

**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.	)	

**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**

Defendant, Chicago Housing Authority (the "CHA"), respectfully requests that his Court, pursuant to Federal Rule of Civil Procedure 12(f), its equitable powers, and the due process clause of the Fifth Amendment to the U.S. Constitution: (a) strike the Receiver's response from the record and (b) strike the exhibits from plaintiffs' response from the record or, in the alternative, (c) substitute instanter the reply attached as Exhibit 1 for the reply submitted simultaneously with this motion by the CHA, and grant the CHA leave to supplement the record after the Court's ruling on the Motion To Stay. In support of its motion, the CHA states as follows:

Motion To Strike Receiver's Response

1. On April 1, 1998, the Receiver's counsel filed four lengthy affidavits and a brief statement in response to the CHA's Motion To Stay. The Receiver's counsel did not file a motion for leave to file the documents. The documents do not constitute a request for direction

from this Court. The documents advocate for plaintiffs' legal position. Indeed, plaintiffs' response, filed the same day, incorporates those documents by reference.

2. The Receiver is not a party in this case. Instead, the Receiver is purportedly the Court's agent. See Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994). The Receiver is not the agent of the plaintiff. See Federal Home Loan Mortg. Corp. v. Tsinos, 854 F.Supp. 113, 115 (E.D.N.Y. 1994). Yet, the Receiver's counsel is filing documents in support of plaintiffs' position on the CHA's motion to stay.

3. The documents filed by the Receiver's counsel are irrelevant and immaterial. The affidavits of Dan Levin and the employees of the Receiver detail multiple disputes with the CHA over multiple issues. The CHA has never contended that the relationship is free of dispute. Indeed, the CHA has consistently stated that there is a dispute about the role of the Receiver, but that the dispute need not be resolved until resolution of the pending appeal. See, e.g., Motion To Stay at ¶ 9-10, 15. The affidavit of Barry Miller, the Receiver's attorney, is equally irrelevant and immaterial. In addition to detailing the dispute that the CHA's motion to stay refers to, Mr. Miller uses his affidavit to opine on the CHA's legal arguments. Mr. Miller's personal opinion, as a matter of fact, is irrelevant and immaterial.

4. The documents filed by the Receiver's counsel are impertinent and scandalous. The documents complain of an alleged failure by the CHA to authorize the transfer of \$7 million worth of funds from a CHA-controlled account to a Receiver-controlled account. Despite the fact that the CHA has consistently told the Receiver that the \$7 million figure is incorrect, the Receiver's counsel filed documents that restated that figure. Further, on April 1, 1998, the CHA's Executive Director, General Counsel, the Receiver, and plaintiffs' counsel met in

Washington D.C. with officials from HUD. At that meeting, the Receiver conceded that the \$7 million figure is incorrect. Yet, neither the Receiver's counsel nor plaintiffs' counsel has retracted or otherwise corrected their filings with this Court. The failure to retract such statements is particularly unfortunate where counsel is accusing a public agency of improper conduct.

5. Further, Mr. Miller's affidavit purports to provide some kind of approximated transcript of at least some of the comments expressed at two *in-chambers* status hearings before this Court. Mr. Miller's affidavit was not filed under seal. Thus, the purported comments that Mr. Miller finds helpful to his case have been provided to the public, without any opportunity for the CHA to be heard as it was heard in-chambers.

6. If Mr. Miller's recollection of statements made at in-chambers conferences is permitted to become a part of the record in this case, then the CHA should be permitted to supplement the record with other comments made by the Court and others at the in-chambers conferences.

Motion To Strike Exhibits To Plaintiffs' Response

7. Plaintiffs' response incorporates by reference the affidavits discussed above. For all of the reasons stated above, plaintiffs' references to those affidavits should be struck from the record.

8. Further, like the affidavits discussed above, plaintiffs' exhibits are used to demonstrate that a dispute has existed between plaintiffs/the Receiver and the CHA regarding the role of the Receiver. The CHA's motion to stay concedes such a dispute; indeed, the motion is premised on the existence of such a dispute. For these reasons, plaintiffs' attempts to demonstrate the existence of a dispute are irrelevant and immaterial to the motion to stay.

9. Plaintiffs' exhibits A and B, a purported e-mail exchange between Joe Shuldiner and a local HUD official and a newspaper report, respectively, are not proper evidence. The e-mail has not been authenticated, and the newspaper report is hearsay.

**IN THE ALTERNATIVE, MOTION TO SUBSTITUTE INSTANTER
ATTACHED REPLY FOR REPLY FILED PURSUANT TO COURT ORDER**

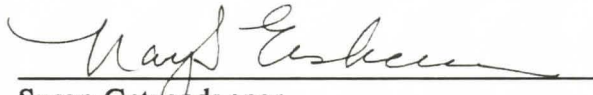
10. Further delay in ruling on the CHA's Motion To Stay will prejudice the CHA, which has already had to request an extension of time in order to reply within a two-day period to filings that have not been filed with permission of the court, and to filings far in excess of 15-pages.

11. Because of the short time frame and the prejudice to the CHA from any further delay in filing its reply, the CHA is not able to comply with the technical requirement of F.R.C.P. 12(f), which requires a motion to strike to be filed before the filing of a responsive pleading. Thus, to conform to the spirit of the rule, the CHA has filed a reply that does not refer to any of the items which it has requested this Court to strike. If the Court denies the CHA's motion to strike the Receiver's reply and plaintiffs' exhibits, the CHA moves instanter to substitute the reply attached hereto as Exhibit A in place of the reply filed simultaneously with the filing of this motion.

WHEREFORE, for the forgoing reasons, the CHA respectfully requests that this Court strike the Receiver's reply and plaintiffs' exhibits or, in the alternative, substitute instanter the attached reply for the reply filed by the CHA simultaneously with this motion, and permit the CHA to supplement the record with regard to past in-chambers conferences.

Respectfully submitted,

Jerome M. Butler
General Counsel
Chicago Housing Authority



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April 6, 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

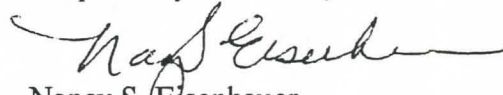
Re: Gautreaux, et al. v. CHA, 66 C 1459

By Hand Delivery

Dear Chief Judge Aspen:

As a courtesy, enclosed please find a copy of the CHICAGO HOUSING AUTHORITY'S REPLY TO PLAINTIFFS' RESPONSE TO CHA MOTION TO STAY, as well as CHICAGO HOUSING AUTHORITY'S MOTION TO STRIKE, ETC. The motion to strike is related to plaintiffs' and the receiver's filings in connection with the motion to stay.

Respectfully submitted,



Nancy S. Eisenhauer
Counsel for Defendant
CHICAGO HOUSING AUTHORITY

cc: Alexander Polikoff, Esq.

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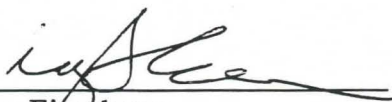
NOTICE OF MOTION

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 April 10, 1998, at 9:30 am we will appear before Honorable Marvin E. Aspen, at 219 S. Dearborn, Chicago, Illinois, and then and there present 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, a copy of which is attached hereto and served upon you.

Dated: April 6, 1998
Chicago, Illinois



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