraph 5.1 of the consent decree requires HUD to provide funding for assisted housing until the 7100 occupancy goal is achieved, at which time HUD's obligations end.[1] Gautreaux v. Pierce, 690 F.2d 616, 623 (7th Cir. 1982) ("HUD's obligations under the

[1] Paragraph 5.1 states:

> Following the effective date, HUD will provide assisted housing to eligible persons as set forth in this Part 5 until the number of occupancies of assisted housing units in the General Area and/or in the Revitalizing Area, pursuant to the contracts referred to in paragraph 5.4, commenced by eligible persons equals 7100.

Decree do not expire until 7,100 eligible persons have commenced occupancy of assisted housing units in the General and Revitalizing Area.") (footnote omitted).

The plaintiffs do not dispute that the 7100 number has been reached, but they maintain that the number was not reached on October 1, 1996.[2] Their position, which is predicated on the Court's Memorandum Opinion and Order of September 1, 1982, (548 F. Supp. 1298), is: HUD is obligated to provide a yearly "set aside" of funding for 350 units of Section 8 new construction/substantial rehabilitation units on the first day of the federal fiscal year, i.e., October 1; that on October 1, 1996, 7100 occupancies had not commenced; and, that, even though the Court approved remedy (and more) now has been provided, HUD still must provide funding for housing this federal fiscal year. Assuming arguendo the plaintiffs are correct that HUD had a "set aside" obligation on October 1, 1996,[3] plaintiffs'

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[2] The plaintiffs and HUD have agreed that the 7100 occupancies was reached on October 2, 1996.

[3] A fundamental flaw in the plaintiffs' position is the erroneous assumption that, before the 7,100 occupancies were reached on October 2, 1996, HUD had a duty to set aside any funds other than funds for 150 Section 8 certificates specified in paragraph 5.5.1 (which plaintiffs do not contend were due them in federal fiscal year 1997).

While paragraphs 5.5.2 and 5.5.3 required HUD at the beginning of each federal fiscal year to set aside funding for 350 Section 8 new construction/substantial rehabilitation units, HUD was relieved of that duty when Congress repealed those Section 8 programs in 1983. Paragraph 8.6 of the decree recognizes that performance of the set aside is contingent on statutory authority and goes on to provide "HUD shall not be held in contempt of this Court or otherwise punished, for non-compliance . . . ." Thus, paragraphs 5.5.2 and 5.5.3 became inoperable long ago; and, when they became inoperable, so did the duty to set aside on October 1st the funding that those paragraphs mandated.

Since 1984 the applicable relief, which took the place of paragraphs 5.5.2 and 5.5.3, was paragraph 8.6. However, it makes no mention of any date, let alone October 1st, as to when comparable relief is to be set aside. Rather, paragraph 8.6. sets out a process in which the parties will "consult in an effort to agree upon a proposed modification of this Decree" and "[I]f after a reasonable time the parties cannot agree" this Court would adjudicate the position requires a construction that would depart from the literal language of paragraph 5.1 and, therefore, must be rejected.

Had paragraph 5.1 been written as stating, "HUD will set aside assisted housing . . . until the number of occupancies . . . commenced by eligible persons equals 7100", plaintiffs' claims for additional HUD funding might have merit. However, the parties agreed to use the word "provide" rather than "set aside", and thus created an agreement that contemplated HUD might have to "set aside" funds but need not have to actually "provide" them if the 7100 occupancies were reached before HUD executed the contracts for those funds.[4]

Thus, assuming arguendo HUD was required to have set aside funding on October 1, 1996, paragraph 5.1 makes it explicit that, if HUD had not entered into the statutorily mandated contract for awarding the funds at the time the 7100 occupancies had commenced, it would no longer have to "provide" the funding. The plaintiffs, on the other hand, in effect are saying that additional words have to be added to the paragraph. In essence, they ask this

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matter. Until this process is complete, HUD had no obligation to set aside any contract authority (and indeed could not know what to set aside). Thus, plaintiffs do not have any support for a contention that under paragraph 8.6, HUD was required to have set aside even comparable relief on October 1, 1996.

