

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

RECEIVED

AUG - 8 1997

Judge Marvin E. Aspen
U.S. District Court

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

ANDREW CUOMO, Secretary of
Department of Housing and Urban
Development,

Defendant.

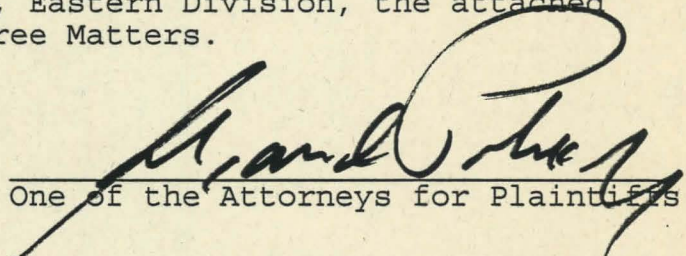
66 C 1460

Hon. Marvin E. Aspen

NOTICE OF FILING

To: Attached Service List

Please take notice that on Friday, August 8, 1997 I filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, the attached Plaintiffs' Reply Brief on Three Matters.


One of the Attorneys for Plaintiffs

Dated: August 8, 1997

Alexander Polikoff
Julie Elena Brown
Robert L. Jones, Jr.
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ILLINOIS

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U.S. District Court

Plaintiffs,

V.

Defendant.

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PLAINTIFFS' REPLY BRIEF ON THREE MATTERS *

* / The three matters are: (1) HUD's motion to terminate the Consent Decree; (2) plaintiffs' motion for a FY1997 set-aside; and (3) plaintiffs' motion for Section 8 relief relating to paragraph 5.8.1 of the consent decree. Pursuant to the Court's order of 5/20/97, simultaneous answering (opening) briefs were filed on 7/8/97, to be followed by simultaneous reply briefs on 8/8/97.

I. PLAINTIFFS ARE ENTITLED TO A FY1997 SET-ASIDE.

Although in the natural world the tale of the ostrich burying its head in the sand may be fanciful, it has metaphorical application to HUD's brief on the FY1997 set-aside, with, however, a consequence not present in the ostrich context. HUD's brief (Part I, pages 2-5) essentially repeats HUD's letter of 4/1/97, which is Exhibit A to plaintiffs' opening brief. However, HUD ignores our responsive letter of 4/15/97, which is Exhibit B to plaintiffs' opening brief. Although HUD's reply brief will presumably respond to the arguments set out in our letter, the simultaneous filing schedule will preclude us from responding to what HUD says.

HUD's central argument is that its first day of the fiscal year set-aside obligation, as determined by this Court's Memorandum Opinion and Order of 9/1/82, was extinguished when the comparable relief process of paragraph 8.6 was employed beginning in 1984. HUD's theory is that the set-aside obligation then shifted from the beginning of each fiscal year to the end of each year's comparable relief process. Yet, as we pointed out in our 4/15/97 letter, the parties entered into a written agreement (Exhibit X attached), memorializing an oral agreement reached before the Court on 10/23/92, that is wholly inconsistent with HUD's theory. The agreement shows, conclusively we think, that the parties understood that HUD's set-aside obligation matured at the beginning of the fiscal year, not at the end of the comparable relief process, even though at that point the parties had been using the comparable relief process for some eight years. If there were ambiguity in the consent decree left unresolved by this Court's Memorandum and Order of 9/1/82, this agreement of the

parties surely resolved it. Yet HUD's opening brief is silent about the 1992 agreement.¹

Our 4/15/97 letter (Exhibit B) also points out that HUD's contention (reiterated in HUD's brief several times) that the consent decree entitles plaintiffs to no more than 7100 occupancies is quite wrong:

"[T]he consent decree entitles plaintiffs to whatever number of occupancies HUD is required to fund before HUD's obligations to provide further funding are terminated by attaining 7,100 occupancies. Plaintiffs bargained not for a number of occupancies, but for a continuing HUD obligation to fund housing in agreed ways (regardless of the number of units thereby produced) until the obligation to provide further funding was terminated by reaching 7,100 occupancies. Given the realities of the HUD funding mechanism, it was a foregone conclusion that plaintiffs would wind up with some number of occupancies in excess of 7,100." Exhibit B, pp. 2-3.

¹ As to the 1992 agreement Exhibit B, p. 3, says:

"Our agreement [of 10/28/92] states that 'if the total occupancies are between 7050 and 7099 on September 30th of the then current fiscal year, the 50-unit credit [attributable to two elderly buildings] will not be counted in that year.' (My letter to John Jensen of October 28, 1992.) Plainly the parties' agreement was intended to give plaintiffs the benefit of HUD's first-day-of-the-fiscal-year set-aside obligation even though we had reached 7099, but not 7100, occupancies on September 30th of any year. That, lacking a few units, is precisely where we now know we were on September 30, 1996."

Compounding the awkwardness of ignoring the 1992 agreement and its implications, HUD says "plaintiffs and HUD have agreed that the 7100 occupancies was reached on October 2, 1996" (p. 3, n.2). True, but only because this self-same 1992 agreement gives HUD "credit" toward the 7100 occupancies figure after the last day of the fiscal year! Thus, HUD takes advantage of the 1992 agreement to argue the "equity" point that "we only missed by one day," while ignoring the import of the agreement: namely, that the parties viewed the last day of the fiscal year, not the end of the comparable relief process, as the crucial maturity date for HUD's set-aside obligation. Certainly plaintiffs did not enter into a bargain that would give them a set-aside on October 1st and take it away on October 2nd.

Silent on these realities, and on the undisputed fact that they have led HUD to provide more than 7,100 occupancies, HUD continues to speak as if "HUD would be required to produce 7,100 occupancies and no more" (p. 5).²

HUD's brief also ignores the relevant contract law, discussed in Exhibit B, which supplies the conceptual underpinning for the proper reading of the consent decree:

"A consent decree is to be construed for enforcement purposes basically as a contract, U.S. v. ITT Continental Baking Co., 420 U.S. 223, 238 (1974). It is familiar law that termination of a contract, which of course ends the arrangement between the parties as respects further transactions, does not affect obligations already accrued. 17A CJS Contracts, Sec. 404 (1968, 1996); U.S. v. Southern Gulf Lumber Co., 10 F. Supp. 815, 818 (D.C. Ala. 1952). ('It is of course axiomatic that, although a contract may be terminated, vested rights which have arisen under such contract are not and cannot be destroyed by such termination.' Cantor v. Berkshire Life Ins. Co., 171 NE2d 518, 520 (Ohio, 1960).)

"Accordingly, HUD was not relieved on October 7 from having to provide the assisted housing it became earlier (on October 1) obligated to provide. HUD was only relieved on October 7 from having to provide assisted housing beyond what it was already obligated to provide; attaining the 7,100 figure on October 7 did not relieve HUD from whatever its assisted housing obligations were on October 6th, or 5th, or 4th,... or 1st." Exhibit B, p. 2.

In like vein, while arguing that plaintiffs' reading of the consent decree "would depart from the literal language of paragraph 5.1 and therefore must be rejected" (p. 4), HUD ignores the language of paragraph 5.1 showing that it is HUD, not plaintiffs, who seeks to depart from the literal language of the decree:

² Indeed, elsewhere (p. 11) HUD acknowledges: "HUD has already provided more than 7100 occupancies and the funding provided under the decree will continue to produce additional occupancies" (emphasis added).

"Par. 5.1 . . . says HUD will provide assisted housing 'as set forth in this Part 5' until the 7100 figure is reached. Since 'this Part 5' obligated HUD to provide assisted housing in the form of a 350 unit set-aside on October 1, 1996, it would violate the 'as set forth' language of para. 5.1 to relieve HUD of its October 1 obligation on the ground that 7,100 occupancies were reached on October 7." Exhibit B, p. 2.

HUD's brief does advance one argument not found in its 4/1/97 letter, which, however only further confirms the proper reading of the consent decree. Based on paragraph 5.5.3.b of the consent decree, HUD argues (p. 4) that if set-aside funds are not fully reserved for use through HUD-executed contracts by the time 7100 occupancies are reached, then HUD "need not have to actually 'provide' them [the set-aside funds] if the 7100 occupancies was reached before HUD executed the contracts for those funds."

Once again, the actual consent decree language is plainly contrary to HUD's argument. Paragraphs 5.5.2.c and 5.5.3.b both state that contract authority equal to any portion of the set-aside unused in any year,

"shall be available for use in the succeeding year and shall not diminish the ...set-aside ...to be provided in that succeeding year, unless HUD's obligations have terminated ..." (emphasis added).

