



THE HABITAT COMPANY

March 13, 1998

BY MESSENGER

Hon. Marvin Aspen
United States District Court
Room 2548
Dirksen Federal Building
219 South Dearborn Street
Chicago, Illinois 60604

Re: Gautreaux v. CHA, No. 66 C 1459

Dear Chief Judge Aspen:

In my role as Receiver, I am writing to request instructions. This request follows a meeting I had with the CHA and HUD on Tuesday, March 10, and the problems that I have encountered and foresee continuing in fulfilling my role as Receiver.

I had requested the meeting with the CHA and HUD to discuss implementation of your Order of February 23, 1998 relating to CHA housing funded under the HOPE VI program. The CHA's positions, as described in that meeting, have led me to conclude that I need direction from the Court.

Your February 23 Order stated that HOPE VI funds are within the Gautreaux case, a matter that had been disputed by the CHA. Therefore, after I received your February 23 Order, I asked Lewis Nixon, the Acting Secretary's Representative in Chicago for HUD, and Joseph Shuldiner, the CHA's Executive Director, to meet with me to discuss what I hoped would be a cooperative approach to new housing to be built with HOPE VI funds. (Your August 14, 1987 Order appointing me and The Habitat Company assigned to the Receiver responsibility for the CHA's non-elderly housing development programs, including all such programs "which may in the future be authorized by HUD" during the pendency of the Gautreaux action, p.2 §(c). Housing to be built with HOPE VI funding clearly appears to be within your Order.)

The meeting was scheduled for March 10, 1998, at Mr. Shuldiner's office. Because Mr. Nixon was unavailable, Janet Elson attended for HUD. Valerie Jarrett accompanied me; Richard Monocchio accompanied Mr. Shuldiner.

At the meeting, Mr. Shuldiner stated that he did not agree with your February 23 Order, that he opposed the Receivership, and that he disagreed with the requirements of various Court Orders mandating housing to be located so as to further desegregation goals. He also stated that the CHA intended to proceed with its own programs for development of new housing without the Receiver, and invited us to "try to stop him." He made it clear that no cooperation would be forthcoming, and that if the Receiver opposed him, he would join tenants in pressing claims against us.

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Because of the extraordinary nature of the statements made, and their implications for my ability to carry out my responsibilities as Receiver, I feel it is necessary to set out in some detail what was said.

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I began the meeting by expressing my desire to work cooperatively to implement your February 23 Order. Ms. Elson also expressed her desire that we work together.

Mr. Shuldiner said that he reads the February 23 Order as dealing only with the location for HOPE VI housing, and not as a statement that HOPE VI-funded housing is within the Gautreaux judgment for all purposes. He added that he does not agree that the Court-ordered Gautreaux locational requirements (such as one-for-one construction of housing in limited and general areas, the designation of revitalizing areas, etc.) should limit the CHA's ability to place new housing units wherever it chooses.

I pointed out the language of your February 23 Order, which states: "We hold that the judgment order governs the CHA's use of HOPE VI funds." Mr. Shuldiner said he didn't agree with that language. He repeated that your Order dealt only with location and, despite the language, that it had no other effect on HOPE VI housing, and had nothing to do with the Receiver's authority. In addition, Mr. Shuldiner said that he was considering appealing your Order, and that if he did not appeal, he would attempt to get rid of the Receiver, because he couldn't accept the consequences of the Receivership.

I suggested that we ask to discuss this issue with the Court, to determine what your February 23 Order meant, if there were any doubt. Mr. Shuldiner repeated that HOPE VI funding began long after Gautreaux and shouldn't be governed by it. I said that it was the CHA's responsibility under the Order appointing the Receiver to cooperate with us.

Mr. Shuldiner repeatedly expressed at length and in detail his anger at Mr. Polikoff, plaintiff's counsel. He asked if Mr. Polikoff is "going to control our life." He said there are over 3,000 housing units to be constructed at a cost of over \$300 million. He asked if we really expected that the Receiver was going to oversee the development of all this housing. If that is the Receiver's view, he stated, the CHA will ask the Court to eliminate the Receivership or provide that there be more than one party building the new housing.