[4] The parties understood when the decree uses the phrase "HUD will set aside contract authority" that this was merely the direction to reserve the funding. See paragraph 5.5.3.b ("If the set-aside [which is due on October 1] is not fully reserved by June 30 . . . ."). On the other hand, the statutory mechanism to "provide" the "set aside" was through "housing assistance payment contracts" in the case of Section 8 new construction or substantial rehabilitation projects. Although the parties could have specified a date on which such contracts would have to have been executed following the "set aside", they did not do so. Accordingly, the parties drafted a decree that leads to the situation where there would be an interim period after the "set aside" would be due during which HUD would be taking the necessary administrative actions prior to executing a contract. Paragraph 5.1 simply recognized that, once 7100 occupancies were achieved, the remedial aspect of the case is over and HUD would not have to provide any further funding because there would be no remedial necessity for doing so.

Court to read paragraph 5.1 as if it contained the following language: "HUD will provide assisted housing until the number of occupancies . . . equals 7100, except that, even when 7100 occupancies are achieved, HUD will nevertheless still have to provide funding that was required to be set aside prior to the achievement of the 7,100 occupancies."

There is no reason, however, to depart from the literal language, as would be required in order to give effect to the plaintiffs' position. Rather than leading to any absurd result, the literal language produces exactly what the parties and this Court intended, namely HUD would be required to produce 7,100 occupancies and no more. In short, the decree was to require HUD to produce only 7,100 occupancies and once they have commenced all HUD's duties under the decree "expire".[5] Gautreaux v. Pierce, 690 F. 2d at 623. Thus, giving effect to the literal language of the decree is fully consistent with the decree.[6]

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[5] The parties understood that the decree contained only a requirement for 7,100 occupancies and so advised the Seventh Circuit in their joint brief defending the district court's approval of the consent decree:

> The Decree may be described as having eight essential elements. (See generally, 1/14/81 Tr. pp. 17-30.) These are:
>
> * * *
>
> (5) The specific determination of the total number of units required to be provided (7,100) under the Decree.

(emphasis added.) Joint Brief of Plaintiffs-Appellees and Defendant-Appellees, United States Department of Housing and Urban Development, filed in the United States Court of Appeals For the Seventh Circuit on March 25, 1982 in No. 81-2308, 81-2311, 81-2361 (Consolidated) at pp. 1d-1e.

[6] Assuming arguendo HUD had a funding obligation which was not extinguished on October 2, 1996, HUD requests that the Court exercise its authority under paragraph 8.2 of the decree and, as requested in HUD's motion to terminate the consent decree, relieve HUD of any further obligations. Missing the 7100 occupancy figure by one day after almost sixteen years of performance should not result in HUD having to provide millions of additional dollars, to the extent any funds are available, since more than the agreed upon remedy has already been provided. See infra at 11.

II. Plaintiffs' Motion Regarding Paragraph 5.8.1 Of The Consent Decree Must Be Denied.

A. Plaintiffs have not proved HUD failed or is failing to follow paragraph 5.8.1.

The plaintiffs as the moving parties bear the burden of presenting facts to support their allegations of nonobservance of paragraph 5.8.1 of the decree. Yet, they have not submitted any evidence showing how many placements were not, or are not, being made in accordance with the locational restrictions specified in paragraph 5.8.1. For this reason alone, their motion must be denied.[7]

Additionally, to the extent they may be relying only on past placements by CHA to support their allegations of past deviations, they have failed to take into consideration the Section 8 certificate placements that the Leadership Council for Metropolitan Open Communities (Leadership Council) has made in General Areas of Chicago. These placements must be included in any analysis of paragraph 5.8.1.[8] While paragraph 5.8.1 applies to the funding HUD makes available for use in Chicago, it does not mandate that only those placements made by the CHA be counted.

