

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

RECEIVED

AUG 13 1997

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY,

Defendant.

Judge Marvin E. Aspen  
U.S. District Court

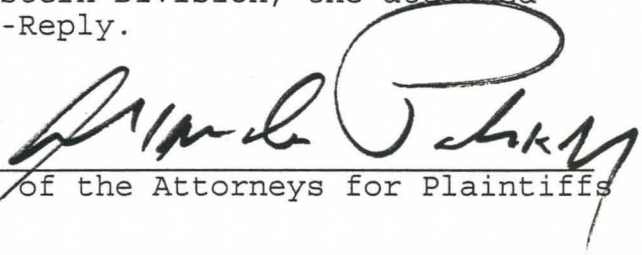
66 C 1460

Hon. Marvin E. Aspen

NOTICE OF FILING

To: Attached Service List

Please take notice that on Wednesday, August 13, 1997 I filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, the attached Plaintiffs' Response to CHA's Sur-Reply.

  
One of the Attorneys for Plaintiffs

Dated: August 13, 1997

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Judge Marvin E. Aspen  
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|----------------------------|---|----------------------|
| DOROTHY GAUTREAUX, et al., | ) |                      |
|                            | ) |                      |
| Plaintiffs,                | ) |                      |
|                            | ) |                      |
| v.                         | ) | 66 C 1459            |
|                            | ) |                      |
| CHICAGO HOUSING AUTHORITY, | ) | Hon. Marvin E. Aspen |
|                            | ) |                      |
| Defendant.                 | ) |                      |

PLAINTIFFS' RESPONSE TO  
CHA'S SUR-REPLY

CHA's sur-reply makes three arguments to which we respond in order.

I. CHA's first argument (Part I, pp. 1-4) begins with the complete misunderstanding that, "The 'Gautreaux Program'... was defined in Paragraph 5.8.1 of the Consent Decree" (p. 1). Not so. The Gautreaux Program is not defined in paragraph 5.8.1; it is "defined" in paragraphs 5.4, 5.5.1 and Exhibit C to the consent decree. (Exhibit C is HUD's contract with the Leadership Council as administrator of the Gautreaux Program.) The Gautreaux Program is entirely different from and completely independent of paragraph 5.8.1.<sup>1</sup>

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<sup>1</sup> Our motion makes this absolutely clear:

"[T]he Gautreaux Program -- using Section 8 rent subsidy certificates entirely separate from CHA's own Section 8 program -- was included in the companion case's consent decree with (footnote continued) . . .

Proceeding from this misunderstanding, CHA has us in "full retreat" (p. 2) from its misconception. Rather than seeking the specific relief of applying paragraph 5.8.1 of the consent decree to the CHA Section 8 program, "filling in the percentages" later (id.), we are now charged with "not seeking specific relief ..." (p. 3), an equally incorrect view.

The draft order proffered with our motion reads in relevant part as follows:

- "(1) The judgment order in this case shall be modified to include provision of relief to plaintiff class families through the use of Section 8 certificates and vouchers available to the defendant, Chicago Housing Authority.
- (2) The parties, together if possible, separately if need be, shall within 30 days from the date hereof submit to the Court a proposed order to effectuate paragraph (1) hereof."

We have explained in our reply brief (and do not repeat here) why the Court should determine (paragraph (1) of the draft order) that the judgment order expressly applies to CHA's Section 8 program. Whether such a determination is called "declaration" or "modification" is semantics. Following such a determination the parties would submit, separately or together, a specific, proposed remedial order (paragraph (2) of the draft order). This familiar procedure is neither strange nor inappropriate. It has been employed several times in this case and countless times in others. Judge Austin's initial determination of summary judgment

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HUD. 523 F.Supp. 665, 675 [a page reference that does not include paragraph 5.8.1]. Under the Gautreaux Program, which is administered by the Leadership Council . . ." (p. 3).

was followed by:

"A final judgment embracing all claims for relief shall not be entered for 30 days. During that time the parties should attempt to formulate a comprehensive plan . . . If the parties cannot agree, each party shall submit a proposed judgment order." (296 F.Supp. at 914.)