The decree does not say, as HUD is now arguing, that attaining 7100 occupancies diminishes HUD's set-aside obligation for the current year, but only for the "succeeding" year.

Rather than continue to repeat HUD arguments made and already answered in the parties' exchange of letters, we ask the Court to review those letters. Together with the Court's Memorandum Opinion and Order of 9/1/82, and the parties' written

agreement of October 28, 1992, they compel the conclusion that plaintiffs are entitled to a final set-aside for FY1997. The Court should so declare, thereby "remanding " the parties to the comparable relief process of paragraph 8.6 of the consent decree, and should retain jurisdiction over the matter as provided in paragraph 8.6.

II. PLAINTIFFS ARE ENTITLED TO RELIEF RESPECTING PARAGRAPH 5.8.1 OF THE CONSENT DECREE

Unlike the FY1997 set-aside, the paragraph 5.8.1 issue is not linked to the 7100 occupancies figure and termination of the consent decree. For several years, continuing months beyond the point at which 7100 occupancies were reached, the parties discussed what to do about the 5.8.1 situation. In that context they agreed that should the discussions fail to reach accord and plaintiffs seek relief from the Court, HUD would not take the position that plaintiffs' request would be untimely. "HUD is . . . not contending here that, because the motion was filed after HUD's obligations under the decree ceased, the Court lacks jurisdiction to consider it." HUD opening brief, p. 8, n. 11.

HUD advances three reasons as to why plaintiffs' 5.8.1 motion should be denied: (1) defective allegations (pp. 6-8); (2) laches (pp. 8-11); and (3) equities (pp. 11-14). We will respond in that order, after a brief contextual statement.

A. The 5.8.1 Context

Plaintiffs' motion comes at a unique point in the history of both subsidized housing and the Gautreaux litigation. Traditional "bricks and mortar " public housing is

being replaced by the Section 8 rent subsidy. A recent article compares the ratio of Section 8 certificates/vouchers issued to project-based units committed:

1970s (last 4 years):	0.60 to 1.0
1980s (entire decade):	1.40 to 1.0
1990s (first 4 years):	4.75 to 1.0 ³

This sea-change in the form of housing assistance is occurring precisely when Section 8 relief for Gautreaux families (three-quarters of whom have not yet received relief) is coming to an end. The attainment of the 7100 occupancies figure will terminate the Gautreaux Section 8 Program established under the consent decree.⁴ (The program has been a success, having provided relief to over 6,500 Gautreaux families, but thousands more still seek such relief and are unable to obtain it. Affidavit of Mary Davis, Exhibit Z attached.) Coupled with the failure of the parties' 5.8.1 discussions, and the failure of HUD and CHA to supply Section 8 relief through CHA's Section 8 program, the Gautreaux Program termination means that all Section 8 relief for the Gautreaux plaintiff class will end -- unless, with the aid of the Court, relief growing out of paragraph 5.8.1 of the consent decree is provided.⁵

³ John M. Hartung & Jeffrey R. Henig, "Housing Vouchers and Certificates as a Vehicle for Decentrating the Poor," Urban Affairs Review, January, 1997, at 403, 406.

⁴ Pursuant to letters dated 5/1/96 and 5/13/96, Exhibit Y attached, HUD and the plaintiffs agreed to "wind down" the Gautreaux Program by using up the remaining funding and Section 8 certificates available to the program. The current estimate is that this will occur in the spring or early summer of 1998.

⁵ Exhibit Y provides a portion of the correspondence that evidences the length and range of the parties' 5.8.1 discussions. The discussions began when plaintiffs became aware that HUD had not adhered to its 5.8.1 obligation. The parties explored a number of approaches and came close to final agreement. In the end, however, agreement was not reached and the paragraph 5.8.1 motion in this case was filed.

The purpose of the 5.8.1 provision was not, as HUD says, "merely one of several means . . . of creating housing opportunities towards the 7100 occupancy goal." Its purpose, at least in plaintiffs' view, included bringing about a "desegregation result in CHA's administration of Section 8." (Exhibit Y, letter of 1/11/96, p. 1, emphasis in the original.) The method was to have HUD condition its Section 8 grants to CHA.

Thus, absent assistance from the Court, the attainment of this important objective of the consent decree will be frustrated. This is the context within which we address HUD's specific arguments.⁶

B. Defective Allegations

HUD argues (pp. 6-8) that our allegations of a 5.8.1 violation are defective for three reasons: (1) insufficient facts (pp. 6-7); (2) a change in law said to have rendered 5.8.1 "inoperable" (p. 7); and (3) the attainment of 7100 occupancies which is said to have relieved HUD from any further 5.8.1 obligation (pp. 7-8).

The third reason is addressed in Part I of this brief: attaining 7100 occupancies relieved HUD from further, not from matured, unperformed obligations. The second reason is addressed at page 11, including note 18, of our reply brief supporting our

⁶ As the Court knows, Section 8 relief is being sought in the companion case against CHA. That separate, free-standing request seeks no relief from HUD; if successful, it will shape in a desegregative direction CHA's use of whatever Section 8 resources it has. The present motion against HUD is likewise free-standing. However, should plaintiffs prevail, the present motion has the potential to provide additional resources -- predicated upon HUD's responsibility for its 5.8.1 violation -- which could strengthen and enrich Section 8 relief received in the companion case.

motion to modify the CHA judgment order in the companion case, to which the Court is respectfully referred.

As to the first reason, HUD carefully does not deny the allegation that it failed to comply with its 5.8.1 obligation to condition Section 8 funding. What we are left with, then, is HUD's suggestion that even though it did not condition CHA Section 8 funding as 5.8.1 requires, somehow Section 8 placements may have met the ratios of that paragraph. However, CHA's letters of September 18, 1991 [Exhibit I to HUD's memorandum] and November 9, 1992 (Exhibit Y, letter of 6/5/95, p. 3), show that more than ten years after the signing of the consent decree over 80% of CHA Section 8 placements were in the limited area, as compared with the "not more than one-third" requirement of 5.8.1. HUD's suggestion (p. 6, n. 8) that this disparity could have been rectified by 2600 Gautreaux families who moved to general area census tracts in the city is not to be taken seriously. At the rate of over 80% limited area placements, and with over 15,000 certificates issued, the "shortfall" respecting 5.8.1 compliance is some 7,000 certificates. (Eighty percent of 15,000 certificates is 12,000, while not more than one-third of 15,000 certificates is only 5,000.)

A recent study by the Voorhees Center of the University of Illinois confirms that the locations of CHA Section 8 placements have not changed since the CHA letters were written -- "families presently using the Section 8 certificates and vouchers are clustered in communities with Black populations over 90% ..." ⁷ Finally, by no stretch of the

⁷ "The Plan to Voucher Out Public Housing," Natalie P. Voorhees Center for Neighborhood and Community Improvement, The University of Illinois at Chicago, May, 1997, at 26.

imagination would the parties have carried on the lengthy discussions reflected in Exhibit Y if the predicate -- non-compliance with the placement ratio prescribed by 5.8.1 -- did not exist.⁸

C. Laches

Laches requires delay in asserting a claim that is both "unreasonable and inexcusable." Leonard v. United Air Lines, Inc., 972 F.2d 155, 158 (7th Cir. 1992). HUD says "plaintiffs have known, as early as 1991, that [the 5.8.1 ratio was not being met]" (pp. 8-9). True, but Exhibit Y makes it clear that, having acquired that knowledge, plaintiffs engaged in lengthy, complex negotiations with both HUD and CHA, culminating in a near-agreement and, following the failure to reach accord, a prompt filing of plaintiffs' 5.8.1 motion. Serious negotiating time is not "laches time." Piper Aircraft Corp. v. Wag-Aero, Inc., 741 F.2d 925, 932 (7th Cir. 1984).

As to the time before plaintiffs learned that the 5.8.1 ratio was not being enforced by HUD,⁹ the HUD brief says it is "inconceivable" we did not know, referring to some CHA statistics before the consent decree was executed, and the Leadership Council experience under the Gautreaux Program (p. 9). Neither are relevant to HUD's promise not to fund a Section 8 program unless the 5.8.1 ratio were observed. The mechanism

⁸ Nonetheless, we have included in Exhibit Y statistical information, initially supplied to us on a confidential basis (and therefore not included earlier) but now no longer so, showing that CHA's limited area placements remained over 80% as of February of this year. Of course, HUD has had access to this information.