I told Mr. Shuldiner that we were not seeking to function as a "dictator" of CHA development, wanted to work with him and the CHA, and understood the competing needs and pressures with which the CHA must work, of which desegregation was the paramount priority, but not the only

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concern. If there is \$300 million of new housing to be built, it might make sense to bring in others to help (under the Receiver's supervision), especially if it is to be built in a short period of time. I suggested that we should all work together to resolve problems and make new housing available as quickly as possible.

We also discussed a series of meetings that occurred between the Receiver and the CHA after we met with you last summer. (As you will recall, following the Receiver's filing of an Emergency Motion in late May 1997, you suggested that the parties attempt to resolve their differences, which included the question of whether the Receiver or the CHA had authority over HOPE VI funding when used for new family housing development. During those discussions, the CHA expressed its opposition to the Receiver carrying out HOPE VI housing development, and we discussed the possibility of requesting the Court's agreement to permit the CHA to conduct certain non-elderly housing development on a demonstration basis, in order to see if the CHA had adequate development capability. At that point, there were fundamental differences between the Receiver, the CHA, and the Gautreaux plaintiffs concerning the CHA's desire to end oversight by the Receiver and the Court of new housing development by the CHA. When the CHA filed its motion seeking a determination that HOPE VI funding was not within the Gautreaux decree, the Receiver informed the CHA that the discussions were pointless since the Court would be resolving the dispute over the scope of the authority.)

In our March 10 meeting, Mr. Shuldiner said that if the Receiver did not agree that the CHA would assume future housing development responsibility for projects not already specifically allocated to the Receiver, he would "fight" and would oppose the Receiver in all respects. In particular, he said he would support a potential claim by the plaintiff class in the Horner case for damages against the Receiver if we did not agree to his demand. (As you know, the Receiver is building housing in the Horner case under the supervision of Judge Zagel, because of separate litigation ended by a consent decree. Late in 1996, an issue arose in that case as to whether the Receiver was falling behind schedule, and whether residents should receive damages if we were. Judge Zagel ruled that the issue was premature, and that he would address it when and if he had to. He directed that we provide liquidated damage provisions for delay in future contracts with contractors building Horner housing, to serve as a possible source to fund such damages, and we have done so.)

At our March 10 meeting, we also discussed certain issues relating to the cost of housing built by the Receiver. Mr. Shuldiner said that the CHA's signature is required by HUD procedures on certain Annual Contribution Contract ("ACC") forms to provide funding for disbursements to be made to the Receiver. He said that if the CHA's signature is required, the CHA will withhold its approval unless the Receiver satisfies the CHA with extensive backup material and data to the same extent as the CHA is required by HUD to satisfy HUD for its funding. Mr. Shuldiner thought it was unfair that HUD trusted the Receiver, and did not require as much detail as it requires from CHA.

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(This is the first time Mr. Shuldiner has told us of that position, although over \$7.69 million is now held up by his refusal to execute the ACC amendments. The funds being held up are affecting our funding of new developments in several communities, including at Horner and Lawndale.) Mr. Shuldiner expressed resentment that HUD does not treat the CHA on the same basis that it treats the Receiver, because HUD accepts certain requests from the Receiver without elaboration, while requiring additional justification from the CHA. Mr. Shuldiner complained that HUD is a rubber-stamp for the Receiver, but applied a far more rigorous standard to the CHA.

Mr. Shuldiner expressed great hostility and distrust towards HUD's Chicago office. He also stated that he had taken steps to have a HUD employee removed from his responsibilities because that employee had cooperated with the Receiver. (We received copies of e-mails between Mr. Shuldiner and this employee, where Mr. Shuldiner berated the employee for even raising the possibility that the Receiver may have responsibility for HOPE VI funding following your February 23 Order.)

Mr. Shuldiner also said that the CHA intended to proceed to build new family housing at the Darrow Homes (in a limited area surrounded by other public housing), and anywhere else the CHA felt was appropriate. Mr. Shuldiner added that if anyone wants to stop the CHA, they are going to have to sue. He said that Darrow will be the test case and that it was always understood that CHA, and not the Receiver, would build the new housing for Darrow. He said that if the CHA loses on Darrow, it will appeal.

