

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

U.S.C.A.—7th Circuit
RECEIVED

MAY 27 1998 EF

No. 98-1807

GINO J. AGNELLO
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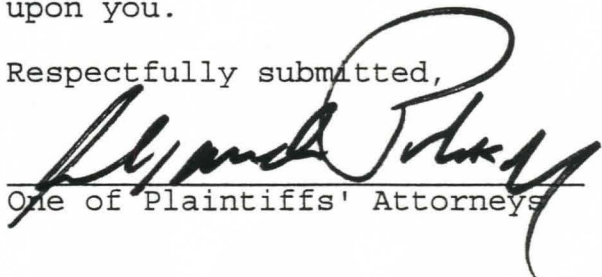
DOROTHY GAUTREAUX, et al.,	)	Appeal from the United
	)	States District Court for
	)	the Northern District of
Plaintiffs-Appellees,	)	Illinois, Eastern Division
	)	
v.	)	No. 66 C 1459
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
and Executive Director Joseph	)	
Shuldiner in his official	)	
capacity,	)	
	)	
Defendants-Appellants.	)	

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that on Wednesday, May 27, 1998, we filed in the United States Court of Appeals for the Seventh Circuit Plaintiffs-Appellees' Response to Defendants-Appellants' (1) Motion for Stay Pending Appeal and Their Memorandum in Support Thereof filed May 19, 1998, and (2) Emergency Motion to expedite Consideration of Motion to Stay February Order and Emergency Motion to Stay May Order, Filed May 20, 1998, a copy of which, with accompanying Appendix, is attached hereto and served upon you.

Respectfully submitted,


One of Plaintiffs' Attorneys

May 27, 1998

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CERTIFICATE OF SERVICE

Alexander Polikoff, an attorney, hereby certifies that on May 27, 1998, I caused copies of the Plaintiffs-Appellees' Response to Defendants-Appellants' (1) Motion for Stay Pending Appeal and Their Memorandum in Support Thereof Filed May 19, 1998, and (2) Emergency Motion to Expedite Consideration of Motion to Stay February Order and Emergency Motion to Stay May Order, Filed May 20, 1998, with accompanying Appendix, to be served on the persons shown on the attached service list in the manner shown on such list.



Alexander Polikoff

U.S.C.A.—7th Circuit
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	)	
Defendants-Appellants.	)	

PLAINTIFFS-APPELLEES' RESPONSE
TO DEFENDANTS-APPELLANTS'

(1) MOTION FOR STAY PENDING APPEAL AND
THEIR MEMORANDUM IN SUPPORT THEREOF FILED MAY 19, 1998, AND
(2) EMERGENCY MOTION TO EXPEDITE CONSIDERATION OF
MOTION TO STAY FEBRUARY ORDER AND
EMERGENCY MOTION TO STAY MAY ORDER, FILED MAY 20, 1998

Notwithstanding the flurry of recent filings, indeed the regrettable complexity of the title to this Response, CHA's two stay motions pose a narrow question: Should the Court, through granting CHA's motions, radically change the status quo by enabling CHA to proceed with planning and development of large numbers of new public housing units, free of the desegregation requirements of Gautreaux orders and without the participation of the Receiver appointed by the District Court a decade ago to conduct CHA's new public housing development?

CHA's transparent goal is to modify long-standing court orders to exempt "HOPE VI" (see note 3 below) from the remedial orders in this case. Instead of seeking a modification order, however, CHA has sought to achieve its desired exemption first through a motion to "clarify" and now through two stay motions. This Court should reject what amounts to CHA's request for a "back-door" modification and require it to approach the District Court at the front door.

We first summarize the background and present circumstances that give rise to the two stay motions, and then address the familiar criteria for granting or denying stays.¹

¹ The two orders sought to be stayed are, respectively, the order of February 25, 1998 ("February Order"), interpreting the 1969 judgment order in this case as applying to HOPE VI, and the order of May 19, 1998 ("May Order"), interpreting the 1987 order appointing the Receiver as applying to a HOPE VI application. For the convenience of the Court copies of the five recent District Court orders, commencing with the February Order, are attached as Exhibit A.

Our Motion to dismiss the appeal from the February Order is pending; the ground of the motion is that the order appealed from is not appealable. Notice of appeal from the May Order was only recently filed on May 20, 1998. It is arguable that the May Order is likewise non-appealable. Though it may appear to be injunctive in form, in fact it merely clarifies that the order appointing the Receiver applies to a particular activity:

"Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested. It is so ordered." (Exhibit A, May Order.)

In our motion to dismiss appeal we said that if the District Court granted any part of our then pending motion for further relief the order would be appealable; however the District Court denied our motion as moot (Exhibit A, Order of 5/21/98); the May Order was entered pursuant to a separate motion of the Receiver.

I. BACKGROUND AND PRESENT CIRCUMSTANCES

Contrary to appearances, the essential history of this case can be simply stated in four time periods.

A. 1966 to 1969

In a complaint filed in 1966 CHA was charged with intentional racial discrimination, including in selecting locations for its public housing buildings. In 1969 Judge Austin found CHA liable as charged. 296 F. Supp. 907. Later in 1969 he entered a remedial judgment order. 304 F. Supp. 736. Neither ruling was appealed. A major thrust of the judgment order is to require that, over time, future public housing ("dwelling units") be developed in places that would afford plaintiff class families locational options other than the segregated ones to which CHA had relegated them. 304 F. Supp. at 737-39.