⁹ The letter of 12/13/94, Exhibit Y, says, "In 1991 we became aware . . ." (emphasis added).

and time frame for achieving the ratio may well have been matters of discussion between HUD and CHA; time for developing a compliance program would surely have been appropriate. What is "inconceivable" is that HUD would have totally ignored its 5.8.1 promise and not conditioned CHA's Section 8 funding in any manner whatsoever.¹⁰

Entirely apart from the requisite showing of unreasonable and inexcusable delay, HUD must show prejudice to itself as a necessary element of a laches defense. "Without prejudice to [defendant], laches does not bar [plaintiff's] claim." Leonard, supra., 972 F.2d at 159 (7th Cir. 1992). The prejudice must be "material" or "serious." EEOC v. Massey-Ferguson, Inc., 622 F.2d 271, 275 (7th Cir. 1980). The only prejudice HUD suggests is based on a strange, hypothetical scenario in which plaintiffs bar HUD from Section 8 funding in Chicago, HUD uses the money elsewhere, and the "prejudice" to HUD is that had plaintiffs so barred HUD from funding Section 8 in Chicago, HUD could have used funding "that it would have otherwise made available for Chicago for other families throughout this country. . ." (p. 10).

This "prejudice" reasoning is totally unpersuasive. The last thing plaintiffs would have desired was a cut-off of Section 8 funding for Chicago families, as indeed the course of their 5.8.1 negotiations with HUD and CHA demonstrates. (See Exhibit Y.)

¹⁰ Prior to 1991 plaintiffs were focused on the scattered site program, culminating in the appointment of the Receiver effective December 1987, and getting the Receivership "off the ground" thereafter. The timing of events suggests that once the Receivership/scattered site program was addressed, plaintiffs turned their attention to the Section 8 program and 5.8.1. "[W]e do not find the Federation's delay to be unreasonable given the complexity of the issues and the need to obtain requisite factual information . . ." Lake Michigan Fed. v. U. S. Army Corps of Engineers, 742 F.Supp. 441, 447 (N.D. Ill. 1990). Nor, obviously, did HUD or CHA -- each of which engaged in years-long negotiations about the matter -- find the timing to be unreasonable.

And even apart from the implausibility of its scenario, how has HUD been "prejudiced " by spending money one place rather than another?

Having completely failed to make any showing of prejudice, HUD has not crossed the threshold of a laches defense, for a core element of that defense is absent. See Reich v. Sea Sprite Boat Co., Inc., 50 F.3d 413, 418 (7th Cir. 1995).¹¹

D. Equities

Finally, HUD advances five reasons (pp. 11-14) why "equities . . . would not warrant " 5.8.1 relief (p. 11).

(1) The first reason is that 5.8.1 was "merely one of several means . . . of creating housing opportunities towards the 7100 occupancy goal;" the remedy having been provided, "paragraph 5.8.1 no longer has a remedial purpose " (p. 11).

The predicate for the argument is faulty. The consent decree does not say 5.8.1 was "merely one of several means . . ." As noted above, plaintiffs' view is that a purpose of 5.8.1 was to achieve a desegregation result in CHA's administration of the Section 8 program, so that HUD would not continue to fund a segregatory program. (After all, the essential Gautreaux claim against HUD was that it knowingly funded segregatory

¹¹ Even if both elements of the laches defense were present, plaintiffs' motion should not, in the circumstances of this case, be barred on the laches ground. The equitable laches doctrine is intended to be flexibly applied, reflecting the "peculiar equitable circumstances " of each case. Farries v. Stanadyne/Chicago Div., 832 F.2d 374, 378 (7th Cir. 1987). Its application is disfavored when protection of a substantial public interest -- here, the interest in desegregating a wrongfully segregated public housing system -- is involved. See Lake Michigan Fed., supra, 742 F.Supp. at 446-447.

CHA programs.) This purpose has clearly not been achieved. If, by reason of its 5.8.1 failure, HUD can be held responsible to assist plaintiffs in achieving that desegregation objective, there is nothing inequitable about requiring HUD to do so.

(2) The second reason is that "HUD has already provided more than 7100 occupancies. . ." (p. 11.) As we have pointed out, "Plaintiffs bargained not for a number of occupancies, but for a continuing HUD obligation to fund housing in agreed ways (regardless of the number of units thereby produced) until the obligation to provide further funding was terminated by reaching 7,100 occupancies. " (Exhibit B to Opening Brief, p. 3.) It would be inequitable to deny plaintiffs the benefit of the 5.8.1 part of their bargain because they did receive the benefit of other parts.

(3) The third reason is that plaintiffs "were not prejudiced by the nonobservance of paragraph 5.8.1" because families who receive Section 8 certificates can choose to live anywhere (p. 12). Yet HUD knows as well as anyone that the rhetoric of choosing to "live anywhere " with a Section 8 certificate is illusory, that the Section 8 pattern has been one of racial and poverty concentration, and that at a minimum an effective mobility counseling program is essential to convert the promise of choice to the reality of effective choice. It is just such a reality for which 5.8.1 strives.

(4) The fourth reason hypothesizes that were plaintiffs to prevail paragraph 5.8.1 would be literally enforced, thereby depriving non-class members of procedural and

substantive due process and violating HUD regulations (p. 12). While it is premature to assume a particular form of relief, these horrors evanesce in the face of a single sentence from HUD's counsel, setting forth a possible feature of a 5.8.1 remedial arrangement that is not viewed as inappropriately restricting the rights of non-class members:

"[T]here is no legal restriction in earmarking fifty percent of CHA's vacancy/consolidation certificates for use only by Gautreaux class members as part of the settlement of HUD's alleged violation of 5.8.1 of the Consent Decree." (Letter of 10/31/96, Exhibit Y.)

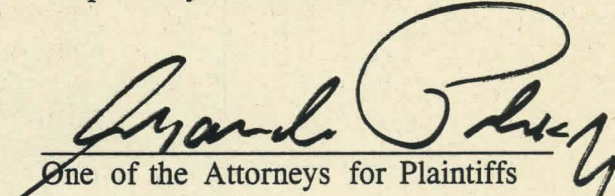
(5) The last reason is that HUD is attempting to assist families to locate in general areas and that "to mandate any fixed percentage would be counterproductive" (p. 13). Apart from the non-sequitur, HUD's good intentions are hardly an "equity" justifying denial of relief to which plaintiffs are otherwise entitled.

CONCLUSION

Under the language of the consent decree, as confirmed by the conduct of the parties, plaintiffs are entitled to a (final) FY1997 set-aside. The Court should so declare, and direct the parties to begin the comparable relief process provided in the decree. HUD having failed to comply with paragraph 5.8.1 of the consent decree, the Court

should declare that plaintiffs are entitled to some form of relief for that failure, and should direct the parties to submit remedial proposals within a specified time.

Respectfully submitted,


One of the Attorneys for Plaintiffs

Dated: August 8, 1997

Alexander Polikoff
Julie Elena Brown
Robert L. Jones, Jr.
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REC'D OGC

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LITIGATION DIVISION
REFERRED TO.

BY FAX

October 28, 1992

Mr. John Jensen
Associate Regional Counsel
U. S. Department of Housing and
Urban Development
77 West Jackson Boulevard
Chicago, Illinois 60604

Dear John:

This letter states the agreement reached by HUD and plaintiffs before Judge Aspen during the Gautreaux status conference, held Friday, October 23, 1992.

1. HUD does not object to CHA's use of a 50% neighborhood preference in tenanting the two elderly cluster buildings under development by the Receiver at 958 North California and 7110-28 South Merrill in Chicago.

2. Subject to paragraph 3, HUD is accorded a credit of 50 units toward the 7100 occupancies figure in the Gautreaux consent decree.

3. The 50-unit credit created by paragraph 2 of this letter will not be counted as a credit in any year in which the 7100 occupancies figure would be attained by September 30 by reason of such credit (or any part thereof) but not otherwise. Thus, if the total occupancies are between 7050 and 7099 on September 30th of the then current fiscal year, the 50-unit credit will not be counted in that year.

EXHIBIT X**Directors**

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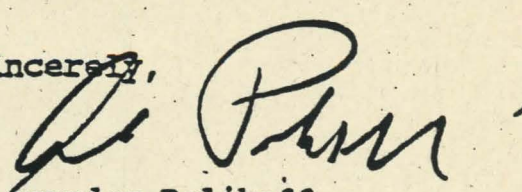
Administrative Staff
Marissa Manos
Administrative Director

Eva Dziemanski
Systems Manager

Paula Kruger
Mary Rice
Elizabeth Stokes
Administrative Staff

If this letter accurately states the agreement reached between HUD and plaintiffs before Judge Aspen, please so indicate by having the enclosed copy of this letter executed and returned to us. Thank you.

