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

APR 06 1998

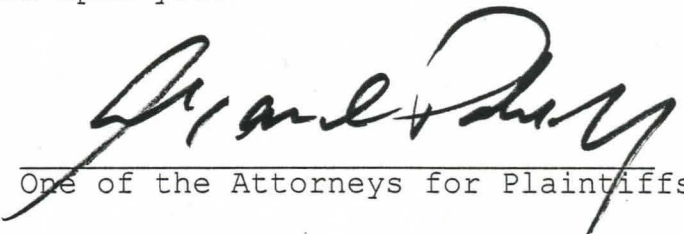
Judge Marvin E. Aspen
U.S. District Court

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

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that on Monday, April 6, 1998, we filed in the United States District Court for the Northern District of Illinois, Eastern Division, Plaintiffs' Reply to CHA Response to Plaintiffs' Motion for Further Relief, a copy of which is attached hereto and served upon you.



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April 6, 1998

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CERTIFICATE OF SERVICE

I, Alexander Polikoff, an attorney, certify that on April 6, 1998, I caused copies of the foregoing Notice of Filing and Plaintiffs' Reply to CHA Response to Plaintiffs' Motion for Further Relief to be served on the persons shown on the attached service list.

A handwritten signature in black ink, appearing to read "Alexander Polikoff", is written over a horizontal line. The signature is stylized with a large, looping initial 'A' and a long, sweeping tail that extends to the left and under the line.

Alexander Polikoff

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PLAINTIFFS' REPLY
TO
CHA RESPONSE
TO
PLAINTIFFS' MOTION FOR FURTHER RELIEF

INTRODUCTION

Plaintiffs could have moved for contempt.¹ Thus far we have chosen otherwise and seek merely "further relief," not because there is ambiguity about CHA's obligations, or doubt respecting its violation of them, but because: (1) we wish to give government agencies a chance to put their houses in responsible order; and (2) we seek not punishment but cooperation, thereby to get about the job, expeditiously and cooperatively, of building housing and providing desegregated housing opportunities.

¹ Violation of an order to cooperate with a receiver is civil contempt. See, e.g., Rhode Island Hosp. Trust Nat'l Bank v. Howard Commun. Corp., 980 F.2d 823, 829 (1st Cir. 1992) (affirming civil contempt sanction for violation of receivership cooperation order). Plaintiffs reserve the right to move for contempt respecting the conduct brought to the Court's attention by plaintiffs' motion.

CHA's complicated Response confuses a straightforward procedural situation while citing no legal authority whatsoever. After briefly summarizing the verified, uncontested facts in Part I, in Part II we undo the procedural confusion. In Part III we show why plaintiffs' motion should be granted.

I. THE UNCONTESTED FACTS.

The Levin and Hickman affidavits filed with plaintiffs' motion for further relief, including Mr. Levin's letter of March 13, 1998, to the Court which is verified by par. 5 of the Levin affidavit, stand uncontradicted by any sworn statement; CHA has filed no counter-affidavits or documents. Mr. Shuldiner's letter to the Court of March 16, 1998, does not dispute any of the factual statements of the March 13 letter. Thus, the Court should take the verified allegations supporting plaintiffs' motion as true. E.g., Bell v. Little Axe Indep. Sch. Dist. No. 70, 766 F.2d 1391, 1403 n.8 (10th Cir. 1985) (Court of Appeals accepts as true facts taken from plaintiff's application for contempt citation since they were not denied by defendants in their pleading).²

² There is therefore no occasion for the evidentiary hearing CHA seeks (pp. 8-9). See Bell, *supra*. Cf., e.g., Johnson v. Gudmundsson, 35 F.3d 1104, 1108 (7th Cir. 1994) (failure to contest movant's statement of facts constitutes binding admission of facts). The Levin and Hickman affidavits are sufficient by themselves to support the relief requested. The additional affidavits of Levin, Hickman, Jarrett, and Miller, submitted by the Receiver in support of its Statement respecting CHA's motion for a stay, supply even more detailed information. Reference to those additional affidavits is not necessary to decide plaintiffs' motion, but the detail is there should the Court wish to refer to it.