Moreover, with respect to the alleged current failure, as described in paragraph 4 of the plaintiffs' motion, plaintiffs fail to present any facts that the 7340 new certificates and

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[7] Because the plaintiffs have not presented any evidence to support their allegations, HUD reserves the right to respond if, and when, they submit any admissible evidence.

[8] "As of mid-1994, approximately 3000 Gautreaux families had moved to 115 of Chicago's suburbs and 2,600 families had moved to eligible census tracts in the city." (emphasis added). George E. Peterson and Kale Williams, Housing Mobility: What Has It Accomplished and What Is Its Promise, Housing Mobility Promise or Illusion, Urban Institute (Alexander Polikoff, editor), 1995 at 31.

vouchers[9] have yet been utilized in amounts that would be inconsistent with paragraph 5.8.1.

But even if the plaintiffs could cure the factual deficiencies of their motion, as a legal matter their allegations are defective and require denial of their motion. First, as a result of a change in federal law, the provisions in paragraph 5.8.1 ceased to apply to CHA's Section 8 Existing program many years ago. That paragraph provides in relevant part that HUD not approve or set aside "contract authority for Section 8 . . . Existing . . . housing in the City of Chicago unless . . . ." When the consent decree was executed, all such contracts with CHA were for housing in the City of Chicago because that was CHA's jurisdiction. On February 5, 1988[10], however, Congress changed the Section 8 Existing program by mandating that certificates and vouchers were "portable", i.e., they were no longer limited to the public housing agency's jurisdiction. 42 U.S.C. §1437f(r); 24 CFR 982.353. Thus, as of 1988, HUD by law could no longer set aside or approve contract authority for use in a PHA's jurisdiction. Accordingly, because paragraph 5.8.1 only applies if HUD approved or set aside contract authority for housing in Chicago, paragraph 5.8.1 became inoperable when the federal law barred it from doing so.

Second, the plaintiffs fail to recognize that paragraph 5.8.1 does not now apply, and has not applied to HUD since the time the 7100 occupancies had been reached. By virtue of paragraph 5.1, there can be no current obligation upon HUD to take any action to restrict where families should live. Thus, contrary to the plaintiffs' belief, the 7340 certificates and

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[9] See, Declaration of Madeline Hastings attached to Federal Defendant's Response To Plaintiffs' Motion To Modify CHA's Judgment Order.

[10] Section 145 of the Housing and Community Development Act of 1987, Pub.L.No. 100-242, 101 Stat. 1815,1852 (codified at 42 U.S.C. §1437f(r)).

vouchers may now be utilized without forcing families to live against their will in particular areas of Chicago.

B. Plaintiffs' Motion Is Barred By The Doctrine Of Laches.

While the plaintiffs' motion could be denied on the merits, this Court should not even reach the merits and instead should dismiss the motion on the basis of laches.[11]

The Seventh Circuit defines laches as an unreasonable delay that prejudices the defendant. EEOC v. Massey-Ferguson, 622 F.2d 271 (7th Cir. 1980). Simply put, it operates as a bar upon the assertion of a party's rights when that party has unreasonably delayed in asserting its rights so as to cause prejudice to the adverse party. Lake Caryonah v. Pulte Home Corp., 903 F.2d 505, 509 (7th Cir. 1990). Prejudice is established when a party remains passive while an adverse claimant incurs risk, enters into obligations, or makes expenditures for improvements or taxes. Id. at 510. Laches also applies to enforcement of a consent decree. Equal Employment Opportunity Commission v. CW Transport, Inc., 658 F.Supp. 1278, 1287 (W.D. Wis. 1987).