Sincerely,


Alexander Polikoff

ALP:mm
encl.

AGREED: December 21, 1992

U. S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

By: Kathleen Burtschi

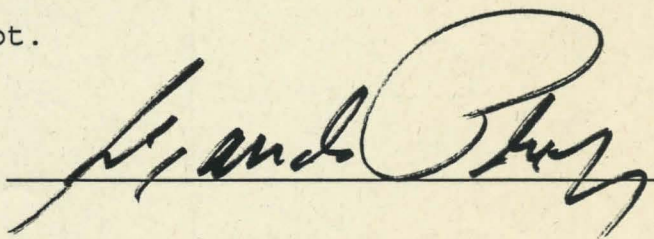
cc: Kathleen Burtschi (by Fax)
Vince Lane (by Fax)
Robert Whitfield (by Fax)
Marilyn Kuhr (by Fax)
Ald. Luis Gutierrez

AFFIDAVIT

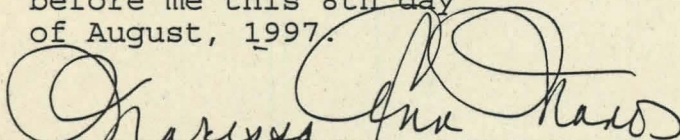
The undersigned, Alexander Polikoff, on oath says:

1. I am lead counsel for the plaintiffs in the Gautreaux litigation.
2. In that capacity I engaged in discussions with both HUD and CHA officials and lawyers respecting paragraph 5.8.1 of the Gautreaux Consent Decree and the CHA Section 8 program. In the course of such discussions numerous letters were sent and received by me to and from such officials and lawyers respecting these matters. Attached hereto are true and correct copies of some of such letters.
3. In that capacity on a confidential basis I was given by the private contractor operating CHA's Section 8 program statistical information showing the general and limited area locations of CHA's non-elderly Section 8 recipients as of 2/01/97. I have recently been advised that such statistics are no longer confidential. Attached hereto is a true and correct copy of such statistical information.

Further affiant sayeth not.



Subscribed and sworn to
before me this 8th day
of August, 1997.


Notary Public

"OFFICIAL SEAL"
MARISSA ANN MANOS
Notary Public, State of Illinois
My Commission Expires Aug. 19, 1998

EXHIBIT Y

INDEX

Letters and Statistical Information Attached to Affidavit of Alexander Polikoff

1. 5/1/96 Polikoff to Wilson and Schmeltzer
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3. 12/13/94 Polikoff to Johnson and Herold
4. 6/5/95 Polikoff to Shuldiner
5. 7/17/96 Polikoff to Shuldiner and Wilson
6. 10/31/96 Wilson to Shuldiner and Polikoff
7. 1/15/97 Wilson to Polikoff
8. 2/12/97 Status Report on Movement of Section 8
Certificate/Voucher Recipients



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May 1, 1996

BY FAX: 202/708-3351

Ms. Carole Wilson
Mr. Howard Schmeltzer
Office of General Counsel
U. S. Department of Housing and
Urban Development
451 Seventh Street, S. W.
Washington, D. C. 20410

Dear Carole and Howard:

Pursuant to our recent conversations and my letter of April 26, 1996, this letter proposes a partial workout of our discussions respecting paragraph 5.8.1 of the Gautreaux Consent Decree (and builds on paragraph 5 of Carole's letter to me of April 4).

We propose the following:

- (1) HUD will agree that the Leadership Council may continue to operate the Gautreaux Program until the Council uses all the Section 8 certificate authority the Program presently possesses, regardless of when the 7100 Consent Decree occupancy figure is reached, for a maximum period however of five years from the date of this letter, and that for this purpose the Council may use all necessary and appropriate funding made and to be made available to it under its current contract with HUD (which runs until 9/30/97).

The current Council certificate authority is approximately 597 certificates, including 317 certificates recently transferred from the FY1992 Gautreaux set-aside (originally placed with the Illinois Housing Development Authority as project-based funding), an additional 150 certificates recently transferred as part of HUD's FY1996 Gautreaux obligation, and approximately 130 certificates from prior Council authority not yet used. The Council tells me that the funding authorized under its current contract with HUD to 9/30/97 would suffice to enable it to process in the Council's normal manner the families who would ultimately use these approximately 597 certificates. The Council estimates that the approximately 597 certificates would be used by the

end of its present contract, 9/30/97, but the Council would be free to continue to process families beyond that estimated date, to a maximum of five years from the date hereof, until all the approximately 597 certificates were used, provided, however, HUD would not be obligated to make counseling or administrative funding available to the Council beyond what is already provided for under the Council's existing contract with HUD.

In other words, the Council could "wind down" the Gautreaux Program by using up approximately 597 existing certificates and contractually obligated funding, even beyond 7100 occupancies to a maximum of five years, but with no right to receive additional certificates or funding beyond what it already possesses or is contractually entitled to.

- (2) The above partial workout of our paragraph 5.8.1 discussions would be without prejudice to the freedom of either HUD or plaintiffs to take whatever positions and make whatever arguments they wished respecting a full disposition of the paragraph 5.8.1 matter, including without limitation HUD's freedom to deny any violation of paragraph 5.8.1 and to assert that the arrangements agreed to in paragraph (1) above constitute a form of 5.8.1 "relief" and that plaintiffs should be entitled to no more. Plaintiffs would agree to acknowledge that the paragraph (1) arrangements do in fact constitute a form of 5.8.1 relief, while remaining free to seek further relief.

The two above numbered paragraphs constitute our proposal. For clarity I wish to note that separate and apart from the foregoing we intend to request, unless Howard (again) persuades us that we are not entitled to it, that the FY1996 Gautreaux set-aside be given to us in the form of funding for the development of public housing (replacement) units. I am awaiting Howard's views as to this.

Given the time pressure I have previously referred to, I hope you can get back to me promptly.

Cordially,

Alexander Polikoff

ALP:mmm



OFFICE OF GENERAL COUNSEL

May 13, 1996

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

Re: Gautreaux

Dear Alex:

This letter responds to the proposal for a partial workout described in your May 1, 1996 letter to Howard and me.

I am pleased to formally advise you that the Department has accepted the workout so that the Leadership Council can wind down the Section 8 certificate pipeline. There is one additional point that I want to add though. Namely, as we discussed over the telephone when we first received your letter, the plaintiffs also must agree that our consent to the workout will not be used or considered as an admission by HUD that it in any manner violated or failed to comply with paragraph 5.8.1. of the Gautreaux consent decree. You indicated at that time that the plaintiffs were agreeable to this additional provision. Accordingly, I am assuming, unless you advise me otherwise, that the terms specified in your May 1st letter along with the above addition constitute the agreement between HUD and the plaintiffs.

Sincerely,

Carole W. Wilson
Associate General Counsel for
Litigation and Fair Housing Enforcement

Agreed
Howard Polikoff
5/14/96



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

December 13, 1994

Marilyn Johnson
General Counsel
Chicago Housing Authority
17 East Monroe Street
Suite 201
Chicago, Illinois 60603

John Herold
Office of General Counsel
Department of Housing &
Urban Development
451 Seventh Avenue, S.W.
Washington, D.C. 20410

Re: CHA Section 8

Dear Marilyn and John:

As you (probably) know, the Gautreaux consent decree between the plaintiffs and HUD prohibits HUD from funding the CHA Section 8 program unless not more than one third of the certificates issued are used in Limited Areas (less than 30% African-American population) of the city. In 1991 we became aware that more than 80% of CHA's Section 8 certificates and vouchers were being used in Limited Areas of the city. We raised the issue with both HUD and CHA and since that time have been in discussions with both regarding a remedy for the violation. While the consent decree provision technically applies to HUD, it obviously implies an obligation on CHA's part to operate its Section 8 program in accordance with the decree. (Of course, CHA has its own obligation under the judgment order to operate its programs toward the end of disestablishing its segregated housing system.)

Prior discussions on this subject (with Vince, Bob Whitfield, Bill Caruso, Stephanie Suttles, John Herold and several representatives of HUD's regional staff, among others) have virtually all considered providing mobility counseling a la the Leadership Council's Gautreaux Assisted Housing Program. We have discussed contracts with the Leadership Council to operate a portion of CHA's program or to provide training to CHA so it could operate its own mobility program, or some combination of the two.

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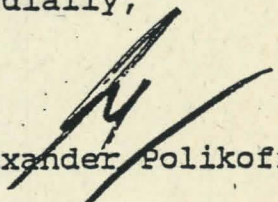
Resolving this violation is now even more important (and perhaps more complicated) because of the following factors:

- HUD's cut-off of CHA's FY 1995 Section 8 funding;
- CHA's need to revamp its program in order to obtain future HUD funding;
- the need to provide through Section 8 some portion of the replacement housing for units that may be demolished in Cabrini Green, Henry Horner, Kenwood-Oakland, etc.

