

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.	)	

**CHICAGO HOUSING AUTHORITY'S REPLY TO
PLAINTIFFS' RESPONSE TO CHA MOTION TO STAY**

Defendant, Chicago Housing Authority (the "CHA"), respectfully submits this reply in further support of its Motion To Stay Order Pending Appeal (the "Motion To Stay"), filed on March 20, 1998.

Plaintiffs' primary argument is that a stay is not necessary because this Court's order of February 25, 1998 (the "February 25 Order") effected no change in the status quo. In addition, plaintiffs argue that the CHA will not be irreparably harmed by the stay, that plaintiffs will be unduly harmed by the stay, and that the February 25 Order is not appealable. This reply addresses each issue in turn.

I. STATUS QUO

The status quo prior to the entry of the February 25 Order with regard to the Receiver was that the Receiver's role in HOPE VI projects was in dispute. (Motion To Stay at ¶¶ 9-10, 15.) The Receiver and plaintiffs have now demanded that the CHA fulfill its obligation under the order appointing the Receiver to "fully cooperate" with the Receiver. The Receiver's

role in HOPE VI projects depends on whether the 1969 injunction governs HOPE VI. This issue will be decided on appeal.

Prior to the entry of the February 25 Order, plaintiffs had not demanded that the CHA cease any activities incident to its HOPE VI projects. Now, in Plaintiffs' Motion For Further Relief, Proposed Order at ¶ 1, plaintiffs seek specific relief under the 1969 injunction. At no time during the past six years of planning and activity have plaintiffs filed a motion for contempt or otherwise requested that this Court determine the Receiver's role with regard to HOPE VI. Plaintiffs'/the Receiver's voluminous filings are irrelevant to this issue; nowhere do they demonstrate any such requests.¹

Indeed, plaintiffs' citation of authority with regard to the status quo (Resp. at 5, 12), when combined with the affidavits and other evidentiary material filed in connection with their response, advances the CHA's case for a stay by demonstrating that the status quo would be maintained in this case by a stay of the February 25 Order. The cases cited by plaintiffs define the status quo as the "last peaceable uncontested status that existed before the dispute arose." Resp. at 5-6, quoting LaRouche v. Kezer, 20 F.3d 68, 74 n. 7 (2d Cir. 1994) (emphasis added); Resp. at 6, quoting Religious Tech. Cent. v. FACT Net, Inc., 901 F.Supp. 1519 (D. Colo. 1995) (emphasis added); Resp. at 12, quoting Massachusetts Mutual Life Ins. Co. v. Assoc. Dry Goods Corp., 786 F.Supp. 1403, 1427 (N.D. Ind. 1992) (emphasis added). Even a cursory review of plaintiffs'/the Receiver's affidavits demonstrates that the question whether the 1969 injunction governed HOPE VI projects was anything but peaceable and uncontested prior to the February 25 Order. See,

¹ The Receiver argues that it brought the issue to the Court's attention. Yet, even after doing so, plaintiffs failed to ask this Court to render a decision on the issue.

e.g., Aff. of B. Miller (providing correspondence reflecting dispute between CHA and Receiver regarding the issue); Aff. of D. Levin (same). Maintenance of the status quo here means the maintenance of the dispute.

Plaintiffs state that “the status quo is that CHA has not developed a single unit of HOPE VI [funded] replacement housing to date.” Resp. at 6. Precisely.² The status quo is that no building has taken place.³ That status quo would be maintained even in the absence of a stay because HUD must approve the funding of replacement units before any can be built. A stay will prevent the Receiver from interfering with the CHA’s HOPE VI projects at least until the appeal is decided.⁴

II. IRREPARABLE HARM TO THE CHA

The Cabrini HOPE VI plan, which has been six years in the making, has been approved by HUD and the City of Chicago, and the implementation plan is ready to be submitted to HUD for final approval. The implementation plan will not be approved until the appeal is

² That is why the CHA filed its motion to clarify; it wanted to determine the court’s jurisdiction over HOPE VI before it began building HOPE VI-funded units. Cf. infra at p. 4, quoting Response of the United States Department of Housing and Urban Development to Chicago Housing Authority’s Emergency Motion To Clarify Injunction, filed October 22, 1997 (“HUD Response”), at 2.

³ The Mohawk North units referred to at pages 6-7 of the Response were not built with HOPE VI money. The Receiver filed the application to draw down the development dollars for the project, and requested a fee; the CHA protested, but in the end negotiated a settlement with the Receiver of \$35,000.

