

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-1807

U.S.C.A.—7th Circuit
RECEIVED

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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.	)	

**DEFENDANTS-APPELLANTS' REPLY
TO RECEIVER'S PRELIMINARY RESPONSE**

Defendants-appellants, the Chicago Housing Authority and Joseph Shuldiner (collectively, the "CHA"), respectfully request that this Court hear the CHA's emergency motion to expedite consideration of the district court's order of February 25, 1998 (the "February Order") and emergency motion to stay the district court's order of May 19, 1998 (the "May Order") on an emergency basis.

The receiver suggests that the CHA has delayed. There has been no delay. The receiver's motion (granted by the May Order) raises the same issue raised by plaintiffs' motion for further relief (filed March 18) -- the role of the receiver in HOPE VI. The CHA has reserved this issue for further litigation since September 1997, and has asked the district court in response to plaintiffs' motion for further relief for a hearing and further briefing on that specific issue.¹ The

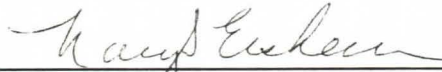
¹ See also Transcript of Proceedings (May 19, 1998) (attached hereto as Exhibit A) at p. 3, line 24 - p. 4, line 4, p. 9, line 23 - p. 10, line 15, where request was renewed.

district court has not yet officially ruled on plaintiffs' motion for further relief -- but has essentially done so by granting the receiver's emergency motion -- still without permitting the CHA its requested hearing and briefing on the role of the receiver. It was not until the district court ruled on the receiver's motion -- compelling the CHA to comply with its orders as interpreted by plaintiffs' in their motion for further relief -- that the CHA realized that it must obtain an immediate stay of the February Order.

The district court treated the receiver's emergency motion as an emergency on Tuesday afternoon. The CHA submits that its emergency motion to stay an order issued in response to an emergency motion is an emergency, and should be ruled on by the district court. Because the district court has indicated that it will not rule until Friday afternoon, the CHA asks that this Court hear its emergency motion to stay. The CHA is in the midst of preparing an application for \$35 million of federal funding which must be filed by June 29, 1998. When it received the May Order at 4:30 pm on Tuesday afternoon, it cut off a meeting with the City regarding the application. The meetings must resume, and the CHA believes that is entitled to have its emergency motion to stay the May Order heard before resuming such meetings with the receiver present.

Jerome M. Butler
General Counsel
Chicago Housing Authority

Respectfully submitted,



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

DOROTHY GAUTREAUX, et al.,) Docket No. 66 C 1459
) No. 66 C 1460
Plaintiffs,)
)
vs.) Chicago, Illinois
) May 19, 1998
SAMUEL R. PIERCE, et al.,) 9:30 o'clock a.m.
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HON. MARVIN E. ASPEN

APPEARANCES:

For the Plaintiffs:

MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
BY: MR. MICHAEL L. SHAKMAN
MR. EDWARD FELDMAN
(208 South LaSalle Street
Suite 1100
Chicago, Illinois 60604

and

MR. ALEXANDER POLIKOFF
Business and Professional
People for the Public Interest
(17 East Monroe Street
Chicago, Illinois 60603)

For Defendant CHA:

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM
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Official Court Reporter
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1 THE CLERK: 66 C 1459, Gautreaux et al., versus CHA.

2 MS. EISENHAUER: Good morning, your Honor. Nancy
3 Eisenhower for CHA and Joseph Shuldiner.

4 THE COURT: Good morning.

5 MR. SHAKMAN: Good morning, Judge. Mike Shakman and
6 Eddie Feldman for the Receiver.

7 THE COURT: Good morning.

8 MR. POLIKOFF: Good morning, your Honor.

9 THE COURT: Mr. Polikoff.

10 MR. SHAKMAN: Judge, this is the motion by the
11 Receiver for emergency relief in connection with the HOPE VI
12 application which we hope to file in cooperation with the CHA,
13 if possible, by June 29, which is the deadline established by
14 HUD for submission of applications.