In this case the plaintiffs have demonstrated a lack of diligence. On information and belief, the plaintiffs' allegations with respect to paragraph 5.8.1 of the decree may be based on CHA's placements of its Section 8 certificates. However, the plaintiffs have known, as

[11] In paragraph 5 of its motion, the plaintiffs reference an agreement with HUD. That agreement, however, only provided that HUD would not take the position that this motion would be untimely filed by reason of having reached the 7100 occupancy figure before the motion was filed. HUD is, therefore, not contending here that, because the motion was filed after HUD's obligations under the decree ceased, the Court lacks jurisdiction to consider it.

early as 1991[12], that less than one-third of its certificate holders were locating housing in General Areas in Chicago. Also, it is inconceivable for the plaintiffs not to have been aware of the situation at the onset of the consent decree. After all, the plaintiffs were put on notice shortly before the execution of the decree of the difficulty CHA had in limiting placements in the Limited Areas and in getting non-elderly families to move to the General Areas of Chicago, as evidenced by Exhibit 2, a November 12, 1980 letter from CHA's Calvin Hall to Alexander Polikoff, to which is attached statistics regarding CHA Section 8 placements. Additionally, the plaintiffs could not have expected that CHA would have a greater success rate than the Leadership Council when, unlike the Leadership Council's contract, the decree did not provide counselling funds nor did it mandate that families be precluded from using their certificates in Limited Areas.[13] Faced with this knowledge, and although it is recognized that a plaintiff's monitoring of a consent decree is essential to ensure its success, see White v. Morris, 863 F.Supp. 607, 610 (S.D.Ohio 1994), the plaintiffs sat back and did

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[12] See letter dated September 18, 1991, attached as Exhibit 1 to Alexander Polikoff from Greg Heine, Office of Development, CHA, within which Heine states that 82% of currently leased certificates and vouchers are in Limited Areas.

[13] Even the Leadership Council program has enjoyed only moderate success. The Leadership Council's success rate in getting eligible families who enroll in the Gautreaux program to move to General Areas is only 19%. George E. Peterson and Kale Williams, id. at 30.

nothing for many years.[14] Indeed, not until July 16, 1991, did plaintiffs' counsel even inquire why CHA had stopped submitting to him reports on the Section 8 program.[15]

Thus, the plaintiffs unreasonably delayed pursuing the issue, and this delay has prejudiced HUD materially. Paragraph 5.8.1 is an instruction to HUD not to provide any Section 8 Existing funding unless the certificates are to be located in accordance with the provisions of paragraph 5.8.1. Had the plaintiffs pursued their motion earlier, and assuming arguendo they had prevailed on it, they would have been entitled to bar HUD from providing Section 8 funding to Chicago because it could not guarantee that certificate holders would use their certificates in accordance with the geographical restrictions imposed in paragraph 5.8.1. Such an order would have enabled HUD to use funding that it would have otherwise made available for Chicago for other families throughout this country in need of housing. Moreover, as a result of the plaintiffs having failed to pursue their claims in this Court earlier, there are now thousands of families living in areas where the plaintiffs say that they cannot live. However, HUD cannot now withdraw the funding or force those families to move from their apartments.

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[14] Obviously pursuing paragraph 5.8.1 would not have been beneficial to the plaintiffs, since it would have reduced the opportunity for class members and other African Americans to receive housing assistance. Moreover, certificates could always be used in General Areas because of the statutory and regulatory scheme that favors choice. One can understand, therefore, why the plaintiffs chose not to pursue halting the funding for certificates. It simply was not in their interest to do so.

[15] See letter dated July 16, 1991, from Alexander Polikoff to Robert Whitfield of CHA attached as Exhibit 3 in which Mr. Polikoff states:

> As long as I'm asking to be brought up to date, it's been a long time since I received any report on CHA's Section 8 program (not less than 1/3 in the General Area, not more than 1/3 in the Limited Area -- ¶5.8.1 of the HUD Consent Decree). Could I get a report on that too?