⁴ Plaintiffs also state that “HUD” also believes that “only” the Receiver has authority over the CHA’s HOPE VI projects. Resp. at 10-11. This statement is inaccurate. See infra, p. 4. It is also irrelevant. HUD’s interpretation of this Court’s orders are not dispositive.

decided. Until that time there is no need for the CHA to “fully cooperate” with the Receiver on HOPE VI projects. That kind of upheaval may be unnecessary, in the event that the CHA prevails on appeal. A delay of several months (given an expedited appeal) for the Receiver to begin his work will not unduly burden plaintiffs.⁵

Plaintiffs argue that the “entire history of HOPE VI in Chicago speaks to the contrary of CHA’s professed fears [re losing funding],” because HUD awarded the HOPE VI grants to the CHA on the basis of HUD’s “belief” that the Receiver would implement the programs, and the belief that the grant applications met *Gautreaux* locational standards. Resp. at 14. Plaintiffs’ argument is contradicted by the record.

The U.S. Attorney in Chicago, supported by the declaration of Kevin Marchman, Acting Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development, submitted the following statement to this Court in connection with this matter:

The stated requirement [requiring Court or plaintiff approval of HOPE VI plan] did not, and was not intended, to reflect any independent determination by HUD that CHA’s HOPE VI program was covered by the 1969 judgment order. Rather the purpose of the quoted passage was to insure that CHA promptly obtain plaintiffs’ agreement to the Authority’s understanding of the Order or alternatively obtain appropriate clarification from the court.

HUD believes that CHA presents substantial arguments raising serious questions as to whether the 1969 judgment order governs HOPE VI funding and programs and whether the court intended its remedial order to encompass HOPE VI funding and programs.

⁵ HUD has agreed to approve the CHA’s implementation plan, pending a final determination of the question whether the *Gautreaux* injunction covers HOPE VI. They have not indicated that they would approve some other plan devised by plaintiffs/the Receiver.

HUD Response at 2.

Plaintiffs' citation to Mr. Jensen's statement (a local HUD official) is incomplete.

The statement continues as follows:

But CHA indicated in its footnote [in original brief] that [the issue of the Receiver's responsibility] was not the issue that was being presented to the Court. I think they said that that would entail an entirely different briefing schedule and – a motion and entirely different briefing. HUD as a department deferred to CHA's suggestion in that regard.

Resp., Ex. C at 28-9.⁶

With regard to the costs of litigation, plaintiffs state that “[a] stay delays but does not avoid further litigation.” Resp. at 16. If the CHA prevails on appeal, plaintiffs' pending motion for further relief will be moot, i.e., litigation on that motion and the role of the Receiver will be avoided. The CHA must spend public monies to proceed with litigation, not only to pay for its own representation but also, in some instances, to pay for plaintiffs' and the Receiver's

⁶ Plaintiffs'/the Receiver's affidavits also indicate that these issues have never been resolved by HUD. For example, in September 1995 (after the grant of HOPE VI funds at Cabrini), a purported HUD memorandum states: Currently the formal role of the Habitat Company (THC) has yet to be clearly defined, although on the request of HUD we were informed to include THC as the development manager for the Cabrini HOPE VI Urban Revitalization Demonstration Program. To date CHA/HUD/CMHDC have been negotiating with the City of Chicago, the Park District, and private developers concerning additional vacant land and housing units [tasks over which the Receiver now asserts sole authority]. The following questions need to be addressed before STEP-TWO of the RFP is issued: What is the Habitat Company's formal role as the Development Manager for [Cabrini] HOPE VI?

Aff. of P.Hickman, Ex. 6 at 2 (emphasis added). Cf. Aff. of P.Hickman, Ex. 8, Receiver's Agenda Memo, “Cabrini HOPE VI RFP Issues For Discussion With Joe Shuldiner” (October 18, 1995) at ¶ 10: The Habitat Company - responsibility and authority regarding the HOPE VI Program?

representation. Continued litigation on these issues will constitute a waste of public resources if the CHA prevails on appeal. In addition, the CHA has other work to do. Clearly, a diversion of the CHA's resources from its other work, simply to pursue litigation that may be mooted by an expedited appeal, is a preventable waste of public resources.⁷

III. HARM TO PLAINTIFFS

Plaintiffs' harm is limited to, at most, a delay in receiving a new form of relief to which they are entitled. Plaintiffs' arguments do not appear to explain why such a delay, although a harm, either unduly burdens plaintiffs or outweighs the other factors that the court must consider in connection with a motion to stay. Instead, plaintiffs present additional arguments and assertions in support of their motion for further relief, and new arguments with regard to the merits of the underlying cause. Although the arguments are irrelevant to the motion to stay, the CHA responds here in order to correct some of the statements which it believes are incorrect.