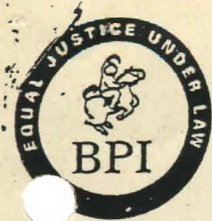
I understand that CHA and HUD are now in the process of evaluating and planning for the reorganization of the program as a whole. Given the ongoing HUD consent decree violation, CHA's desegregation obligations, and HUD's and CHA's previously expressed desires to "infuse" the Section 8 program with a mobility component, it seems important that the reorganization of the basic program include a significant mobility component and that the Gautreaux plaintiffs be represented in the planning process. It might also be useful to include the Leadership Council in the discussions.

As I understand the planning process may have already begun, we should discuss this matter promptly. I'll call each of you soon for that purpose.

Cordially,


Alexander Polikoff

ALP/pk



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for the Public Interest

June 5, 1995

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Via Messenger

Mr. Joseph Shuldiner
Chairman of the Board
Chicago Housing Authority
626 West Jackson Boulevard
Chicago, Illinois 60606

Re: Gautreaux: The CHA Judgment Order and HUD Consent Decree as They Relate to the CHA Section 8 Program

Dear Joe:

As I mentioned at our meeting on Tuesday, in our view CHA's Section 8 program is seriously out of compliance with Article VIII of the Gautreaux Judgment Order against CHA ("Judgment Order") which obligates CHA to disestablish its segregated system "in every respect." HUD shares responsibility for CHA's violation of the Judgment Order, for under Paragraph 5.8.1 of the Gautreaux Consent Decree with HUD ("Consent Decree"), HUD agreed not to "approve or set aside contract authority" for Section 8 housing in Chicago unless the Judgment Order's locational restrictions designed to foster desegregation were met by CHA.

As you may know, for several years we have discussed this issue with both CHA and HUD without reaching closure. Our purpose in writing this letter is to emphasize the importance of this issue to the Gautreaux plaintiffs, and to suggest that the planned privatization of the CHA Section 8 program provides the right occasion for finally dealing with the violations noted above. We suggest a prompt meeting with you or your staff to discuss how this issue should be "folded into" the current plans to privatize the CHA Section 8 program. To facilitate our discussion, this letter sets out the pertinent Judgment Order and Consent Decree provisions and some background facts.

THE JUDGMENT ORDER AND THE CONSENT DECREE

As you know, Gautreaux was designed to end and remedy the unconstitutional racially segregated housing programs and policies employed by CHA and approved by HUD. The Judgment Order and Consent Decree both utilize the terms "General Public Housing Area" and "Limited Public Housing Area." The former are census tracts that have less than 30% African-American population, the latter those that have 30% or more

Mr. Joseph Shuldiner
June 5, 1995
Page 2

African-American population. The Judgment Order -- and these terms -- apply to all "dwelling units" made available to eligible families, directly or indirectly through CHA. "Dwelling units" is broadly defined to include leased units. The Judgment Order also contains the overriding obligation that:

"CHA shall affirmatively administer its public housing system in every respect (whether or not covered by a specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures." (Judgment Order, Art. VIII.)

In addition, the Consent Decree with HUD specifically refers to the Section 8 program and restricts HUD funding for assisted housing in the Chicago metropolitan area as follows:

"... HUD will not approve housing assistance plans or approve or set aside contract authority for Section 8 New Construction or Existing (other than Moderate Rehabilitation) housing in the City of Chicago, unless (a) not less than one-third of the units . . . are to be physically located within the General Area, and (b) not more than one-third of the units . . . are to be physically located within the Limited Area." (Consent Decree, ¶ 5.8.1., emphasis added).

These obligations under the Order and the Decree are of course in keeping with the goals of Title VIII and with current national housing policy as Secretary Cisneros has consistently articulated it, right down to and including the Reinvention Blueprint.

HISTORY OF DISCUSSIONS

According to information provided to us by CHA in 1992, over 80 percent of the Section 8 certificates issued by CHA are used in Limited Areas of the City, and there is no reason to believe these figures have improved since then. This locational pattern not only violates both the Judgment Order and the Consent Decree, but deprives Gautreaux plaintiffs of an important remedy stream.

Mr. Joseph Shuldiner
June 5, 1995
Page 3

Here is a summary of the relevant written correspondence on this issue (in addition to numerous telephone conversations and meetings):

July 16, 1991:	BPI (A. Polikoff) to CHA (R. Whitfield) re: question of compliance with ¶5.8.1 of Consent Decree.
September 18, 1991:	CHA (G. Heine) to BPI (A. Polikoff), indicating that 82% of the "currently outstanding certificates and Vouchers are under lease within Limited Areas."
November 9, 1992:	CHA (A. Rodriguez) to BPI (J. Brown), reporting a "current recap of census tract locations" in the Sec. 8 program as finding 83.4% of the total in Limited Areas.
April 14, 1993:	BPI (A. Polikoff and J. Brown) to CHA (W. Caruso and M. Barricini) raising the violations of the Decree and Order, and suggesting a proposed remedy.
July 12, 1993:	BPI (A. Polikoff) to HUD (J. Herold) re: "HUD's failure to adhere to paragraph 5.8.1" of the Consent Decree
October 1, 1993:	BPI (A. Polikoff) to CHA (R. Whitfield), as a "reminder letter" to CHA concerning the proposed remedy for the violations of the Section 8 portions of the Order and Decree
November 30, 1993:	BPI (A. Polikoff) to HUD (J. Herold) concerning prospective remedy for compliance with paragraph 5.8.1 of the Consent Decree.
December 13, 1994:	BPI (A. Polikoff) to CHA (M. Johnson) and HUD (J. Herold), concerning state of non-compliance

Mr. Joseph Shuldiner
June 5, 1995
Page 4

and negotiations concerning proposed remedy.

April 25, 1995:

BPI (A. Polikoff) to HUD (J. Jensen)
concerning negotiations on Section 8.

Copies of the foregoing letters are attached.

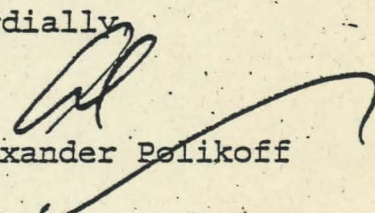
PROPOSED DISCUSSIONS

We understand that CHA's administration of its Section 8 program has been so severely criticized by HUD that HUD and CHA are considering "privatizing" the CHA Section 8 program. With but limited success we have sought to participate in these HUD-CHA privatization discussions so that the proposed arrangements could take our views concerning non-compliance into account. (See, e.g., Dec. 13, 1994 letter and April 25, 1995 note, referenced above.)

We believe that the privatization proposal affords a perfect opportunity to take effective administrative steps to change the segregatory pattern of CHA's Section 8 program, by, for example, earmarking new or "turnback" certificates for use only in the General Public Housing Area, and providing effective mobility counseling and housing search assistance to participating families in advance of lease expirations.

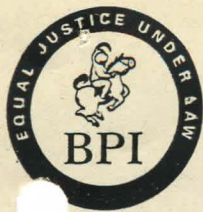
We'll call soon to arrange a meeting to discuss this matter.

Cordially,


Alexander Polikoff

ALP/pk
Enclosure

cc: Kevin Marchman (Via Messenger)
Harold Saether (Via Messenger)
John Herold (Via Fax and U.S. Mail)
John Jensen (Via Messenger)
Edwin Eisendrath (Via Messenger)
Marilyn Johnson (Via Messenger)



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July 17, 1996

Mr. Joseph Shuldiner
Executive Director
Chicago Housing Authority
626 West Jackson Boulevard
Chicago, Illinois 60661
BY FAX: 627-0346

Ms. Carole Wilson
Office of the General Counsel
U. S. Department of Housing and
Urban Development
451 Seventh Street, S. W.
Washington, D. C. 20410
BY FAX: 202/708-3351

Dear Joe and Carol:

The enclosed draft addressed to Carole and Jerome Butler, CHA General Counsel, is intended to capture the basics of our 7/16 discussion on Section 8 to see if we're really together. The drafting is somewhat broad brush and can be "refined" if we're in accord. If we're not, there's no point in fine-tuning. I'd like a prompt response as to whether this is on track, because I'll be leaving for a well-deserved vacation the end of next week -- Thursday, 7/25, will be my last day in the office for two weeks.