Background

The Receivership Order was entered on August 14, 1987, following years of dismal CHA failure to develop remedial housing under the 1969 judgment order. Among other things the order transfers to the Receiver "all powers of CHA" respecting "all" CHA non-elderly public housing development programs which may be authorized by HUD during the pendency of this action. The transfer includes all powers "incident to the development and administration" of such programs, including making "all determinations" governing such programs and "[c]arrying out the determinations so made" (paragraphs 1 and 2 of the Receivership Order, emphasis added). It could not be clearer that all powers of CHA respecting all non-elderly public housing development were lifted from CHA's shoulders and placed upon the Receiver's.

In addition, CHA is directed to provide to the Receiver "full cooperation and assistance," and is mandated "not [to] interfere" with the Receiver in the performance of its responsibilities (paragraph 7 of the Receivership Order, emphasis added). (A copy of the Receivership Order is part of Exhibit A to the Hickman affidavit. The February 1998 order entered pursuant to CHA's motion to clarify the original judgment order ("HOPE VI Order") determined that through its definition of "dwelling unit" and by reason of its remedial desegregation purpose the judgment order applied to non-elderly public housing to be newly developed with HOPE VI funds. The HOPE VI Order did not modify either the Receivership Order or the judgment order.)

For some years following entry of the Receivership Order there was no controversy among the parties concerning it. CHA cooperated with the Receiver, as of course it was obligated to do. For its part the Receiver (and plaintiffs) acquiesced voluntarily in a 350 unit demonstration program to be conducted by CHA to show that CHA too could successfully develop non-elderly housing. Following CHA's total failure to develop any of the contemplated housing, the Receiver also cooperated in forming a joint venture with a CHA instrumentality intended both to develop the demonstration program units and to enable the Receiver to train CHA in development. By agreement orders were also entered for the Receiver or the joint venture to develop housing in Lawndale, and in several areas designated "revitalizing."

Disagreements between CHA and the Receiver began to develop in a period preceding the filing of CHA's September 1997 motion to clarify. The disagreements included, but were not limited to, the question brought to a head by CHA's motion, i.e., does the judgment order apply to HOPE VI replacement housing. For example, CHA began to delay and block funding for the Receivership unrelated to HOPE VI. CHA also began to develop housing on its own - not under the aegis of the Receiver or the joint venture. This too was unrelated to the HOPE VI controversy.

The disagreements (some of them) first surfaced in Court with the Receiver's emergency motion filed in May, 1997. In a meeting following consideration of that motion, the Court urged

the parties to attempt to work out cooperative arrangements. Those attempts were unsuccessful and ended when CHA's motion to clarify was filed in September.³ The Court's HOPE VI Order was followed in turn by the Receiver's March 10 meeting with CHA and HUD, seeking once more - with the clarification provided by the HOPE VI Order -- the elusive cooperation understanding. The defiance expressed at that meeting, given CHA's now extensive pattern of non-cooperation and deliberate frustration, necessitated the filing of the further relief motion on March 18, 1998. (See generally Ex. A, Levin Aff. pp. 6-10.)

The Contemptuous Conduct and the Relief Requested

Plaintiffs' memorandum, supported by the Levin and Hickman affidavits, categorizes CHA's contemptuous conduct as follows:

- (A) Blocking and delaying Receivership funding (Hickman Aff., par. 4; Memo. p. 2);⁴

³ Before and after the meeting with the Court in early July, CHA repeatedly refused to discuss HOPE VI with the Receiver at all. Levin Aff. Pars. 29-33. CHA then agreed to discussions - but insisted that the Receiver give up all authority over all new housing development activities, including, but not limited to, HOPE VI, on a permanent basis. (Levin Aff. Pars. 34-37.) Contrary to the Receiver's suggestion for a joint presentation to the Court, CHA then filed its HOPE VI motion with the Court on September 30, 1997. (Levin Aff. Par. 38.)

⁴ Following the filing of our motion and supporting documents, CHA has apparently approved some - but not all - of the funds in question. (See Jarrett Aff. Exs. 4-8.) That does not end the dispute, however. Plaintiffs wish to ensure (a) that all of the outstanding money is paid, and (b) an order is put in place so that CHA does not repeat this type of harassment.