15 We view it as an emergency because we have been unable
16 to obtain a response from the CHA to our request for
17 cooperation and information needed to move forward with the
18 application.

19 The City of Chicago has indicated that it supports the
20 principle of a joint application, will work with us on it.
21 There is up to \$35 million in funding for housing and for other
22 services that's potentially available.

23 Mr. Levin and his colleagues, Valerie Jarrett, who's
24 in court today, and the others of the Receiver's staff are most
25 concerned that the opportunity to obtain this kind of funding

1 for the city not be lost because of lack of cooperation, and
2 for that reason we have filed the motion.

3 I could go into greater detail but I know you read
4 these things.

5 THE COURT: Any response?

6 MS. EISENHAUER: First two factual matters -- or one
7 factual matter.

8 We're not aware of a response from the City of Chicago
9 to this. I'm not saying it hasn't happened; I just want you to
10 know the CHA has not been informed of that.

11 More importantly, we filed a motion to stay in the
12 Seventh Circuit this morning. I --

13 THE COURT: Has it been granted?

14 MS. EISENHAUER: We filed it this morning. We --

15 THE COURT: All right. Well, the case is still here,
16 so I'm not really concerned about that.

17 MS. EISENHAUER: I'm just informing you we did. And
18 in connection with that motion to stay we filed an affidavit of
19 Joe Shuldiner in which he states the CHA will not be able to
20 prepare a timely or competitive application before the June
21 28th deadline if it is forced to work with the Receiver, and
22 because of that the CHA and the City of Chicago may lose up to
23 \$35 million worth of funding.

24 Second of all, the issues raised by the Receiver here
25 are the same issues raised by the plaintiffs in the motion for

1 further relief, which we believe requires briefing on the scope
2 of the receivership order and also hearing from Mr. Shuldiner
3 to present his views on the topic and his description of his
4 actions.

5 And third, in the response to the motion to clarify
6 that the plaintiffs filed with this Court, they wrote that the
7 applicability of the judgment order cannot be determined
8 definitely at the HOPE VI application stage; that is at page 8
9 of their response. Because of that statement and for other
10 reasons, we would argue that this injunction is too vague to be
11 enforced against the CHA in this context.

12 MR. SHAKMAN: I would like to briefly respond, unless
13 Mr. Polikoff wants to say something?

14 MR. POLIKOFF: No.

15 MR. SHAKMAN: First of all, I want to note that we
16 have not received a response to Dan Levin's letter to the
17 Receiver that he wrote on May 5th or to my letter to
18 Mr. Butler, general counsel of the CHA, that I wrote last
19 Friday. The only response is the filing of a motion for a
20 stay, which indicates that the CHA, as counsel has said, has
21 concluded that it can't work with the Receiver. I don't
22 understand why that couldn't have been communicated by a phone
23 call to Mr. Levin or a letter to me or a phone call to me.

24 So I want to raise a question because it seems to me
25 that the fact that that conclusion had been reached but not

1 communicated to us illustrates in part some of the problems we
2 are having in our relationship with the CHA. We were entitled
3 to be told that and we shouldn't have had to file a motion with
4 this Court to receive that information.

5 In terms of the connection between the motion for
6 further relief and this motion, all I can say is Mr. Polikoff,
7 representing the plaintiffs, does what he deems appropriate
8 representing his clients.

9 Mr. Levin operates as the Court's agent. He has
10 duties the Court has entrusted to him and he is attempting to
11 carry those out. Mr. Levin, as I am sure the Court knows, is
12 not by nature a litigious man or a confrontational man. His
13 staff shares his views. We are here only because nothing else
14 seems to hold promise for moving this process forward.

15 In terms of the application of the judgment order for
16 HOPE VI, we are here seeking to enforce the 1987 order
17 appointing the Receiver and the cooperation requires that that
18 order imposes upon the CHA.

19 Whether or not the HOPE VI order is stayed, no effort
20 has been made to stay the 1987 order appointing the Receiver,
21 no effort is being made to stay the obligations of the CHA to
22 cooperate with the Receiver as specified in that order.