In the final analysis, the plaintiffs lack of diligence in pursuing their claims regarding paragraph 5.8.1 has materially prejudiced HUD. Under these circumstances, the doctrine of laches requires dismissal of the motion.

III. Assuming Arguendo Paragraph 5.8.1 Has Not Been Observed, The Equities Warrant No Further Restrictions Be Imposed On Section 8 Families' Right To Choose Housing In Chicago.

The plaintiffs seek as relief in their motion that paragraph 5.8.1 be applied indefinitely and that HUD, therefore, compel Section 8 families to live in particular areas of Chicago. The equities, however, would not warrant such relief for the following reasons:

1) Paragraph 5.8.1 was merely one of several means in the decree of creating housing opportunities towards the 7100 occupancy goal. Now that the remedy has been provided, paragraph 5.8.1 no longer has a remedial purpose.

2) HUD has already provided more than 7100 occupancies and the funding provided under the decree will continue to produce additional occupancies.[16] In this regard, it should be noted that the Receiver still has additional units to complete and that HUD has agreed to extend the Leadership Council's contract, which would expire in September, so that it can place families with the hundreds of unused Section 8 certificates it has been given pursuant to this decree.

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[16] The Receiver's Fourth Quarter Report for 1996 and First Quarter report for 1997 lists 104 scattered sites units as completed and transferred to CHA between October 1, 1996 and March 31, 1997. The Leadership Council reported 201 placements between October 1, 1996 through May 31, 1997. See excerpt from the Monthly Technical Progress Narrative Number 77 prepared for HUD by Delores A. Irvin, Director of the Gautreaux Assisted Housing program attached as Exhibit 4.

3) Plaintiffs and their class were not prejudiced by the nonobservance of paragraph 5.8.1. Those families who received certificates could choose to live in General Areas in Chicago; any who chose to use their certificates in Limited Areas should not now be allowed to complain that they should have been required to use them in the General Areas. Indeed, if there are class members who are living in Limited Areas who want to live in General Areas, they are permitted to move to those areas. Similarly, those class members that receive Section 8 assistance in the future will not be prejudiced by this Court not requiring observance of paragraph 5.8.1 because the law allows them to choose where they can use their Section 8 assistance in Chicago. See, 24 CFR 982.353(a) and 353(f). Nor can plaintiffs assert that they were prejudiced because the nonobservance of paragraph 5.8.1 delayed achieving the 7100 occupancy goal. Time was not made the essence of the consent decree. If anything, it is HUD who has already been penalized for any such delay because each year that the 7100 figure had not been reached HUD had to provide additional funding for assisted housing.

4) Directing that paragraph 5.8.1 be applied would deprive non class members of their legal entitlement to choose where they can use their Section 8 assistance and would violate both procedural and substantive due process, as well as the aforementioned HUD regulations. In this regard, it should be noted that paragraph 5.8.1 does not apply only to the plaintiff class but also operates to restrict where non class members may live. There is, however, no rational remedial purpose that could justify applying restrictions on non class members' choices.

5) HUD is attempting to assist families to locate housing in General Areas; to mandate any fixed percentage would be counter productive.

As stated in HUD's Response to Plaintiffs' Motion to Modify CHA's Judgment Order, filed June 25, 1997, the primary recipients of the 7340 Section 8 certificates and vouchers HUD recently awarded to CHA will be family public housing tenants, which are primarily Gautreaux class members. Also, CHA has been awarded $4 million in counselling funds to promote metropolitan-wide housing choices for those tenants in low-poverty areas. See Declaration of Madeline Hastings, attached to Federal Defendant's Response to Plaintiffs' Motion to Modify CHA's Judgment Order, at 2. These counselling funds will be used to broaden housing choice for public housing tenants who will be required to move from their units and who will receive Section 8 certificates or vouchers. Declaration of Madeline Hastings, attached hereto.

