

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

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

**THE CHICAGO HOUSING AUTHORITY'S
RESPONSE TO PLAINTIFFS' MOTION FOR FURTHER RELIEF**

The Chicago Housing Authority (the "CHA") makes the following response to the Motion for Further Relief filed March 18, 1998 (the "Motion for Relief" or the "Motion"), now set to be heard on March 24, 1998.

The Motion Should Be Denied Pending Appeal of the Order

The principal relief sought by the Motion for Relief is based on the Court's Order of February 25, 1998 (the "Order"). The CHA intends to file a notice of appeal of the Order on or before March 27, 1998, and to seek expedition of the appeal. If the CHA prevails on appeal, the Injunction would not apply to HOPE VI-funded replacement housing, and the Receiver would have no role with respect to HOPE VI programs. This would moot the need for the principal relief sought in the Motion for Relief, as well as the HOPE VI issues raised by the Receiver in its March 13, 1998, letter to the Court ("Receiver's Letter"). The Motion for Relief should be denied without prejudice to reinstatement in the event the Order is affirmed by the Court of Appeals.

To the extent the Motion for Relief seeks non-HOPE VI related relief, such as the release of certain funds and access to information from CHA's management firms, these issues are

not new and should be resolved outside the context of the Motion for Relief. These issues do not require the Court's consideration of the plaintiffs' accusations of improper conduct by the CHA. Moreover, the CHA believes that the amount of funds actually sought by the Receiver, which is substantially less than what is sought in plaintiffs' Motion for Relief, is being reviewed by HUD and that the issue may resolve itself. The information the Receiver wants to be able to obtain by direct contact with the CHA's management firms is available to the Receiver through the CHA. There has been no refusal to provide this information to the Receiver.

Alternatively, the CHA's Motion for Stay Should be Granted

Because of the Receiver's demand for cooperation in implementing the Order immediately and well beyond the locational requirements of the Injunction, and the plaintiffs' related Motion for Relief, the CHA has filed a motion to stay the Order pending appeal.¹ The stay motion was filed March 20 and noticed for March 24, 1998. The motion for stay should be considered by the Court or, if necessary, the Court of Appeals, before consideration of the merits of the Motion for Relief.

Alternatively, the Motion for Relief Summarily Should Be Denied

¹ The CHA did not seek a stay of the Order immediately after its entry based on its judgment that it was not necessary. The CHA believed that the status quo prior to the entry of the Order would remain undisturbed and the appeal would be resolved prior to any change in the status quo. This belief was based on the view that the Order requires compliance with the locational requirements of the Injunction, no new construction of HOPE VI replacement housing is being performed, none would be constructed unless and until HUD authorizes the funds, and, therefore, there is nothing for the Receiver to do. Now the plaintiffs seek further relief from the Court based on allegations that the CHA has failed to comply with the Injunction (as interpreted by the Order) for the past several years. A stay is now necessary to preserve the status quo.

If the Order is not stayed, the Motion for Relief based on the Order summarily should be denied. The Motion is based entirely on the Receiver's Letter, which plaintiffs assume is true and correct. Assuming the accuracy of the Receiver's Letter, there is no basis for the allegations in the Motion for Relief that Mr. Shuldiner expressed an intent to violate any Court orders. The Receiver's Letter asserts that at the March 10 meeting among the CHA, HUD and the Receiver, Mr. Shuldiner stated his opinion that (1) he opposed the Receivership; (2) the CHA's opposition to the Receiver on HOPE VI projects had not been resolved by the Order; (3) that the Order on its face did not deal with the role of the Receiver on HOPE VI programs; (4) that he disagreed with the substance of the Order; (5) desegregation goals are not served by continued compliance with the locational requirements of the Injunction; and (6) the CHA intends to proceed with the HOPE VI projects and if the Receiver disagreed with the CHA's right to do so, the Receiver should seek an interpretation of the Order that the CHA is not entitled to go forward with its HOPE VI projects without interference of the Receiver.

This would not be contumacious speech but rather a recitation of Mr. Shuldiner's beliefs, all of which are based on well-grounded legal positions, which are as follows:

- (1) the proper role of the Receiver in HOPE VI programs is not decided or covered by the Order; it is an issue separate and apart from the subject of the Motion to Clarify; and the issue was specifically reserved by the CHA in both its initial and reply memoranda in support of the Motion to Clarify;²
- (2) the Order on its face considered only the locational requirements of the Injunction and did not consider the broader implications now being asserted by the Receiver and the plaintiffs;

² In the CHA's memoranda regarding its Motion to Clarify, the CHA stated that the motion did not address the role of the Receiver and that the issue would be considered and litigated by the CHA if the Court applied the Injunction to HOPE-VI funded construction. (See *infra* at 6.)