23 So for those reasons, I would suggest that Ms.
24 Eisenhauer's comments really aren't addressed in the merits of
25 this motion.

1 MS. EISENHAUER: May I respond to that?

2 THE COURT: Sure.

3 MS. EISENHAUER: First, on the point of has the CHA
4 advised the Receiver that they can't work with them on these
5 applications, the CHA believes it has been advising the
6 Receiver of that for several months now.

7 Part of the reason the CHA believes that it will not
8 be able to file a timely application, that was not simply
9 because it cannot work with the Receiver but because of the
10 information that would need to be compiled and the fact that it
11 appears that the Receiver and the CHA have different views on
12 what HOPE VI requires and what the Gautreaux injunction
13 requires. And for that reason any negotiation would not come
14 to anything except for the same disputes that have been going
15 on in this Court repeatedly.

16 Second, I understand it's the Receiver's motion. My
17 only point with regard to the motion for further relief is that
18 it raises the same underlying issues, and one of those issues
19 is whether the 1987 order applies to HOPE VI, whether this
20 Court's February 25th order envisions that the 1987 order
21 necessarily applies.

22 As you know, the CHA has argued from the beginning
23 that the conclusion that you reached on February 25th does not
24 necessarily lead to the conclusion that the Receiver is drawing
25 today here with regard to the 1987 order. And again, we've

1 raised that issue repeatedly in the past month, at least.

2 MR. SHAKMAN: One comment, if the Court -- if counsel
3 is done?

4 MS. EISENHAUER: Yes.

5 MR. SHAKMAN: If the CHA believes that the August 14,
6 1987 order appointing the Receiver should be modified, the CHA
7 has been free to make that motion for these many months that
8 this issue has been percolating in this Court and it's elected
9 not to make that motion. Therefore, the Court has not had an
10 opportunity to address such a motion.

11 So we, as the Receiver, are operating under the duties
12 imposed upon us by the Court and we willingly accept it in
13 trying to carry out those duties.

14 THE COURT: Okay. Mr. Polikoff, do you have anything
15 you want to say?

16 MR. POLIKOFF: No, your Honor.

17 THE COURT: Well, I am concerned that Mr. Shuldiner
18 feels that he can't go along with the Receiver. I find that
19 disturbing and I find that surprising because everyone else
20 involved in this litigation through the years, other than
21 Mr. Shuldiner, has had no problem getting along with the
22 Receiver.

23 But my focus is not on whether he can get along with
24 the Receiver or not. My focus is whether or not everyone,
25 including the CHA, complies with the orders of this Court, the

1 orders that I have issued thus far and the orders that I will
2 issue in the future. I expect Mr. Shuldiner to comply with
3 those orders, whether or not he feels that it's an impediment
4 to follow my orders because he can't get along -- or feels he
5 can't get along with the Receiver.

6 I will issue an order, and as long as the Seventh
7 Circuit has not changed my order it's a viable order and I
8 expect Mr. Shuldiner to comply with it. If he does not comply
9 with it, I will do what I have to do to make him comply with
10 it. I hope you will give him that message.

11 Thank you.

12 MS. EISENHAUER: Your Honor, could I ask a question?

13 I just want to clarify that it is not that
14 Mr. Shuldiner has some problem with the Receiver, refuses to
15 work with him on a personal level. It is that he believes and
16 the CHA believes that the 1997 order does not -- and the
17 February 25th order does not necessarily lead to the conclusion
18 that the CHA must turn over authority for this program to the
19 Receiver, and that's the basis for the objection.

20 THE COURT: Well, if that belief conflicts with the
21 orders of this Court, then Mr. Shuldiner will have to opt to
22 follow the orders of this Court. You know, we're not in a
23 lawless society where somebody has their own views as to the
24 law or the construction of an agreement and can follow those if
25 there is a Court order to the contrary,

1 Mr. Shuldiner is not reluctant to appeal my orders and
2 I hold no animosity toward anyone who appeals one of my orders.
3 But until and unless an order of the Court has been overturned
4 by a reviewing court, I expect that order to be followed,
5 regardless of Mr. Shuldiner's personal views as to how he
6 thinks the law ought to operate. And please convey that to
7 him.