In addition to this special Section 8 mobility program for public housing tenants, HUD has taken steps to expand housing choice for participants in the overall Section 8 program. On December 1, 1995, the function of administering the CHA's Section 8 program was transferred to Quadel Consulting Corporation, a private contractor. Quadel's contract with CHA grants it performance awards for each percentage point increase in units leased in low-poverty census tracts. Declaration of Madeline Hastings. "Low-poverty census tracts" are census tracts located in either the City of Chicago or the Chicago metropolitan area that, as measured by the 1990 census, had less than twenty-percent of persons living in poverty. Declaration of Madeline Hastings. These census tracts correspond substantially with the Gautreaux General Areas.

The plaintiffs' desire to have certificates earmarked for use only in General Areas is counter productive and may well keep families in distressed public housing, as there appears to be limited housing opportunities in General Areas, or may force them to move outside the City and into Limited Areas there.[17] Indeed, as described in footnote 13 above, even the Leadership Council only has a 19% success rate, and that is with eligible families who have expressed a desire to live in General Areas by volunteering to participate in its Gautreaux program.

WHEREFORE, an order denying or dismissing plaintiffs' two motions should issued.

Respectfully submitted,

JAMES B. BURNS
United States Attorney

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

OF COUNSEL:

CAROLE W. WILSON

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[17] Because paragraph 5.8.1 only applies to locations within Chicago, imposition of its requirements might well produce results that the plaintiffs would not want. Namely, public housing tenants who will be displaced from distressed public housing, who could not obtain housing in the General Areas of Chicago and who would be barred from the Limited Areas in Chicago, might therefore, have to rent housing in the Limited Areas outside of the City, which would not be barred by paragraph 5.8.1. To bar them from living in the Limited Areas in Chicago, but allowing them to live in the Limited Areas outside of the City, serves no conceivable purpose. This is another reason why the plaintiffs' request that paragraph 5.8.1 be enforced makes no sense.

Associate General Counsel
for Litigation and Fair Housing Enforcement

HOWARD M. SCHMELTZER
Assistant General Counsel

KATHLEEN E. BURTSCHI
Trial Attorney

Dept. of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410
(202) 708-1067

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division

DOROTHY GAUTREAUX, et al.	)	
Plaintiffs	)	
v.	)	NO. 66 C 1459
CHICAGO HOUSING AUTHORITY	)	
Defendant	)	

DECLARATION OF MADELINE HASTINGS

I, Madeline Hastings, Associate Deputy Assistant Secretary of Public and Assisted Housing Operations, Office of Public and Indian Housing, United States Department of Housing and Urban Development (HUD), supplement my previous declaration and do hereby declare under penalty of perjury, based upon my personal knowledge or information provided to me by my staff:

1. The $4,000,000 HUD has awarded CHA for counselling will be used to broaden housing choice for CHA public housing tenants who receive Section 8 certificates and vouchers. This mobility counselling will be provided by an entity other than CHA.

2. On December 1, 1995, the function of administering the CHA's Section 8 program was transferred to Quadel Consulting Corporation (Quadel). Quadel has contracted with CHAC, Inc. to carry out this function.

3. Quadel's contract with CHA grants it performance awards for each percentage point increase in units leased in low-poverty census tracts.

4. The Quadel contract defines "low-poverty census tracts" as census tracts located in either the City of Chicago or the Chicago metropolitan area that, as measured by the 1990 census, had less than twenty-percent of persons living in poverty. These areas correspond substantially with Gautreaux General Areas.

Executed on July 7, 1997.