- (B) Committing to residents to "build replacement housing with them, and without the Receiver" (Ex. A to Levin Aff., p. 5; Memo. p. 2);
- (C) Taking specific steps respecting development of non-elderly public housing without the consent or participation of the Receiver, e.g., submitting a proposal respecting over 100 units at Darrow Homes to the Chicago Plan Commission (Hickman Aff., Ex. B., par. 7; Levin Aff., Ex. A, p. 8);⁵
- (D) Making plans without the consent or participation of the Receiver for developing non-elderly housing in areas that violate the locational requirements of the Court's orders (id.);
- (E) Refusing to provide information to the Receiver respecting CHA-initiated non-elderly housing development activities (e.g., Hickman Aff., par. 6; Memo. p. 3); and
- (F) Threatening retaliation against the Receiver if the Receiver did not agree to give up responsibility for non-elderly housing development (Levin Aff., Ex. A, p. 5; Memo. p. 3).

⁵ Vividly illustrative of CHA's contemptuous attitude toward and conduct regarding the Court's orders is the Darrow situation. While acknowledging "the Order technically (sic) may apply to Darrow," CHA evidently concluded that its intention to "seek a court order" (CHA Response, p. 5) was sufficient warrant for it to request formal approval of its unilateral Darrow plans from the City Plan Commission without even having sought, let alone obtained, such an order.

Mr. Levin's uncontested, verified March 13 letter to the Court makes it plain that, absent intervention by the Court, this contemptuous conduct threatens to continue. For example, Mr. Shuldiner said he "would 'fight' and would oppose the Receiver in all respects"; and that CHA intended to build at Darrow "and anywhere else the CHA felt was appropriate," and "if anyone wants to stop the CHA, they are going to have to sue." (Levin Aff., Ex. A, pp. 3, 4.)

Both the Levin and Hickman affidavits state that CHA's conduct is impairing the Receiver's ability to carry on the work of the Receivership. (Levin Aff., Ex. A, p. 10; Hickman Aff., par. 10.)

Based on the foregoing, the relief requested is simply that the Court spell out more precisely than is done in the Receivership Order - without adding to the already existing obligations of that order - the meaning of its "full cooperation," "assistance," and "non-interference" provision. This would be done, under plaintiffs' proposed order submitted to the Court, by directing CHA to:

- (1) Cease its unilateral housing development activities;
- (2) Provide the Receiver with information about those unilateral activities carried on by CHA since the HUD takeover;
- (3) Answer the Receiver's reasonable questions;

- (4) Subject to HUD requirements, assist in the transfer of non-elderly housing development funds to the Receiver; and
- (5) Make no unilateral applications for non-elderly housing development funds. (Plaintiffs' Proposed Order, filed March 18, 1998, pp. 3-5.)

In addition, the proposed order would direct CHA to provide the Receiver and plaintiffs' counsel with its desegregation plans (id., p. 5).

The question is whether, given the uncontested facts, CHA advances any persuasive reason for not granting the requested relief summarily.

II. THE SIMPLE PROCEDURAL SITUATION.

Citing no authority CHA says (p. 1) our further relief motion should not be considered until after appeal of the HOPE VI Order, or (p. 2) until after CHA's motion for stay of that order is considered.⁶ However our motion for further relief is not, as CHA says, based principally on the HOPE VI Order or entirely on the Receiver's letter (pp. 1, 3); rather, it is based principally on the 1987 Receivership Order. Because the Receiver's ability

⁶ CHA's filing of a notice of appeal from the HOPE VI Order does not divest this Court of jurisdiction. Even if the order were appealable (which it is not), this Court retains jurisdiction to enforce injunctive orders it has entered. See Shevlin v. Schewe, 809 F.2d 447, 450-451 (7th Cir. 1987); SEC v. American Capital Investments, Inc., 98 F.3d 1133, 1146 (9th Cir. 1996); In Re Grand Jury Subpoenas

to carry out its duties under that Order is being severely hampered by a contemptuous CHA whose course of deliberately frustrating conduct, not limited to HOPE VI questions, is in clear violation of the Receivership Order, our motion demands immediate action. (CHA fails to explain why, to the extent we seek non-HOPE VI related relief, the issues "should be resolved outside the context" of plaintiffs' motion for relief - p. 2.)