8 Thank you.

9 MR. SHAKMAN: Your Honor, I have one other request, if
10 I may.

11 It's fairly apparent that the proceedings are under
12 way, that additional appeals may be taken to the Seventh
13 Circuit. There is law in the Seventh Circuit that the Receiver
14 needs the approval of the appointing court to participate in
15 the appellate process. We would, therefore, ask permission to
16 participate in any pending or future appeals from this
17 collection of issues.

18 THE COURT: All right. I will enter an order to that
19 effect.

20 MR. SHAKMAN: Thank you, Judge.

21 MS. EISENHAUER: Your Honor, can I make one more
22 comment?

23 I would just like to say that Joseph Shuldiner
24 certainly intends to comply with this Court's orders. He does
25 have obligations under state statutes and under -- that he's

1 already made to HUD, and he believes that the orders as
2 interpreted by the Receiver are in conflict with those other
3 obligations that he has.

4 Second of all, I certainly understand your point, and
5 Joseph Shuldiner does as well, that he must comply with orders
6 of this Court. We do not read any of the orders of this Court
7 to require CHA to turn over responsibility for this program to
8 the Receiver.

9 THE COURT: If there are any problems with the
10 construction of any of my orders, obviously it will be brought
11 to my attention and I will make it perfectly clear for
12 Mr. Shuldiner.

13 MS. EISENHAUER: We believe that we brought that issue
14 to your attention in connection with the briefing on the motion
15 for further relief.

16 MR. POLIKOFF: Your Honor, might I add one word if Ms.
17 Eisenhower is finished?

18 THE COURT: Yes.

19 MR. POLIKOFF: The rhetoric of turning over this
20 program to the Receiver that's been used in the briefs and
21 responded to, is not an accurate characterization of what is
22 involved, and I didn't want my silence to --

23 THE COURT: I agree with you, Mr. Polikoff, and I
24 should have said something as well. That's Mr. Shuldiner's
25 pique at having to follow the orders of the Court and that's

1 the language he uses.

2 Go ahead. I didn't mean to interrupt.

3 MR. POLIKOFF: No. That's all I wanted to say.

4 MR. SHAKMAN: Your Honor, I will second that.

5 The whole thrust of Mr. Levin's approach to this issue
6 and Mr. Shuldiner has been that this should be done on a
7 cooperative, joint basis, not that Mr. Levin should scoop up
8 all the responsibility and run away from it and not permit the
9 CHA to participate.

10 THE COURT: Mr. Levin has never done anything in the
11 past, nor have I found any of his actions in the recent
12 brouhaha to indicate that he wants to usurp any of
13 Mr. Shuldiner's authorities.

14 On the contrary, I find that Mr. Shuldiner has thus
15 far indicated that he would rather contest every aspect of the
16 relationship between the Receiver rather than attempt to
17 cooperate. And to the extent that I can, I will straighten it
18 out when I rule on the motions.

19 MR. SHAKMAN: Thank you.

20 THE COURT: Thank you.

21 (Which were all the proceedings had at the hearing of
22 the within cause on the day and date hereof.)

23

24

25

1 CERTIFICATE

2 I HEREBY CERTIFY that the foregoing is a true,
3 correct and complete transcript of the proceedings had at the
4 hearing of the aforementioned cause on the day and date hereof.

5
6 
7 _____
8 Official Court Reporter
9 U.S. District Court
Northern District of Illinois
Eastern Division

5/20/98

Date

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CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Thursday, May 21, 1998, I caused a copy of the foregoing DEFENDANTS-APPELLANTS' REPLY TO RECEIVER'S PRELIMINARY RESPONSE to be served by hand on counsel listed below:

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