Madeline Hastings

MADELINE HASTINGS, Associate Deputy
Assistant Secretary for Public
and Assisted Housing Operations
Office of Public and Indian Housing
U.S. Department of Housing and
Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

EXHIBITS
GAUTREAUX v. CHA

Exhibit 1 - September 18, 1991 letter to Alexander Polikoff

Exhibit 2 - November 12, 1980 letter from CHA's Calvin Hall

Exhibit 3 - July 16, 1991 letter from Alexander Polikoff to Robert Whitfield

Exhibit 4 - Habitat and Leadership Council Placements 10/96 - 05/97

The Chicago Housing Authority

EXHIBIT

1

September 18, 1991

Alexander Polikoff, Esq.
Business & Professional People
for the Public Interest
17 E. Monroe Street - Suite 212
Chicago, Illinois 60603

Re: Section 8 In Chicago Limited Areas

Dear Alex:

The Gautreaux court order entered April 9, 1991, formed the basis for our analysis of outstanding Section 8 Certificates and Vouchers within currently designated Limited Areas.

Those census tracts therein enumerated accounted for 9,196 out of the total 11,251 certificates and vouchers under lease as of July 30, 1991.

My investigation and inquiry here at the Authority lead unfailingly to the following conclusions:

1. Section 8 Certificates, as a practical matter, have never had their use restricted to other than Limited Areas.

2. The Section 8 Voucher program was never deemed (ab initio) to be governed by Gautreaux.

The fact that eighty-two percent of all currently outstanding Certificates and Vouchers are under lease within Limited Areas certainly bears out this historical perspective.

Sincerely,

Greg

Greg Heine, Director
Office of Development

cc: Robert Whitfield, Esq.
F. Willis Caruso, Esq.

EXHIBIT
2

Chicago Housing Authority

EXECUTIVE DIRECTOR
G. W. MASTER

22 WEST MADISON STREET
CHICAGO, ILLINOIS 60602
(312) 791-8500

COPY

November 12, 1980

Mr. Alexander Polikoff
Executive Director
Business & Professional People
For the Public Interest
109 North Dearborn Avenue
Chicago, Illinois 60602

Dear Mr. Polikoff:

In compliance with your request, Mike Role has prepared the enclosed statistical report for the Section 8 Existing Housing Program.

If you have any further questions regarding these figures, you may contact Mike at 791-8728.

Sincerely,

CALVIN H. HALL
General Counsel

COPY

CH:MR:gc

Enclosures

Section 8 EXISTING HAP PROGRAM
22 WEST MADISON ST.
CHICAGO, ILLINOIS 60602

Approved by

STATISTICAL REPORT AS OF OCTOBER 3, 1980

Allocation Year	1976	Sec. 23	1977	L.C.	C.D.A.	L.C.	1979	1980	L.C.	Sub Total	Total
Project Number	001	002	003	004	005	006	007	008	009		9
Number of Authorized Units	571	3388	875	40	389	111	682	-0-	46		6102
Non-Elderly	343	1028	875	40	346	111	682	-0-	46	3471	
Elderly	228	2360	-0-	-0-	43	-0-	-0-	-0-	-0-	2631	
General Area Non-Elderly	77	115	256	12	21	56	134	-0-	4	675	
Limited Area Non-Elderly	262	905	578	16	326	53	308	-0-	6	2454	
Sub Total	339	1020	834	28	347	109	442	-0-	10		3129
General Area Elderly	151	1477	2	4	19	1	1	-0-	-0-	1655	
Limited Area Elderly	86	860	5	5	24	-0-	1	-0-	-0-	981	
Sub Total	237	2337	7	9	43	1	2	-0-	-0-		[illegible]
Total Units Under Lease	576	3357	841	37	390	110	444	-0-	10		5765

General Area Non-Elderly	675
General Area Elderly	1655
Total General Area	2330
Limited Area Non-Elderly	2454
Limited Area Elderly	981
Total Limited Area	3435
Total	5765

chrono

BPI

Business and Professional People for the Public Interest

17 East Monroe Street, Suite 212 • Chicago, Illinois 60603 • Telephone: (312) 641-5570 • FAX: 641-5454

EXHIBIT

3

July 16, 1991

Mr. Robert Whitfield
Chicago Housing Authority
22 West Madison - #400A
Chicago, IL 60602

Here is the project-based Section 8 letter we talked abut yesterday. I'd be happy to discuss it whenever convenient.