(There had been discussions among Mr. Polikoff, the Receiver, and the CHA about allowing CHA to build 38 units of new housing at Darrow as a demonstration project. As is discussed below, no agreement has been reached for the CHA to build that housing -- or a greatly expanded project it recently submitted to the City's Planning Commission without the Receiver's knowledge. At our March 10 meeting, Ms. Elson noted that Vincent Lane, when he was CHA Chair, had tried to prove the CHA's development capacity by developing 350 units as a demonstration program. When the CHA was unable to develop even one unit after 3½ years, the Receiver assumed responsibility in a joint venture with CMHDC, an arm of the CHA.)

Mr. Shuldiner said that the "whole revitalizing area concept is ridiculous." He said that the CHA should be able to house people wherever it can house them. CHA residents at Robert Taylor Homes, he stated, have to be housed. Mr. Shuldiner asked if we wanted to go deal with the gangs at Taylor, as he has to do.

Mr. Shuldiner said that Mr. Polikoff is "with the unborn residents, and future generations." Mr. Shuldiner said that "we [the CHA] throw in our lot with the current residents." (In context, it was clear that he was saying that he wanted to provide new housing for residents wherever possible,

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regardless of the locational requirements based on the desegregation provisions of the Gautreaux judgments.)

Mr. Shuldiner said that the CHA doesn't need the Receiver to lease housing. He said again that if the CHA goes back to court it will ask the Court to get rid of the Receiver.

Mr. Shuldiner raised the question of how much money Habitat was making from its role as Receiver. Richard Monocchio asked about the pass-through of costs incurred by the Receiver, expressed the view that many developers hide profits in such costs, and implied that we were doing the same thing. I said we didn't make a penny of profit on out-of-pocket costs. (The Receiver is entitled to a fee of 2% on turnkey and 3% on conventional developments, under the August 14, 1987 Order. The fee is not based on all costs, but on certain construction-related costs. My time and other executives' time is not billed. Administrative costs represent an average of 4 to 4½% of project costs, and are approved by HUD. They are a pass-through of our expenses, without mark-up.)

I said that the CHA acts as if it doesn't trust us and doesn't believe I'm telling the truth. I added that if all we wanted was money we would do as little as we could and get out. Mr. Monocchio said he knows we aren't doing that. We also discussed Habitat's fees for leased units.

I repeated that it might be well to ask for a meeting with you. I also said we would talk to HUD about our views, and that the very poor relationship between the Receiver and the CHA wasn't serving the people who need housing. Mr. Shuldiner said he had to consult with his lawyers before agreeing to a meeting with you.

Ms. Jarrett said that it was unfortunate Mr. Shuldiner felt the way he did, since we had a common purpose. She said that Mr. Shuldiner was telling us that the Court's February 23 Order was meaningless, we are dishonest, and that the CHA would like to get rid of us.

I told Mr. Shuldiner that I was proposing to make a cooperative arrangement with the CHA, but the CHA must acknowledge that the Court's February 23 Order has some meaning, and that the CHA must acknowledge its obligation to plan and consult with the Receiver. I said at least five times that I was willing to try to work with him to solve problems. I emphasized that I was not seeking to sit in his chair, and was not trying to make all of the decisions.

Near the end of the meeting, Mr. Shuldiner told me that he had offered to residents at Cabrini-Green a development partnership interest. He will build replacement housing with them, and without the Receiver. He made it clear that he is going to continue to make plans with the residents at Cabrini-Green, and that we could only "try to stop him."

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The statements made by Mr. Shuldiner at the March 10 meeting are the latest developments in a difficult relationship between the Receiver and the CHA over at least the past year. I will briefly discuss the relevant background.

Your August 14, 1987, Order appointed me and The Habitat Company as Receiver, with responsibility for new housing development. Your Order gave the Receiver authority to develop "all CHA non-elderly public housing development programs . . . authorized by HUD during the pendency of" this litigation. August 14, 1987 Order at 2, ¶(C).