Procedurally, nothing more is involved than requiring the party against whom a remedial order has been entered to obey that order, providing sufficient particularity so that there may be no mistaking what is required. It may be appropriate in this context to recall another CHA delay effort. Eighteen years after the judgment order was entered this Court said:

"As Judge Crowley wrote in this case nearly seven years ago in denying '[w]ith great reservation' the plaintiffs' motion to appoint a receiver, 'compliance will be measured by results not intentions. . .' (emphasis added). Enough is enough. It is fundamentally clear that in light of CHA's track record, not only in CHA's present form but also in its multitude of previous incarnations, this case is well beyond the point where bureaucratic squabbles between local and federal agencies will be tolerated as an excuse for noncompliance with the important remedies sought by the plaintiffs . . . CHA, as it has demonstrated, lacks the ability and competence to comply with the orders of this Court. In effect, by seeking broad discovery, CHA is asking the plaintiffs and the Court to wait . . ." Gautreaux v. Pierce (Nos. 66 C 1459, 66 C 1460), 1987 WL 13590 (N.D. July 9, 1987) (emphasis added).

Duces Tecum, 85 F.3d 372, 375-76 (8th Cir. 1996); U.S. v. York, 909 F.Supp. 4, 9-10 (D.D.C. 1995).

CHA's current request for delay rests in part on its statement that it will file a motion to vacate the Receivership Order, "or" to exclude HOPE VI new housing from it, "and, alternatively," to describe the nature and extent of the Receiver's responsibilities (p. 5). Parties are free to file motions, but an intention to do so is hardly a reason for denying presently needed relief. It will be time enough to deal with motions to vacate, exclude and/or describe when they are filed.⁷

We note also that CHA's argument (pp. 7-8) respecting the need for separate handling of the Receiver's role respecting HOPE VI replacement housing amounts to a replay of its HOPE VI argument. If, as the Court has ruled, the judgment order's definition of "dwelling unit" includes such housing, the

⁷ This is especially true given CHA's acknowledgement that, "The Gautreaux remedy should stay in place" (Transcript, 2/10/98, attached as Exhibit C to Plaintiffs' Response to Motion for Stay, filed March 31, 1998, p. 36).

It is not possible to resist comment on CHA's "lost confidence" in the Receiver's ability to produce quality units in a timely fashion (p. 6). This comes from a CHA that: (a) has threatened and vowed retaliation against the Receiver (Levin aff., Ex. A); (b) was so incompetent as a developer of housing that ultimately the extraordinary step of appointing a Receiver was necessitated; (c) itself utterly failed to develop any housing though given (with the uncoerced acquiescence of the Receiver and the plaintiffs) funding for 350 units and four years time in which to showcase its own development capability; and (d) is not only classified by HUD as a "troubled" housing authority but is ranked number 36 among the forty largest housing authorities in the nation, with a score that has worsened since HUD's "takeover." (Prepared testimony of Judy A. England-Joseph, Director, Housing and Community Development Issues, United States General Accounting Office, June 7, 1995, Federal News Service, p. 2, and Transformation of America's Public Housing, A 1996 Status Report by Secretary Henry G. Cisneros, p. II-13, attached as Exhibit O to Plaintiffs' Response to CHA Motion for Stay.)

Receiver's role respecting such non-elderly public housing is fully articulated in the Receivership Order ("all powers . . . necessary and incident" to developing non-elderly housing, making "all determinations," etc.), and needs no additional exploration.⁸ What does require additional particularization, given the verified facts, is CHA's duty of cooperation, assistance, and non-interference.

III. PLAINTIFFS' MOTION SHOULD BE GRANTED.

CHA's Response advances no facts, legal authority or persuasive reason for not granting summarily, or for delaying, plaintiffs' motion.

The Response begins with a misstatement: "The principal relief sought . . . is based on the Court's [HOPE VI] Order" (p. 1), and adds, "The Motion is based entirely on the Receiver's Letter . . ." (p. 3) Not so. The relief sought is based on the 1987 Receivership Order and CHA's failure to comply with the

⁸ "You correctly state the CHA's position that HOPE VI is not within the scope of Gautreaux (and therefore outside the scope of the 1987 [Receivership] order) . . . If the Receiver chooses to dispute the CHA's activities regarding HOPE VI, the real issue will be the applicability of the Gautreaux orders to HOPE VI." Letter from CHA's General Counsel, attached as Ex. 3 to Miller affidavit filed with Receiver's Statement on March 31, 1998, p. 2 (emphasis added).

CHA's final argument respecting "waiver" - by which CHA means the determination by the Court that an area is revitalizing - is based on CHA's persisting mischaracterization that plaintiffs believe desegregation can only be achieved "by moving minority families into white neighborhoods," a philosophy CHA says is at odds with HOPE VI policies (pp. 9-10). This tired disingenuity was thoroughly addressed in the briefs preceding the HOPE VI Order, as well as in the Order itself.

cooperation, assistance and non-interference provisions of that order, a failure which is amply evidenced by the supporting affidavits.