Perhaps, since we'll be meeting on this, we could place a few other items on the agenda:

(1) I'd really like to get a fix soon on private manager selection and major/minor repairs, as requested in my letter to Greg Heine of July 15. We're way behind the agreed schedule on the former.

(2) As long as I'm asking to be brought up to date, it's been a long time since I received any report on CHA's Section 8 program (not less than 1/3 in the General Area, not more than 1/3 in the Limited Area -- ¶5.8.1 of the HUD Consent Decree). Could I get a report on that too?

(3) What about CHA's demonstration program? Is HUD still holding it up? Why? Should the Suarez-Garaffa "team" be utilized?

Cordially,

Alexander Polikoff

ALP:mm

GAUTREAUX PLACEMENT BREAKDOWN FOR EXISTING HOUSING - RELIEF TABLE
Contract HO5C95021600000

Previous Contract						963		963	1864	4296		
Month	City: Lim.	Gen.	Rev.	Suburban Lim.	Gen.	Total	Total Cum. Placement Existing	Monthly Relief	Cum. Relief Contract Existing	Cum. Mon.	Relief Con.	Overall
01/96	0	00	0	0	24	24	24	24	24	24	24	4421
02/96	0	00	0	0	19	19	19	19	19	19	19	4440
03/96	0	00	0	0	27	27	27	27	27	27	27	4467
04/96	0	00	0	0	12	12	12	12	12	12	12	4479
05/96	0	00	0	0	18	18	18	18	18	18	18	4497
06/96	0	00	0	0	07	07	07	07	07	07	07	4504
07/96	0	00	0	0	22	22	22	22	22	22	22	4526
08/96	1	00	0	0	25	25	25	25	25	25	25	4552
09/96	1	00	0	0	19	19	19	19	19	19	19	4571
10/96	1	00	0	0	20	20	20	20	20	20	20	4591
11/96	0	00	0	0	43	43	43	43	43	43	43	4634
12/96	1	00	0	0	34	34	34	34	34	34	34	4668
01/97	0	00	0	0	32	32	32	32	32	32	32	4700
02/97	0	00	0	0	14	14	14	14	14	14	14	4714
03/97	0	00	0	0	26	26	26	26	26	26	26	4740
04/97	0	00	0	0	21	21	21	21	21	21	21	4761
05/97	0	00	0	0	11	11	11	11	11	11	11	4772

EXHIBIT 4

AFFIDAVIT OF HAND DELIVERY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ANN C. BISSELL, 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 **8th day of July, 1997** she placed a copy of **MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR A DECLARATION REGARDING FISCAL YEAR 1997 SET ASIDE AND RESPECTING PARAGRAPH 5.8.1 OF THE CONSENT DECREE** in a government franked envelope addressed to the following named parties and caused said envelopes to be hand delivered, on said date at or before the hour of 4:30 P.M.

Alexander Polikoff, Esquire
Business & Professional
People for the Public Interest
17 East Monroe Street
Suite 212
Chicago, Illinois 60603

Susan Getzendanner, Esquire
Nancy Eisenhauer, Esquire
Skadden, Arps, Slates,
Meagher & Flom (Illinois)
333 West Wacker Drive
Suite 2100
Chicago, Illinois 60606
Counsel for CHA

Michael L. Shakman, Esquire
Barry A. Miller, Esquire
Edward W. Feldman, Esquire
Derek L. Cottier, Esquire
Miller, Shakman, Hamilton, Kurtzon
& Schlifke
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604

Ann C. Bissell

ANN C. BISSELL

SUBSCRIBED AND SWORN TO before me
this 8th day of July, 1997.

Cynthia A. Meinke

NOTARY PUBLIC

"OFFICIAL SEAL"
Cynthia A. Meinke
Notary Public, State of Illinois
My Commission Exp. 04/30/2000