(3) the CHA's ability to go forward with the HOPE VI projects, as planned by the CHA and approved by HUD, is not constrained by the Order other than being required to locate one half of new replacement units in General Areas;

(4) the CHA has no obligation under the Order to provide the Receiver with full cooperation and assistance beyond cooperation and assistance relating to the Receiver's responsibility for constructing replacement units, which cannot take place without HUD's authorization of the HOPE VI funds; and, therefore, any such cooperation and assistance would not become required until after the appeal is decided;

(5) the Court's Order is wrongly decided and constitutes an unwarranted modification of the Injunction;

(6) the CHA's concerns about the Receiver having any role in connection with HOPE VI projects are based on lack of need and the quality of the Receiver's performance of its obligations, and these concerns should be heard by the Court before any responsibilities are turned over to the Receiver;

(7) at a minimum, the CHA has the right to challenge the legal sufficiency of the Receiver Order and to a specific statement as to the Receiver's responsibilities before turning over to a private party any responsibility for a vast federally-funded program; and

(8) that the requirement of various Court orders mandating housing to be located in General Areas is inconsistent with current public housing policy as declared by Congress, which is that desegregation goals are best served by HOPE VI-type programs and not through the compulsory movement of minority public housing tenants to white neighborhoods.

All of the statements attributed to Mr. Shuldiner in the Receiver's letter to the Court are statements of beliefs and opinions that he is entitled to have. Neither Mr. Shuldiner nor the CHA is required to agree with court orders, they are only required to obey them. The CHA clearly disagrees with the Order, which it has the right to, and will, appeal. Mr. Shuldiner has the right to express, in a meeting among the CHA, HUD and the Receiver, his disagreement with the Order and the locational requirements of the Injunction, as well as his opposition to the Receiver having any role in HOPE VI projects. Thus, assuming, the allegations of the Receiver's

Letter are true, the expression of these opinions would not provide any basis for concluding that the CHA would violate any court order or act without seeking judicial approval.

The balance of the allegations in the Receiver's Letter are a "rehash" of old disputes that the Receiver well knows have not been resolved. For example, the CHA opposes any role of the Receiver at Darrow and previously had informed the Receiver that the CHA would seek a court order allowing it to proceed at Darrow without the Receiver. The Receiver's Letter agrees that Mr. Shuldiner stated that a court order would be sought on the Darrow project. While the Order technically may apply to Darrow, the Order did not resolve the on-going dispute about Darrow. Darrow is a project that is being done in a Limited Area pursuant to years of CHA planning and negotiation with the Darrow tenants, and, if the Order is affirmed on appeal, the CHA would move for a waiver of the Injunction for the Darrow project. The CHA always intended to obtain a waiver of the Injunction for Darrow, if it applied, and the Order does not adversely affect the CHA's right to do so.

Accordingly, the Motion for Relief summarily should be denied.

CHA Motion to Vacate/Modify Receiver Order Should Be Heard Before Motion for Relief

If the Motion for Relief is not summarily denied or if a stay of the Order is not granted by this Court or the Court of Appeals, the CHA shall file a motion to vacate the Receiver Order or to exclude HOPE VI new construction programs from the Receiver's responsibilities, and, alternatively, to describe with specificity the nature and extent of the Receiver's responsibilities. Such a motion comes as no surprise to the Receiver or the plaintiffs. As the Receiver's Letter states at page 3, since last spring the CHA has disputed on numerous grounds that the Receiver should have any role in HOPE VI programs.

The Receiver's Letter asserts, at pages 1-2, that Mr. Levin believed that the CHA's Motion to Clarify would resolve the dispute over the continuation of the Receivership and the role of the Receiver in HOPE VI projects. When the Order denied the Motion to Clarify, the Receiver, apparently believing that all issues regarding the Receivership had been resolved, sought the March 10 meeting with HUD and the CHA to discuss implementing the Order. Thus, the Receiver went into the March 10 meeting with Mr. Shuldiner expecting to move forward in a cooperative way in implementing the Order. That was not Mr. Shuldiner's or the CHA's view of the situation.

The CHA's position consistently has been that a denial of the Motion to Clarify would not resolve the dispute regarding the role of the Receiver. The CHA alerted the Court and the parties to its position in both its initial (p. 10, n. 7) and reply memoranda (p. 14, n. 9) in support of the Motion to Clarify. In the initial memorandum the CHA stated that:

if the Court determines that the Injunction covers HOPE VI, the CHA will ask the Court to clarify the Receiver's authority with regard to the CHA's HOPE VI projects, or alternatively to amend the order appointing the Receiver to exclude HOPE VI projects. That would be a completely separate motion requiring extensive briefing by the parties.