The blocking of funding and the Darrow development activities would alone justify entry of the requested order. In addition, the conduct described in Mr. Levin's March 13 letter to the Court demonstrates that absent entry of a further order, non-cooperation, non-assistance and frustrating interference are likely to persist. "All of the statements" attributed to Mr. Shuldiner in the March 13 letter cannot fairly be described as "statements of beliefs and opinions that he [Mr. Shuldiner] is entitled to have" (p. 4). They include threats against the Receiver and unambiguous statements of intention to violate Court orders, as the following partial list illustrates:

- (1) "CHA intended to proceed with its own programs for development of new housing without the Receiver, and invited us to 'try to stop him.'" (p. 5)
- (2) "He [Mr. Shuldiner] made it clear . . . he would join tenants in pressing claims against us." (p. 3)
- (3) "[He] [Mr. Shuldiner] would 'fight' and would oppose the Receiver in all respects." (p. 3)
- (4) "[He] [Mr. Shuldiner] 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 [that CHA assume future housing development responsibility for projects not already specifically allocated to the Receiver]." (p. 3)
- (5) "[T]he CHA will withhold its approval [of certain funding] unless the Receiver satisfies the CHA with extensive backup material and data" (p. 3)

- (6) "[H]e [Mr. Shuldiner] had taken steps to have a HUD employee removed from his responsibilities because that employee had cooperated with the Receiver." (p. 4)
- (7) "[T]he 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." (p. 4)
- (8) "[I]f anyone wants to stop the CHA, they are going to have to sue." (p. 4)
- (9) "[H]e [Mr. Shuldiner] had offered to residents at Cabrini-Green a development partnership interest. He will build replacement housing with them, and without the Receiver." (p. 5)
- (10) "Mr. Shuldiner said he would withhold approval for \$7.69 million in funding for the Receiver." (p. 10)

* * *

CHA is mandated to provide "full cooperation and assistance," and not to "interfere," with a Receiver invested with full power and authority (leaving none to CHA) to develop all non-elderly public housing CHA would otherwise be authorized to develop. The Levin and Hickman affidavits establish that CHA has been usurping the Receiver's development authority and blocking and frustrating its exercise of that authority.

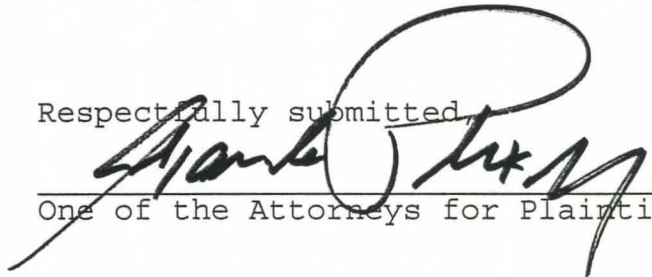
What the Supreme Court has termed the "inherent capacity" of a Court to effectuate its own orders (Freeman v. Pitts, 503 U.S. 467, 487 (1992)) has not infrequently been exercised in situations like this one in which a receiver has been appointed to take over some local governmental activity and needs further court assistance. See for example, Dixon v. Barry, 967 F.Supp. 535, 551 (D.D.C.1997) ("where dire facts justify the use of the receivership power, considerations of federalism and comity do

not warrant withholding a necessary remedy"); Gary W. v. State of Louisiana, 1990 WL 17537, 30 (E.D. La.1990) ("The federal courts possess both the authority and power to implement whatever remedies are necessary to correct constitutional violations [citations omitted]".) (collecting cases respecting receivers appointed for public agencies); The Judge Rotenberg Educ. Cent., Inc. v. Comm. Of Dept. of Mental Retard., 677 N.E. 2d 127, 151 (Mass.1997) ("Once a judge has taken the extraordinary step of appointing a receiver, that judge surely must give the receiver sufficient power to meet the requirements of the situation. The receiver must have enough power to enforce the judge's decrees, make them completely effective, and thus restore legality. [citations omitted]."

CONCLUSION

CHA has disputed no facts and cited no law. On both the facts and the law plaintiffs' requested order must be entered not only to effectuate the relief plaintiffs have already been awarded, but to vindicate the authority of the Court which is now being grievously flouted.

Respectfully submitted,


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