See also this Court's order of August 14, 1995, declaring that the CHA tenant selection and assignment plan "shall be modified" in stated ways, "all upon presentation of appropriate orders therefor." Cf. Ruiz v. Estelle, 679 F.2d 1115, 1127 (5th Cir. 1982) ("district court issued . . . memorandum opinion . . . indicating generally the relief it proposed to grant, and gave the parties an opportunity to agree on a proposed judgment").

After years of ultimately unsuccessful discussions among the parties, the suggested procedure has the great advantage of sending them back to the negotiating table with the realism-inducing understanding that there will be some form of Section 8 relief, thereby maximizing the possibility that the parties will now agree and minimizing the possibility of further, time-consuming litigation over extraneous issues.

II. CHA's second argument (Part II, pp. 4-6) is likewise based on a misunderstanding. CHA argues that the only place for federal court supervision of CHA's federal housing programs is the consent decree ("any control or supervision over specific [CHA] federal programs . . . would be governed by orders and decrees entered in the companion case . . ." -- p. 5). Yet paragraph 7 of the consent decree specifically states:

"This Consent Decree does not affect CHA's obligations under any orders entered in this action or preclude further proceedings against CHA pursuant thereto." 523 F.Supp. at 680.

This, coupled with the "affirmatively administer" language of the judgment order and the Court's retention of jurisdiction "for all purposes, including . . . modifying or supplementing the terms of the order" (304 F.Supp. at 741), make it clear that the modification we propose "belongs" to the judgment order, not to the consent decree. There is absolutely nothing in the judgment order's "affirmatively administer" provision that distinguishes between CHA's federal and non-federal programs. Nor is there anything in the Seventh Circuit's holding or reasoning in the Romney case (see sur-reply at 5-6) that lends support to the notion that CHA programs are to be supervised through a decree in a case to which CHA is not even a party.<sup>2</sup>

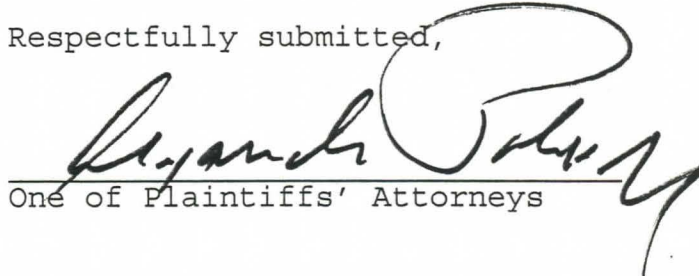
III. CHA's final argument (Part III, p. 7-10), that our stated reasons for the proposed modification are "legally insufficient," is mostly a rehash of CHA's previous arguments about federalism, separation of powers, etc. We will not reargue these matters here for they are addressed in our reply brief. We

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<sup>2</sup> CHA is also mistaken in asserting that since the Section 8 program was initiated we have not "raised any claim" that CHA's Section 8 program violated the judgment order. See, for example, Exhibit A to Plaintiffs' Reply Brief, letters of 12/13/94 and 6/5/95. The 6/5/95 letter begins: "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... which obligates CHA to disestablish its segregated system 'in every respect.'" )

do note, however, that we have nowhere made the "inflammatory accusation" that CHA would revert to a policy of "intentionally" segregating (pp. 7-8). We also note that CHA now appears to hinge its violation-of-federal-law argument on whether or not a special HUD-created Section 8 program is involved (p. 9). Some of the housing desegregation cases cited in our reply brief do, and some do not, involve such special programs. No case or other authority has been cited to show that the exercise of a court's inherent equitable remedial powers depends on whether the Section 8 program in question is "special" or "general."

Respectfully submitted,

  
One of Plaintiffs' Attorneys

August 13, 1997

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CERTIFICATE OF SERVICE

I, Alexander Polikoff, an attorney, certify that on August 13, 1997 I served copies of the foregoing Plaintiffs' Response to CHA's Sur-Reply by mail on the persons listed on the attached service list.

  
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