Plaintiffs' counsel's assertion at page 17 of the Response, that Joseph Shuldiner's statements -- *as reported by a Receiver who has filed papers in support of plaintiffs' position in this matter* -- "reflect an intention to disregard the remedial desegregation thrust of this Court's orders," is unfortunate. Mr. Shuldiner's commitment to desegregating public housing in Chicago is clear; that he disagrees with the Court's and plaintiffs' counsel's opinion on how best to accomplish this task does not make him contemptuous of this Court, nor any other adjective

⁷

Plaintiffs' citation to a newspaper article to prove the truth of the reported statements of Joseph Shuldiner is improper. The article is hearsay. In any event, the same article quotes Mr. Polikoff as heralding this Court's opinion as a "change [in the] CHA's anticipation" Resp., Ex. B., "Court Alters Rules For CHA Rebuilding" (March 19, 1998). Yet here, Mr. Polikoff argues that the ruling effected no change for the CHA.

which Mr. Polikoff's statement so obviously implies. In any event, Mr. Shuldiner's intentions are not relevant to the motion to stay.⁸

Plaintiffs' citation to Article X of the Injunction goes to the merits of the Court's interpretation of the Injunction. Although plaintiffs did not reference Article X during briefing on the merits, the CHA's arguments as to whether the Injunction covers replacement "developments" applies to this section of the Injunction as well. Citation to Article X is not dispositive of the issues raised below. The agreed orders entered with the approval of the Court were not entered in connection with HOPE VI dollars; neither were the Mohawk North units (for which the Receiver prepared the application not the development plan, over the initial objection of the CHA and at a negotiated cost of \$35,000) funded with HOPE VI dollars. None of this is related to the motion to stay.

IV. SUBSTANTIAL QUESTIONS FOR A SERIOUS APPEAL

The CHA believes that it has set forth substantial arguments raising serious questions on appeal. Cf. HUD Response at 2 ("HUD believes that CHA presents substantial arguments raising serious questions as to whether the 1969 judgment order governs HOPE VI funding and programs and whether the court intended its remedial order to encompass HOPE VI funding and programs."). Plaintiffs apparently disagree. Plaintiffs also argue that the appellate

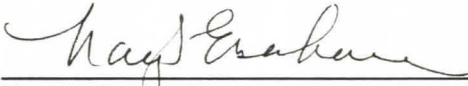
⁸ Plaintiffs have raised the question of Mr. Shuldiner's intentions for the first time in their Motion For Further Relief. As the CHA stated in its response to that motion, this Court must afford Mr. Shuldiner a fair opportunity to be heard, before granting relief on the basis of plaintiffs'/the Receiver's interpretation of Mr. Shuldiner's words -- an interpretation that is in dispute. The CHA refers the Court to its Pre-Tour Memorandum, filed July 11, 1997, for a description of some of the work that Mr. Shuldiner has done at the CHA in the past two years.

court lacks the jurisdiction to hear the appeal. In response, the CHA refers the Court to the docketing statement filed with the appellate court in connection with the CHA's appeal (attached hereto as Exhibit A).

WHEREFORE, for the forgoing reasons, and for the reasons set forth in the CHA's Motion To Stay Pending Appeal, the CHA respectfully requests that this Court stay enforcement of its February 25 Order pending appeal.

Respectfully submitted,

Jerome M. Butler
General Counsel
Chicago Housing Authority



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CHICAGO HOUSING AUTHORITY

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. ____ - ____

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	Appeal from the United
	)	States District Court for the
v.	)	Northern District of Illinois,
	)	Eastern Division
CHICAGO HOUSING AUTHORITY,	)	
a corporation, and JOSEPH SHULDINER,	)	No. 66 C 1459
Executive Director, in his official capacity,	)	
	)	Chief Judge Marvin E. Aspen
Defendants.	)	

DOCKETING STATEMENT

Defendants-Appellants, the Chicago Housing Authority and Joseph Shuldiner (collectively, the "CHA"), submit this docketing statement pursuant to Circuit Rule 3.

Jurisdiction of the District Court

The district court has jurisdiction over this civil action, which arises under the Fourteenth Amendment of the Constitution and 42 U.S.C. § § 1981, 1983, pursuant to 28 U.S.C. § 1331.

Jurisdiction of the Appellate Court

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 or, in the alternative, 28 U.S.C. § 1292(a)(1). The order being appealed (the "Order") was entered by the district court on February 25, 1998. The notice of appeal of the Order was filed on March 26, 1998. The following additional information is provided pursuant to Circuit Rules 3 and 28(b)(1) and (3):

- (2) CHA's Motion To Stay Order Pending Appeal, filed March 20, 1998.