In a couple of respects the draft goes beyond our discussion in Betsy's conference room, but Joe and I talked about and agreed on these points in the airport.

Cordially

Alexander Polikoff

ALP:mm

cc: Howard Schmeltzer - 202/708-3351
Edwin Eisendrath - 886-2729
Elizabeth Julian - 202/708-4483
MaryAnn Russ - 202/401-9135

DRAFT - 7/17/96

July __, 1996

Mr. Jerome Butler,
General Counsel
Chicago Housing Authority
200 West Adams - #2100
Chicago, Illinois 60606
BY FAX: 726-6418

Ms. Carole Wilson
Office of the General Counsel
U. S. Department of Housing and
Urban Development
451 Seventh Street, S. W.
Washington, D. C. 20410
BY FAX: 202/708-3351

Dear Jerry and Carole:

I write to propose an accord relating to paragraph 5.8.1 of the Gautreaux Consent Decree, which of course necessarily involves the CHA Section 8 program, currently being administered by CHAC. (Wherever appropriate, a reference to CHA shall be understood to mean or include CHAC).

1. At least fifty percent of all new CHA Section 8 certificates (expected for the foreseeable future to be made available for use in CHA's "vacancy/consolidation program") will be usable only in the General Public Housing Area (GPHA) as follows:

(a) CHA will offer to residents of targeted

buildings in CHA's vacancy/consolidation program mobility counseling and certificates which may be used in either the GPHA or the Limited Public Housing Area (LPHA).

(b) On a building-by-building basis CHA will then set aside a number of certificates, usable only in the GPHA, equal to the number of certificates actually used (whether to lease apartments in the GPHA or in the LPHA) under paragraph (a) preceding.

(c) The certificates so set aside shall be administered by CHA in a "Gautreaux-type" program (i.e., a program similar to the one administered by the Leadership Council for Metropolitan Open Communities under the Gautreaux Consent Decree) with mobility counseling appropriate to such a program.

(d) HUD is agreeing to provide \$1,000 per vacancy/consolidation certificate for counseling purposes. It is expected that less than \$1,000 per family of such funding will be used under paragraph (a) above; the balance of such funds will be allocated by CHA as needed for counseling under paragraph (c) above to provide mobility counseling appropriate to a "Gautreaux-type" program.

2. All CHA turnover certificates will be administered on a "Yonkers-type" basis [to be defined] for a period of 18 months from the date hereof, after which CHA and the Gautreaux plaintiffs will mutually examine the results. If fewer than one-third of the families using such certificates have located in the GPHA, one-third of all future turnover certificates will be earmarked for use only in the GPHA.

3. No certificates issued after the date hereof may be utilized in "impacted" census tracts, as defined in Exhibit A, attached hereto. [Wendy/Rich Monocchio to prepare exhibit.]

4. At the time of income recertification an offer of mobility counseling shall be extended to all families already participating in CHA's Section 8 program.

5. This agreement, when accepted by CHA and HUD, shall constitute a settlement of the Gautreaux plaintiffs' claim that HUD has violated paragraph 5.8.1 of the Gautreaux Consent Decree, and, subject to their right to enforce this agreement, the Gautreaux plaintiffs shall have no further rights under paragraph 5.8.1.

Sincerely yours,

Alexander Polikoff

Accepted:

Chicago Housing Authority

U. S. Department of Housing and
Urban Development

cc: Joseph Shuldiner - 627-0346
Howard Schmeltzer - 202/708-3351
Edwin Eisendrath - 886-2729
Elizabeth Julian - 202/708-4483
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OCT 31 1996

OFFICE OF GENERAL COUNSEL

Joseph Shuldiner
Executive Director
Chicago Housing Authority
626 West Jackson Boulevard
Chicago, Illinois 60661-5601

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

Re: Vacancy/Consolidation Certificates and Vouchers

Dear Mr. Shuldiner and Mr. Polikoff:

This letter is written to clarify several points made in Richard Kruschke's letter to Joseph Shuldiner dated October 9, 1996, regarding the 4000 vacancy/consolidation certificates¹ given to CHA for the relocation of residents from distressed public housing developments.

Mr. Kruschke's letter stated that by law all vacancy/consolidation certificates must initially be used to assist families in those public housing developments listed in the October 9 letter. Once the 5.8.1 letter agreement is executed, however, the law will allow the certificates to be distributed to Gautreaux class members whether or not they are residing in one of the named projects.

The Fiscal Year 1995 Appropriations Bill, from which the 4000 vacancy/consolidation certificates and vouchers were funded, grants HUD authority to use assisted housing funds to implement "litigation settlements or court orders." Therefore, there is no legal restriction in earmarking fifty percent of CHA's vacancy/consolidation certificates for use only by Gautreaux class members as part of the settlement of HUD's alleged violation of 5.8.1 of the Consent Decree.

I hope this clarification resolves any uncertainty caused by the October 9, 1996 letter. HUD remains committed to final

¹The references to vacancy/consolidation certificates also include vacancy/consolidation vouchers.

approval and implementation of the 5.8.1 letter agreement.

Sincerely,

Carole W. Wilson

Carole W. Wilson
Associate General Counsel for
Litigation and Fair Housing
Enforcement

cc: MaryAnn Russ
Chris Hornig
Maddie Hastings
Richard Kruschke



U.S. Department of Housing and Urban Development
Washington, D.C. 20410-5000

JAN 15 1997

OFFICE OF GENERAL COUNSEL

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

Re: Gautreaux 5.8.1 Letter Agreement

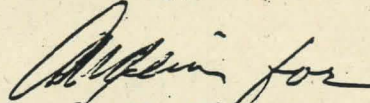
Dear Alex:

Enclosed you will find HUD's revision of your draft letter agreement which resolves the alleged violation of 5.8.1 of the Gautreaux Consent Decree. Please note that for the most part this version is a reorganization of your earlier draft, with the exception of several technical changes. In addition you will notice the following provisions have been changed and/or added:

1. The agreement is limited to the 4000 vacancy/consolidation certificates awarded CHA from FY 1995 appropriations. The Section 8 certificates that have been awarded to CHA for mandatory conversion in FY 1996, as well as any future certificates awarded for such purpose, must be set-aside without restriction as to where they can be used due to the necessity of moving tenants out of distressed public housing.
2. The inclusion of an ending date of April 1, 2003 by which all obligations under the agreement must terminate, if they have not already terminated.
3. A provision providing for notification to the Court upon execution of the agreement.
4. A provision allowing CHA to "borrow" certificates designated for use in connection with relocation of public housing residents for use in its regular Section 8 program. These "borrowed" certificates will be treated like turnover certificates under paragraph III.A, and will be replaced with those turnover certificates not subject to the locational restrictions.

This agreement has been reviewed by staff at HUD and the Department of Justice. It is subject to final approval by both agencies. Please let us know your thoughts as soon as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carole W. Wilson".

Carole W. Wilson
Associate General Counsel for
Litigation and Fair Housing
Enforcement

Enclosure

AGREEMENT

WHEREAS, the Gautreaux plaintiffs have asserted that the Department of Housing and Urban Development ("HUD"), the defendant, violated the terms of paragraph 5.8.1 of the Gautreaux Consent Decree.

WHEREAS, HUD denies all liability for all actions, and/or inactions with respect to the terms of paragraph 5.8.1 of the Gautreaux Consent Decree.

WHEREAS, the plaintiffs and HUD believe that settlement is in their best interests and best serves the interests of justice by avoiding further expense, inconvenience and other burdens of litigation.

WHEREAS, the Chicago Housing Authority (CHA) agrees to participate in this agreement with regard to the processing and distribution of the Section 8 certificates, as described herein.

NOW, THEREFORE, plaintiffs and HUD enter into this Agreement, stipulate that it constitutes a full and complete resolution of plaintiffs' claims regarding defendant's compliance with the terms of paragraph 5.8.1 of the Gautreaux Consent Decree, and agree to the following:

I. DEFINITIONS:

A. The term "Gautreaux Plaintiffs" in this agreement means the class of individuals certified by the Court in this action, Gautreaux v. CHA, 265 F.Supp. 582, 583 on March 2, 1967.

B. The term "Gautreaux Consent Decree" in this agreement means the consent decree entered by the court on June 16, 1981.

C. The term "CHA" in this agreement means the Chicago Housing Authority or the Chicago Section 8 Housing Program (CHAC).

D. The term "Section 8 certificate" in this agreement means a Section 8 tenant-based certificate or Section 8 voucher under Section 8 of the U. S. Housing Act of 1937, 42 U.S.C. § 1437f, and subject to the usual terms of Section 8 assistance.