The HOPE VI program was created by HUD annual appropriation statutes in fiscal year 1993 and each fiscal year since. Substantial funding has already been allocated (and additional sums may be allocated in the future) to the CHA for the purpose of developing new non-elderly public housing. HUD has determined that the Receiver, and not the CHA, is responsible for new non-elderly housing development with HOPE VI funds. (See Lewis Nixon's July 29, 1997 memo attached to the December 19, 1997 Statement we filed with the Court.)

The February 23, 1997 Order (at 5) held that the Gautreaux Judgment Order "governs the CHA's use of HOPE VI funds."

Despite the Court's Orders and the statutory background, prior to our meeting on March 10 the CHA has made intermittent objections to the Receiver exercising authority over non-elderly housing construction funded by HOPE VI, as well as filing the motion that led to your February 23 Order.

Much of the factual history is described in the Statement we filed on December 19, 1997, commenting on the CHA's Motion. Following the 1995 takeover of HUD by the CHA, the Receiver worked hard to cooperate with the new CHA management led by Mr. Shuldiner, and tried to avoid bringing a dispute to Court concerning the Receiver's authority. The "development manager" concept was created so that the Receiver could administer HOPE VI funds in cooperation with the CHA, without a dispute over the Receiver's role.

The CHA, however, revoked the earlier written confirmation from its then Chairman, Edwin Eisendrath, that the Receiver would function as development manager at Cabrini-Green, and did not include the Receiver in the HOPE VI applications for Taylor and ABLA II.

Disputes between the CHA and the Receiver escalated during 1997. Many of the disputes concerned the Horner development. As you will recall, the Receiver filed an Emergency Motion seeking instructions, describing our view, among other things, that the CHA was failing promptly to fill completed units at Horner. The CHA objected, and made charges against the Receiver. Judge Zagel resolved certain matters relating to Horner.

You scheduled a conference in chambers in July 1997, and observed that the Emergency Motion seemed to betray greater difficulties in the relations among the parties. You urged the parties to negotiate their differences.

The Receiver scheduled a series of meetings with Mr. Shuldiner, his counsel, and other CHA representatives. Among the issues discussed were the Receiver's desire to assume its responsibilities for HOPE VI funded non-elderly housing development, and the CHA's opposition to any role for the Receiver.

The parties discussed the possibility of entering into an agreement as discussed above. Before a final agreement was reached, the CHA decided to file the motion that led to the February 23 Order, seeking a determination that HOPE VI housing was outside the scope of the Gautreaux judgments.

* * * * *

The CHA's position has complicated and will, if adhered to, further complicate and impede the Receiver's actions -- and in many cases the desegregation goals of the Gautreaux Orders -- in a number of ways.

(a) Robert Taylor Homes. The Receiver understands that the CHA applied in 1996 for HOPE VI funds for Taylor. Press reports indicate \$25 million was awarded.

The Receiver was not aware of the application at the time it was made. The Receiver does not know what portion of the funding is for new non-elderly housing construction development, but we are aware of the CHA's attempt to enter into long-term leases in the limited area without approval of a revitalizing designation. (The use of long-term leases for public housing was considered by the Receiver before it was mentioned by the CHA. The leasing concept is based on a HUD memo that HUD development funds could be used for long-term leases as a form of expanding the supply of new public housing.)

Mr. Shuldiner indicated that the CHA intends to demolish all of Taylor. Mr. Shuldiner's comments reflect that he (and/or his staff) had extended discussions with tenants, and possibly with others, in the area relating to replacement housing.

We do not know if those discussions have ripened to commitments, since the CHA has not shared any of this information with us or involved us in any way in its planning. If replacement housing units are developed, it appears likely that they would fall within the language of the August 14, 1987 Order. If the Receiver is to take any action to construct new housing for residents of Robert Taylor, it is important that we immediately be made aware of the status of HOPE VI (and other) funding, and all prior communications with the City, tenants, and others. It is also important that we discuss how such housing will be built consistent with the desegregation obligations of the CHA under the 1969 Judgment Order in this case.