Thus, when Mr. Shuldiner went into the March 10 meeting, his perspective was the opposite of the Receiver's. He believed that the Order would not, and on its face did not, resolve the role of the Receiver, and that the role of the Receiver had to be decided by the Court before the Receiver would have any HOPE VI responsibilities. Accordingly, Mr. Shuldiner advised the Receiver that the CHA had lost confidence in the Receiver's ability to produce quality units on a timely basis and would oppose the Receiver having any role regarding HOPE VI. The Receiver cannot claim surprise at Mr. Shuldiner's statements.

The CHA's concerns about Receiver or challenges to the Receiver's Order should be heard by the Court before the CHA is required to turn over to the Receiver any responsibilities for any aspect of the HOPE VI programs. The Motion for Relief should be heard by the Court only after the CHA's challenge to the Receiver Order is decided.

The Scope of the Order Must Be Determined Before Motion for Relief is Heard

At the March 10 meeting, the Receiver and Mr. Shuldiner also disagreed on the scope of the Order. The CHA's position is that the Order imposed only the locational requirements of the Injunction. Therefore, the Receiver would have no responsibilities until such time as HUD authorizes the grant of HOPE VI funds for new construction. The Receiver took a much broader view of the Order and relied on the statement in the Order that "the judgment order governs the CHA's use of HOPE VI funds." Order at 5. The CHA relied on the Court's further statement: "Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements." *Id.*

The plaintiffs have an even broader interpretation and argue that the Order triggered the application of the Receiver Order under which the CHA is required to "extend full cooperation and assistance" to the Receiver and to "vigorously pursue desegregation opportunities." The nature of the relief sought in the Motion for Relief strongly suggests that the plaintiffs believe that the Order subjects the entire HOPE VI program to the scrutiny of the plaintiffs and the Court to determine if the program maximizes desegregation opportunities.

The CHA believes that the Order is not ambiguous and is limited to the locational requirements. If it were broader, the Order would have addressed, inter alia, the federalism and

separation of powers concerns raised by the CHA. Nevertheless, if the Motion for Relief is to be heard, the scope of the Order must be resolved.

If the CHA is correct and the Order only imposes the Injunction's locational requirements, there is no urgent need to implement the Order. HOPE VI funds presently are not authorized or being used by the CHA for new construction, and if the appeal is expedited, it is likely that a decision would be rendered before there would be any need for the CHA and the Receiver to litigate the scope of the Order and the Receiver's role in HOPE VI programs.

Alternatively, an Evidentiary Hearing On the Motion For Relief Is Required

If the Order is not stayed or the Motion for Relief is not summarily denied, then an evidentiary hearing is necessary. The draft order proposed by the plaintiffs and attached as an exhibit to the Motion for Relief purports to define the general language of the Receiver Order that requires the CHA "to provide full cooperation and assistance" to the Receiver. This language is so vague and incapable of enforcement, however, that the Motion for Relief asks the Court to require the CHA to take certain specific actions that it has not previously been required to take. As such, the Motion for Relief seeks an injunction.

Moreover, the draft order is based on conclusory "findings" of facts that are substantially disputed by the CHA. Accordingly, the plaintiffs must prove the allegations made in support of their Motion for Relief, and their entitlement to an injunction, at an evidentiary hearing. The CHA is entitled to conduct reasonable discovery and present evidence at the hearing, and file a written response to the merits of the Motion for Relief.

Unless the hearing is expedited, it is possible that the appeal of the Order would be decided before the hearing was concluded. There is no clear urgency presented in the Motion that

would justify an emergency expedited evidentiary hearing while the underlying predicate for the Motion is being appealed.

Injunction Will Have to be Waived

The plaintiffs' Motion for Relief and the Receiver's Letter deal with the effect of the Order; based on the assumption that the CHA will be able to comply with the locational requirements of the Injunction. Both fail to address the more likely scenario--raised in the CHA's Motion to Clarify--that if the Injunction applies and its requirements cannot be met, in order to go forward, the CHA would have to obtain a waiver of the Injunction.³ Given the history of the use of the waiver process in this case, each HOPE VI program will be evaluated by the plaintiffs and the Court in terms of whether the program is sufficiently consistent with the *Gautreaux* objectives that the requirements of the Injunction should be waived. Issues that the plaintiffs will want to pursue before agreeing to a waiver include, among others, (1) what buildings are to be demolished; (2) what on-site replacement housing will be built; (3) what percentage of the public housing tenants should be allowed to remain in the community; and (4) whether the goal of creating an economically viable community can be achieved.