E. The term "Gautreaux type" in this agreement means a program for the counseling and placement of Gautreaux families in

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non-minority areas similar to those duties and responsibilities of the Leadership Council for Metropolitan Open Communities under its contract with HUD pursuant to the Gautreaux Consent Decree.

F. The term "Yonkers-type basis" in this agreement means that families offered CHA "turnover certificates" shall have a maximum of 120 days from the date the subsidy is issued to submit a request for lease approval in the GPHA only before the subsidy expires and must be turned in for issuance to another family. However, CHA may grant one, and only one, additional 60-day extension of the subsidy to an applicant who does not submit a request for lease approval within the GPHA within that 120-day period if the mobility counselor certifies in writing, prior to the end of the 120-day period, that the family needs the additional time and has not been dilatory in looking for housing in the GPHA. During the additional 60-day period the family may enter into a lease for a unit wherever it is located. If the certificate holder is unable to rent a unit, upon the expiration of the original 120 days (or 180 days if the time period is extended), the certificate shall be issued to another eligible family.

G. The term "turnover certificates" in this agreement means a Section 8 subsidy issued from funding that becomes available to CHA because a participant previously issued a subsidy is no longer participating in the Section 8 tenant based program. For the purpose of this agreement it also includes the 1687 non-vacancy/consolidation certificates that CHA has received but as of September 4, 1996 had not been issued to Section 8 applicants.

H. The term "vacancy/consolidation program" in this agreement means the CHA program to relocate public housing families, reduce vacancies and/or consolidate occupancies in CHA public housing with the 4000 Section 8 certificates HUD awarded CHA from FY 1995 appropriations.

I. The term "General Public Housing Area or "GPHA" in this agreement means all census tracts in the Chicago Standard Metropolitan Statistical Area (SMSA) except those listed on Exhibit A-2 and Exhibit B-2 as defined by court order dated April 8, 1991.

J. The term "Limited Public Housing Area or "LPHA" in this agreement means those census tracts in the Chicago SMSA listed on Exhibit A-2 and Exhibit B-2 as defined by court order dated April 8, 1991.

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II. DISTRIBUTION OF NEW CERTIFICATES:

A. At least fifty percent of the 4,000 Section 8 certificates made available for use in CHA's "vacancy/consolidation program" will be usable only in the General Public Housing Area (GPHA) as follows:

(1) CHA will offer to residents of targeted buildings in CHA's vacancy/consolidation program mobility counseling and certificates which may be used in either the GPHA, or the Limited Public Housing Area (LPHA) or other areas outside the jurisdictional boundaries of CHA.

(2) On a building-by-building basis CHA will then set aside for use only in the GPHA the certificates not actually used by resident-offerees (whether to lease apartments in the GPHA or in the LPHA) under paragraph A(1) preceding. At the end of each calendar quarter, to the extent such number of certificates set aside is less than such number of certificates actually used, CHA will set aside additional certificates for use only in the GPHA so that on a quarterly basis the number of such certificates set aside will at least equal the number of such certificates actually used. In the event that such number of certificates set aside is more than the number of certificates actually used, no additional certificates will be set aside. This paragraph also applies to any of the 4000 vacancy/consolidation certificates, described in paragraph 1 (d) below, that CHA has issued prior to the execution of this agreement.

(3) The certificates so set aside in paragraph A(2) above shall be administered by CHA in a "Gautreaux-type" program with mobility counseling appropriate to such a program. The distribution of these certificates shall not begin until April 1, 1997, except that, beginning in January 1997 and ending on March 31, 1997, the Leadership Council for Metropolitan Open Communities, upon the extension of its present contract with HUD, may offer per month until March 31, 1997 up to 40 of the certificates set aside pursuant paragraph 1(b) above to Gautreaux eligible class members.

(4) HUD is agreeing to provide \$1,000 per vacancy/consolidation certificate for counseling purposes. HUD has reserved \$4,000,000 in funding authority to be used for counseling purposes in connection with the 4,000 vacancy/consolidation certificates it has previously awarded

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to CHA. It is expected that less than \$1,000 per family of such funding will be used under paragraph A.(1) above; the balance of such funds will be allocated by CHA as needed for counseling under paragraph A.(3) above to provide mobility counseling appropriate to a "Gautreaux-type" program. In addition, HUD is providing an additional \$2,000,000 in funding authority from Federal Fiscal Year 1996 appropriations for counseling in connection with the placement of other certificate holders, as described in this agreement. The \$6,000,000 in funding authority (less the amount provided to the Leadership Council for Metropolitan Open Communities pursuant to paragraph A.(3) above) will be provided to an organization selected through a competitive process to do the counseling.

(5) If the \$6,000,000 described in paragraph A.4 is expended and less than 3262 placements of certificate holders have been made in the GPHA, HUD shall provide, one time only and subject to the availability of appropriations, funding authority for future counseling services in the amount of \$1,000 times the difference between 3262 and the actual number of placements of certificate holders in the GPHA. This agreement will continue in force until this additional funding is expended. However, in the event HUD has no appropriations available when the \$6,000,000 is expended and less than 3262 placements of certificate holders have been made in the GPHA, this agreement shall terminate as provided in section IV below. For purposes of determining the 3262 placements in the GPHA, all certificates that are newly issued to families after the execution of this agreement, as well as all certificates that are reused by a family living in the LPHA to move to the GPHA after the execution of this agreement, will be counted.

B. No certificates issued after the date hereof may be utilized in the census tracts in Exhibit A, attached hereto, except upon a determination by CHA, supported by a file memorandum or other written record, that a certificate is to be used to enable a family to remain in place, or to be proximate to a caregiver or place of employment, or upon the mutual determination on some other ground of CHA and the plaintiffs.

C. At the time of income recertification CHA shall offer mobility counseling to all families already participating in CHA's Section 8 program who desire to move from the LPHA to the GPHA.

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III. TURNOVER CERTIFICATES:

A. One-half of CHA "turnover" certificates will be administered on a "Yonkers-type" basis for a period of 12 months from the date hereof April 1, 1997, after which CHA and the Gautreaux plaintiffs will mutually examine the results. If fewer than one-third of the families using such certificates have located in the GPHA, one-third of all future turnover certificates will be earmarked for use only in the GPHA until this agreement terminates.

B. If CHA determines that it needs Section 8 certificates from either the pool of the 4,000 vacancy/consolidation certificates, the 3340 certificates awarded to CHA in 1996, and/or any similar awards to CHA that designate certificates for use in connection with relocation of public housing residents, for its regular Section 8 certificates, it may borrow from that pool of certificates. Such "borrowed" certificates shall be treated like turnover certificates and shall be subject to the provisions of paragraph III.A above. CHA will replace each borrowed certificate from the portion of turnover certificates that are not subject to the geographic use restrictions described in section II.

IV. TERMINATION OF THE AGREEMENT:

A. HUD's and CHA's obligations under this agreement terminate, subject to the exceptions in paragraph II.A (5) above, after the \$6,000,000 described in paragraph II.A is expended.

B. In the event HUD's and CHA's obligations under this agreement have not already terminated by April 1, 2003 all such obligations under this agreement will terminate on April 1, 2003.

V. NOTICE TO THE COURT:

A. Within ten days of execution of this Agreement, the parties shall promptly notify the Court of such execution and submit a signed copy of the Agreement to the Court.

VI. ATTORNEYS FEES:

A. Plaintiffs shall not be entitled to any fees or costs incurred in monitoring the performance of this agreement.

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Initialed by counsel for:

plaintiffs

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VII. SUBSEQUENT LEGISLATION:

A. The parties shall not be obligated to carry out any term of this Agreement if any otherwise applicable federal or state statute or regulation that becomes effective after the signing of this Agreement precludes a party from complying with or withdraws that parties authority or obligation to perform, that term.

VIII. MISCELLANEOUS PROVISIONS:

A. This agreement, when accepted by CHA and HUD, shall constitute a full and final resolution of the Gautreaux plaintiffs' claim that HUD has violated paragraph 5.8.1 of the Gautreaux Consent Decree, and, subject to their right to enforce this agreement, the Gautreaux plaintiffs shall have no further rights under paragraph 5.8.1. This agreement may not be referred to as evidence of, and/or may not be construed as, an admission of wrongdoing, unlawful conduct or liability by HUD.

B. This Agreement cannot be amended, changed, or modified except by means of a written instrument that specifically refers to this Agreement, and is executed by all parties hereto.

C. Nothing contained in this agreement shall be deemed or interpreted (1) to require HUD to provide any funding to CHA or any other entity beyond that expressly provided by this agreement; (2) to impose duties or undertakings upon HUD or the CHA other than those explicitly stated herein; or (3) to provide that either HUD or CHA is a guarantor or insurer of the other's performance hereunder.