(b) Darrow. Mr. Polikoff, the Receiver, and the CHA had a series of discussions concerning the possibility of the CHA creating a housing demonstration project at Darrow. Several years ago, the CHA received \$8.5 million from HUD under either the modernization or Comprehensive Grant program to rehabilitate a building at Darrow. The CHA spent about \$500,000 on architectural plans. It then learned that the cost of rehab exceeded the funds available, and demolished the building, after agreeing (without court permission or consultation with us) with the tenants that it would build replacement housing on site.

The funds available allow for approximately 80 replacement units. Mr. Polikoff and the Receiver discussed with the CHA that if the Receiver did not need to use 38 units built in Rogers Park to offset units the Receiver was building in Woodlawn (on the 1-for-1 formula provided by the Judgment Order, as amended), then the CHA could use the 38 units on a one-for-one basis to build 38 units at Darrow without a court waiver of the Gautreaux locational requirements. The CHA also considered seeking permission to build an additional 40 units (approximately) on site. No agreement was reached.

We next heard about the CHA's plans for this development by chance, when Valerie Jarrett of Habitat attended a Chicago Plan Commission Meeting in February 1998, where a formal proposal was scheduled to be presented by Andrew Rodriguez for the CHA for a 105-unit project at Darrow that we (and plaintiffs' counsel) knew nothing about. After the Receiver objected, the matter was deferred.

As noted above, Mr. Shuldiner said in our March 10, 1998 meeting that he intends to proceed with the Darrow project, and that the Receiver (or anyone else) would have to take legal action to stop him. Mr. Shuldiner's plans appear to conflict with the Court's August 14, 1987 Order.

(c) Cabrini-Green. A November 14, 1995 letter from Edwin Eisendrath confirms that Habitat would act as development manager for the Cabrini project, including HOPE VI, in its role as Receiver. But as discussed in our December 19, 1997 Statement filed with the Court, the CHA subsequently vacillated among involving the Receiver in the redevelopment of this project,

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abandoning the Receiver, and pursuing the project on its own, and reinvolving the Receiver in the leasing of 44 units at Mohawk North and Old Town Square.

Since 1993, no units have been produced by the CHA. In addition, the Receiver has 190 units of Gautreaux funding authorized for use in this area. It has been blocked from using any of these units because of lack of a comprehensive plan, from which the CHA has largely excluded us. There has also been a separate lawsuit brought by Cabrini tenants against the CHA.

Until the March 10 meeting, we had understood that nothing had been resolved at Cabrini. At the March 10 meeting, we learned for the first time that Mr. Shuldiner has made some kind of promise to residents that they would be partners with development entities to be created by them and the CHA. It was clear from Mr. Shuldiner's comments that his arrangement with the tenants does not include a role for the Receiver. Any promises made by Mr. Shuldiner could jeopardize our ability to comply with the Gautreaux Orders, and would be contrary to our responsibilities under the August 14, 1987 Order appointing us.

(d) Horner. Judge Zagel is supervising the construction of replacement housing at Horner, which is occurring under a consent decree in separate litigation. You have received copies of reports on the status of construction there. (We are proud to say our construction recently won a national award.)

As discussed above, an issue arose in that case as to whether the Receiver was falling behind schedule, and whether residents should receive damages if we were. Judge Zagel ruled that the issue was premature, and that he would address it when and if he had to. He provided that we should require contractors to provide liquidated damages for delay in future contracts with contractors building Horner housing.

At the March 10 meeting, Mr. Shuldiner stated that if we oppose him on the HOPE VI issue, he will encourage Horner residents to seek damages from the Receiver. We are concerned that this threat reflects an attitude of hostility under which it will be more difficult to work.

(e) ABLA and Horner II. These development efforts are complicated by the existence of the Horner lawsuit, and the need to coordinate plans with tenants, neighbors, local elected officials, and the court supervising the Horner reconstruction process. Developing procedures to implement the desegregation objectives of Gautreaux, while building replacement housing, presents difficult issues. In view of Mr. Shuldiner's statements we are concerned that necessary cooperation will not be provided by CHA.