The plaintiffs' analysis of whether the HOPE VI programs are consistent with *Gautreaux* necessarily would be driven by their belief that desegregation should be achieved by moving minority families into white neighborhoods, a philosophy totally at odds with the public

³ The Order also deals only with compliance and does not address the waiver process and related issues raised in the Motion to Clarify. Nevertheless, the issues concerning the waiver process should drive the question of what the proper role is for the Receiver, the plaintiffs, and the Court. For example, if new units cannot be constructed in General Areas, there is no need for the Receiver.

housing policies of HOPE VI. The purpose of the HOPE VI statute is to revitalize the very communities in which distressed public housing now exists, by deconcentrating public housing through demolition, constructing replacement housing on site for tenants who choose to remain, creating mixed income housing, providing for an infusion of social services, and promoting tenant participation and choice of where they want to live.

The Motion for Relief has little to do with the locational requirements of the Injunction and the Receiver's need to prepare to take over responsibility for constructing replacement units that conform to the locational requirements. Implementation of the Order to promote the waiver process is particularly onerous and unwarranted and should await the decision of the Court of Appeals.

Conclusion

Based on the above considerations, the CHA requests that the Motion for Further Relief be denied without prejudice to reinstatement after the appeal of the Order is decided, or, in the alternative, that the Court first consider and grant the CHA's Motion for Stay pending appeal.

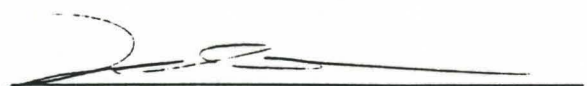
In the event the Court considers the merits of the Motion for Relief, the CHA requests that the Court first (a) determine the scope of the Order, and (b) decide the CHA's motion concerning the legal sufficiency of the Receiver Order or seeking to vacate or limit the Receiver Order.

In the event there remains a need for consideration of the Motion for Relief, the CHA requests an evidentiary hearing, an opportunity to conduct discovery, and sufficient time to file a full response to the legal and factual merits of the Motion.

Dated March 23, 1998
Chicago, Illinois

Respectfully submitted,

Jerome M. Butler
General Counsel
Chicago Housing Authority



Susan Getzendanner
Nancy S. Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 W. Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700
Counsel for Defendant
CHICAGO HOUSING AUTHORITY

CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Monday, March 23, 1998, I caused a copy of CHICAGO HOUSING AUTHORITY'S RESPONSE TO PLAINTIFFS' MOTION FOR FURTHER RELIEF to be served via hand delivery on counsel listed below:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL
PEOPLE FOR THE PUBLIC
INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

Michael L. Shakman, Esq.
Barry A. Miller, Esq.
MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
208 South LaSalle Street,
Suite 1100
Chicago, Illinois 60604



Nancy S. Eisenhower

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
(ILLINOIS)

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606-1285

TEL: (312) 407-0700
FAX: (312) 407-0411

AFFILIATE OFFICES

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MOSCOW
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SINGAPORE
SYDNEY
TOKYO
TORONTO

DIRECT DIAL
312-407-0907
DIRECT FAX
312-407-0411

March 23, 1998

The Honorable Marvin E. Aspen
Chief Judge
United States District Court
for the Northern District of Illinois
219 South Dearborn, Room 2548
Chicago, Illinois 60604

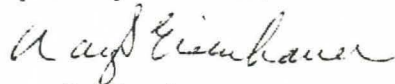
Re: Gautreaux, et al. v. CHA, 66 C 1459

By Hand Delivery

Dear Chief Judge Aspen:

As a courtesy, enclosed please find a copy of the CHICAGO HOUSING AUTHORITY'S RESPONSE TO PLAINTIFFS' MOTION FOR FURTHER RELIEF, filed today in the above-captioned case. Plaintiffs' motion is scheduled to be heard on March 24, 1998.

Respectfully submitted,



Nancy S. Eisenhower
Counsel for Defendant
CHICAGO HOUSING AUTHORITY

cc: Alexander Polikoff, Esq.

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

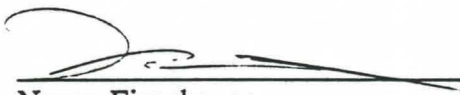
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Plaintiffs,	)	66 C 1459
	)	
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

NOTICE OF FILING

TO: Alexander Polikoff, Esq.	Michael L. Shakman, Esq.
BUSINESS AND PROFESSIONAL	Barry A. Miller, Esq.
PEOPLE FOR THE PUBLIC	MILLER, SHAKMAN, HAMILTON,
INTEREST	KURTZON & SCHLIFKE
17 E. Monroe Street, Suite 212	208 South LaSalle Street, Suite 1100
Chicago, Illinois 60603	Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Monday, March 23, 1998, we filed in the United States District Court for the Northern District of Illinois, Eastern Division, CHICAGO HOUSING AUTHORITY'S RESPONSE TO PLAINTIFFS' MOTION FOR FURTHER RELIEF, a copy of which is attached hereto and served upon you.

Dated: March 23, 1998
Chicago, Illinois


Nancy Eisenhower
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
(312) 407-0700
Counsel for Defendant
CHICAGO HOUSING AUTHORITY