The CHA's motion asks the district court to stay the Order pending appeal. On April 1, 1998, plaintiffs filed a response, arguing that the stay should not be granted. The district court has ordered the CHA to reply to plaintiffs' response by April 6, 1998.

- (3) Plaintiffs' Motion To Name Additional Class Representatives

Plaintiffs' motion asks the district court to name seven individuals as representatives for the plaintiff class. On March 30, 1998, the CHA filed a response to the motion, as well as a motion of its own seeking a hearing and discovery with regard to the question whether the seven individuals adequately represent the class. The district court has ordered plaintiffs to reply/respond to the CHA's response/motion by April 8, 1998.

Major, Prior Appellate Proceedings

The following is a list of the major, prior appellate proceedings in this case. None of the proceedings is directly related to the current appeal, although the CHA relied on the holding in Gautreaux, et al. v. Romney et al., 457 F.2d 124 (7th Cir. 1972) (Nos. 71-1732, 71-1734, 71-1807), in support of its arguments below. Note that on November 24, 1971, this case was consolidated with a companion case filed against HUD (the consent decree entered in the companion case was terminated in August of 1997). Therefore, some of the cases listed below are more directly related to the companion case.

Gautreaux, et al. v. CHA, et al., 436 F.2d 306 (7th Cir. 1970) (No. 18681) (affirmed order that modified Injunction to include deadline by which building sites selected by CHA had to be submitted to Chicago's City Council).

Gautreaux, et al. v. Romney et al., 448 F.2d 731 (7th Cir. 1971) (No. 71-1073) (reversed order dismissing case against HUD)

Gautreaux, et al. v. Romney et al., 457 F.2d 124 (7th Cir. 1972) (Nos. 71-1732, 71-1734, 71-1807) (reversed order prohibiting HUD from dispersing certain federal funds to the CHA)

Gautreaux, et al. v. City of Chicago, et al. v. Roti et al. v. Vrdolyak, et al. v. CHA, et al., 480 F.2d 210 (7th Cir. 1973) (Nos. 72-1409, 72-1410, 72-1485, 72-1486) (affirmed order directing the CHA to ignore state statute that required the CHA to obtain the approval of Chicago's City Council prior to acquiring land for building)

Gautreaux, et al. v. CHA, et al., 503 F.2d 930 (7th Cir. 1974) (Nos. 74-1048, 74-1049) (remanded to the district court, holding that relief must not be limited to Cook County, but must be provided on a suburban or metropolitan basis)

Hills, et al. v. Gautreaux, et al., 425 U.S. 284 (1976) (No. 74-1047) (affirmed and remanded to district court to craft relief on a suburban or metropolitan basis)

Gautreaux, et al. v. CHA, et al., 690 F.2d 601 (7th Cir. 1982) (No. 81-2223) (affirmed order granting interim attorneys fees)

Official Capacity

The office of the Executive Director of the CHA is currently occupied by Joseph Shuldiner.

Dated: April 2, 1998

Respectfully submitted,

Jerome M. Butler
General Counsel
Chicago Housing Authority

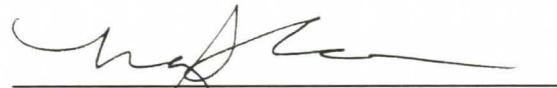
s/s Nancy Eisenhower
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CERTIFICATE OF SERVICE

I, Nancy Eisenhauer, an attorney, hereby certify that on Monday, April 6, 1998, I caused a copy of the foregoing CHA'S MOTION TO STRIKE RECEIVER'S RESPONSE TO CHA'S MOTION TO STAY, TO STRIKE EXHIBITS TO PLAINTIFFS' RESPONSE, OR IN THE ALTERNATIVE, TO SUBSTITUTE INSTANTER THE ATTACHED REPLY FOR THE REPLY SUBMITTED BY THE CHA to be served by hand on counsel listed below:

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Nancy S. Eisenhauer

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

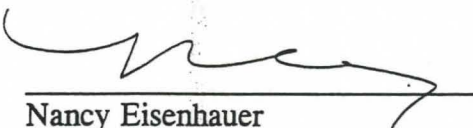
DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459
	)	
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

NOTICE OF FILING

TO: 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
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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, CHICAGO HOUSING AUTHORITY'S REPLY TO PLAINTIFFS' RESPONSE TO CHA MOTION TO STAY, a copy of which, along with its exhibits, is attached hereto and served upon you.

Dated: April 6, 1998
Chicago, Illinois



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