D. The plaintiffs and HUD agree that this agreement is not intended to modify the terms of the Gautreaux consent decree, and does not affect the provisions in the decree governing the termination of HUD's obligations and specifically, paragraph 5.1 of the decree. Accordingly, plaintiffs will not in any manner assert that this agreement precludes the termination of decree and the dismissal of HUD from the Gautreaux lawsuit, Civ. No. 66 C 1460.

E. Notwithstanding any other provision of this agreement, CHA may not restrict non-Gautreaux class members who receive turnover certificates from requesting lease approval outside the jurisdictional boundaries of CHA.

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F. Any provision of this agreement which conflicts with the settlement agreements, court orders or other court-approved plans of action in Latinos United, et al. v. Chicago Housing Authority, et al., 94 C 1229 (1994), will be null and void.

APPROVED ON BEHALF OF PLAINTIFFS:

ALEXANDER POLIKOFF
ATTORNEY FOR THE PLAINTIFF CLASS

APPROVED ON BEHALF OF DEFENDANT:

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APPROVED ON BEHALF OF THE CHICAGO HOUSING AUTHORITY:

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Initialed by counsel for:

plaintiffs

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Status Report on movement of Section 8 Certificate/Voucher recipients

Total Leased @ 02/01/97: 13406

Summary of Total Program (Certificates & Vouchers only)

Total Leased @ 02/01/97 (excluding elderly, disabled, handicapped without children): 9895

	<u>Number</u>	<u>%</u>		
# Living in <20 percent poverty areas:	2899	29.3%		
# Living in >20 percent poverty areas:	6996	70.7%		
			<u><20% Poverty</u>	<u>>20% Poverty</u>
# Living in GPHA:	1647	16.6%	892	755
# Living in LPHA:	8248	83.4%	2007	6241

Summary of New Movers & Transfers (Certificates & Vouchers only) between 12/01/95 - 02/01/97

Total Leased @ 02/01/97 (excluding elderly, disabled, handicapped without children): 3124

	<u>Number</u>	<u>%</u>		
# Living in <20 percent poverty areas:	964	30.9%		
# Living in >20 percent poverty areas:	2160	69.1%		
			<u><20% Poverty</u>	<u>>20% Poverty</u>
# Living in GPHA:	605	19.4%	370	235
# Living in LPHA:	2519	80.6%	594	1925

AFFIDAVIT

The undersigned, Mary Davis, on oath says:

1. For 21 years I have been employed by the Leadership Council for Metropolitan Open Communities which administers the Gautreaux Assisted Housing Program ("Gautreaux Program") pursuant to contracts with HUD. From its commencement in 1976, and through all of the ensuing years, I have been associated with the Gautreaux Program, first as a counselor, then from 1979 to 1985 as Director of the Gautreaux Supportive Services Program, and since 1985 as Vice President and Director of the Leadership Council's Legal Action Program with supervisory responsibility for the Gautreaux Program, which is my current position.

2. In its early years, the Gautreaux Program conducted registrations of approximately 1,000 persons twice each year by having registrants come to its office on a day selected as "Gautreaux registration day."

3. In January, 1984, beginning at about 4:00 a.m., thousands of people gathered outside the Leadership Council's offices on South State Street, seeking to register for the Gautreaux Program. The crowd grew so large that the subway station in front of 220 South State Street was closed, and CTA buses were rerouted. Mounted police were called to restore order and the registration had to be terminated.

4. Beginning in February, 1984, and in each year thereafter, down to and including its most recent Gautreaux

EXHIBIT Z

registration on January 17, 1997, the Leadership Council has conducted its annual Gautreaux Program registration by "telephone lottery." Under the telephone lottery, the Leadership Council installs a "bank" of approximately 20 telephones, manned by volunteers from the time the telephones are turned on at approximately 9:00 a.m. until the telephones are turned off when the 2,000th registrant is reached, which is generally in the early afternoon. Volunteers record registration information from telephone callers. The procedure is described as a "lottery" because the ability of a caller to register depends upon his or her "luck" in dialing the Leadership Council Gautreaux Program telephone number at a moment in time when one or more of the 20 telephones is not in use.

5. The first year the telephone lottery was used a bank of telephones was installed at the Medinah Temple. To avoid a repetition of crowd-gathering on State Street the Leadership Council sought to publicize the fact that the only way to register for the program would be by telephone. On the day of the registration, telephone lines at the Medinah Temple were jammed, and dial tones were delayed not only for the designated exchange but for the whole downtown Chicago area. The next day telephone company officials revealed to the Leadership Council that the entire telephone system of the city had been near collapse due to the overload caused by the number of calls to the Gautreaux registration number, which they estimated at 17,000-19,000. In addition, the Leadership Council was called by

numerous businesses to complain that the Council's registration had disrupted their businesses because telephone callers could not get through, and several threatened lawsuits against the Council. (None were brought.)

6. Throughout the years since the telephone lottery registration began, including its most recent Gautreaux registration in January of this year, it has been the Leadership Council's experience that the Gautreaux registration telephones ring constantly from the time of turn-on at approximately 9:00 a.m. until early afternoon when the 2,000th registrant is reached and the telephones are turned off. Volunteers "spell" each other during this time so that the telephones are in continuous use from turn-on in the morning until turn-off in the afternoon.

7. Each year on Gautreaux registration day, including the most recent, the regular telephone lines to the Leadership Council main office, and the telephone lines to the suburban offices of the Leadership Council, are likewise inundated with calls. In addition, for days leading up to Gautreaux registration day, the number of telephone calls to the Leadership Council inquiring about Gautreaux Program registration increases significantly. For several days after registration the Leadership Council is called by many persons who claim they could not get through the phone lines on registration day, including calls from the offices of alderpersons on behalf of their constituents.

8. In about 1990 the Leadership Council became aware that

following its annual Gautreaux Program registration it was receiving numerous complaints from persons who said they had attempted unsuccessfully to register for the Gautreaux Program by telephone and complained that they had been given the wrong telephone number to call, or that they received unintelligible recorded messages when they dialed the given number.

9. Upon calling the telephone company to make inquiry about this situation the Leadership Council was informed that telephone company "trunk lines" serve individual geographic areas of the city, that when -- by reason of the volume of phone calls originating from within any such area at any point in time -- the capacity of the trunk lines is reached, callers receive busy signals or recorded messages, and that the volume of calls to Leadership Council telephone numbers on Gautreaux registration days was such that trunk line capacity was reached. We were further advised that adding additional phones or numbers to our phone bank would not alleviate the situation because trunk line capacity from a geographic area, not the number of receiving phones or numbers, is a limiting factor. The staff of the Leadership Council was advised of these conversations, and since then have been directed to inform persons who inquire about Gautreaux telephone registration that their likelihood of "getting through" on registration day will be increased if they attempt to telephone the Gautreaux Program from elsewhere (including from the suburbs) than highly concentrated public housing areas.

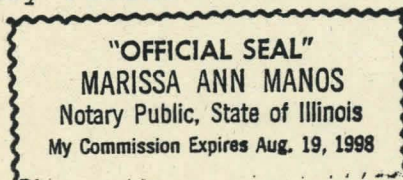
10. Since the commencement of the Gautreaux Program in 1976 through July 15, 1997, some 6,536 Gautreaux plaintiff class families have been placed in the Gautreaux Program, a majority in the Chicago Metropolitan Area outside the City of Chicago.

Further, affiant sayeth not.

Mary Davis
Mary Davis

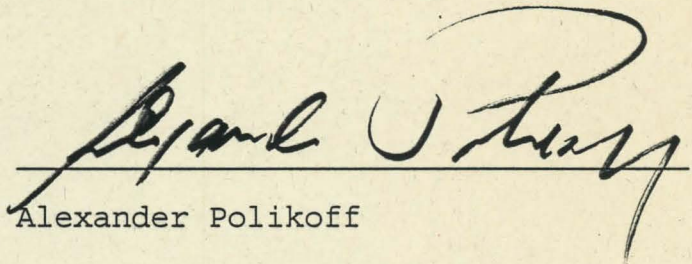
Subscribed and Sworn to
before me this 25th day of
July, 1997.

Marissa Ann Manos
Notary Public



CERTIFICATE OF SERVICE

I, Alexander Polikoff, an attorney, certify that on August 8, 1997 I served copies of the foregoing Plaintiffs' Reply Brief on Three Matters by mail on the persons listed on the attached service list.


Alexander Polikoff

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