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(f) Scattered site housing. We continue to build scattered-site housing in the General Area and, as recently as this week, closed on two additional buildings. In a letter of March 6, sent by Mr. Shuldiner to me shortly before our March 10 meeting, he made a number of complaints about our work as Receiver. We do not see the need to respond in detail at this time to Mr. Shuldiner's views, although we are prepared to do so. We do want to note our concern that Mr. Shuldiner apparently doesn't agree with the Court's determination that revitalizing areas are a step towards desegregation, even though CHA has repeatedly agreed to court orders to that effect.

(g) Funding. At the March 10 Meeting, Mr. Shuldiner said he would withhold approval for \$7.69 million in funding for the Receiver. We believe we have met all of the requirements for the funding. HUD has approved it, and sent it to CHA for final signature. No CHA signature is required under the August 14, 1987 Order. Therefore, those funds should be transferred. Without the transfer, the progress of our program will be severely impeded. We are already overdue on bills awaiting the funding.

(h) Information. CHA has not provided us with information concerning its HOPE VI and other new non-elderly housing development plans. We do not know the scope of other planned non-elderly housing development that CHA has considered, or may even have authorized. We do not know to what Mr. Shuldiner was referring when he discussed 3,000 units of housing costing \$300 million.

In addition, after the filing of our Emergency Motion in May 1997, the CHA directed the managers of its scattered site housing not to provide information directly to us, and that prohibition remains in effect. That is contrary to the cooperation requirement in the August 14, 1987 Order. Information concerning the occupancy of the scattered site units is necessary, among other reasons, to trigger the cutoff of certain payments from the development budget we administer.

We were told that the reason for the prohibition was our filing of the Emergency Motion against the CHA. Since we were a litigant, the CHA would not allow us access to their agents without going through counsel. We were advised that all requests for information must proceed through counsel.

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We recognize that it is not our role to determine the scope or duration of our responsibility as Receiver. It is our responsibility, however, to advise you that our ability to act effectively is being impaired.

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We accepted the position of Receiver to be a developer of housing, not to be a policeman over the CHA, and certainly not to be a litigant with the CHA over all housing-related decisions. Unfortunately, the CHA's conduct has frequently forced us to involve our counsel in litigation-type activity, at the expense of focusing on housing development.

The CHA's frequent adversarial attitude to the relationship with the Receiver clearly impedes the development of new housing urgently needed by CHA residents.

The Receiver would like to develop new housing in a cooperative manner with the CHA. We would like to respond to CHA needs, while also meeting the desegregation objectives of Gautreaux. A working relationship has to develop between the CHA and the Receiver. The CHA should share its needs and ideas with the Receiver in advance of making commitments. It should meet on an ongoing basis to try to develop solutions for the benefit of residents. That has not been happening.

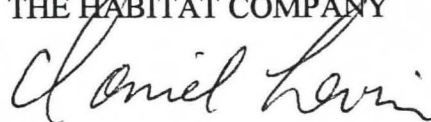
I had held off asking for the Court's directions, in the hope that we could work through the process with the CHA and reach pragmatic solutions that respected our responsibilities as Receiver while not offending the CHA. Based on the most recent meeting with Mr. Shuldiner, I believe that there is no prospect of a solution being developed without Court intervention. Our effectiveness as Receiver is clearly impaired by the problems posed by the CHA's actions and attitudes.

We appreciate the responsibility you have given us as your Receiver. We also appreciate and support the important goals to be accomplished by implementation of the Court's Orders in this litigation. It is a privilege to perform this public service.

We reiterate our willingness to operate in a cooperative fashion with the CHA.

We need your assistance and directions in carrying out the tasks you have entrusted to us.

Respectfully,
THE HABITAT COMPANY

A handwritten signature in dark ink, appearing to read "Daniel E. Levin". The signature is fluid and cursive, with the first name "Daniel" being more prominent.

Daniel E. Levin

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cc: Jerome Butler/Susan Getzendanner
Valerie Jarrett
John Jensen/Linda Wawzewski
Lewis Nixon/Janet Elson
Alexander Polikoff/Julie Brown
Michael L. Shakman
Joseph Shuldiner/Karen Newton