B. 1969 to 1987

An intransigent and incompetent CHA failed to perform its judgment order obligations responsibly. CHA's failures were so egregious that, after the District Court had twice threatened to do so (498 F.Supp. 1072-(1980), and unpublished orders of 11/21/83 and 1/13/84, attached as Exhibit B), in 1987 Judge Aspen took the extraordinary step of appointing a receiver to assume all of CHA's non-elderly public housing development responsibilities, including applications for funding. (Unpublished "Receivership Order" of 8/14/87, attached as Exhibit

C.) (Judge Aspen had been assigned the case in July 1981.) Among other things, CHA was directed by the Receivership Order to "cooperate with" and "assist" the Receiver. (Id., p. 6.) The Receivership Order was likewise not appealed.

C. 1987 to 1997

Without significant controversy or need for judicial intervention, and with substantial CHA cooperation, the Receiver thereafter carried out CHA's non-elderly public housing development activities in two contexts.

(i) As of a recent date the Receiver had developed or had under construction over 1,600 dispersed public housing dwelling units in a large number of Chicago neighborhoods. (Hickman affidavit, filed with Receiver's Statement, par. 72, Ex. 28, p. 1.) This activity has been carried on since 1987 and is ongoing.

(ii) Beginning in 1993 the Receiver has been authorized by the District Court to develop public housing dwelling units in "revitalizing" neighborhoods, including replacement units in the vicinity of others already or soon-to-be demolished. To date the Receiver has received authority to develop about 1,200 units of such housing in the North Kenwood-Oakland (Washington Park), Near West Side (Henry Horner) and Cabrini-Green neighborhoods. (Id., pp. 7-8.) This activity too is ongoing; several hundred units in

North Kenwood-Oakland and the Near West Side are currently under construction, about 175 having been completed. (Id.)²

D. 1997 to Present

Beginning in late 1996 and culminating in a motion filed by CHA on September 30, 1997, to clarify the 1969 judgment order, the decade of cooperation between CHA and the Receiver dissolved. CHA sought by its motion to have the 1969 judgment order "clarified" so that it would not apply to revitalization housing, particularly such housing funded by a HUD program known as "HOPE VI," currently a principal source of federal funding for the development of public housing.³

² "Revitalizing" areas are "Limited Areas" under the judgment order as to which however the Court has made a determination upon a "sufficient showing of revitalizing circumstances such that a forecast of economic integration, with a longer term possibility of racial desegregation, could be made." (Horner Area Order of 8/14/95 for 466 units, p. 2, attached as Exhibit D. Another such order, attached as Exhibit E was entered on 6/3/96 respecting North Kenwood-Oakland for up to 241 units.) Previously, on 12/10/93, preliminary to later revitalization orders, the District Court authorized a joint venture between the Receiver and an affiliate of CHA (the venture is managed by the Receiver) to develop 377 units in both North Kenwood-Oakland and Cabrini-Green. This order is attached as Exhibit F and was discussed at length in the oral argument before the District Court, the transcript of which is attached as Exhibit G. See pp. 9-13 of Exhibit G.

³ The "federally-funded, public housing program known as HOPE VI" (CHA Motion to Stay February Order in this Court, p. 7) authorizes "grants to carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing." 42 U.S.C. Sec. 1437-1 (note), Pub. L. 102-389, Title II, 106 Stat. 1579 (October 6, 1992). Funding may be used, among other things, for replacement housing, including public housing. Id. Public housing provided with HOPE VI funds is "conventional" public housing (id.), and according to the HUD HOPE VI Guidebook "must be" developed pursuant to the regulations (24 CFR Part 941) that govern non-HOPE VI-funded public housing. HUD's Office of Public Housing

In February the District Court ruled that the judgment order did apply to HOPE VI-funded housing as it does to any other new housing (the "February Order"). In May, under the cooperation and application for funding provisions of the Receivership Order, the District Court ordered CHA to cooperate with the Receiver in applying for additional HOPE VI funding HUD is offering to public housing authorities with an application deadline of June 29, 1998 (the "May Order"). These are the two orders CHA now seeks to stay in this Court.⁴

investment Guidebook on HOPE VI: Building Communities of Opportunity (1997), at 1.D.1, attached as Exhibit H. One of the key HOPE VI objectives is "Lessening concentrations of poverty by placing public housing in non-poverty neighborhoods, or by promoting mixed income communities where public housing once stood alone" Id., at I.A.I.

⁴ The "cooperation" provision of the Receivership Order states:

"CHA, its agents, servants and employers shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program." (Exhibit C, p. 6.)

The "application for funding" provision of the Receivership Order states:

"The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of [the scattered site] program, including . . . submission to HUD of applications for funding, development programs and other documents" (Id., pp. 2-3.)

The "scattered site program" is defined as uncompleted CHA development programs and "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 66C1459." (Id., p. 2.)

The Receiver believed that the "development manager" role provided it with adequate power and authority to carry out its Receivership duties for the non-elderly public housing part of the HOPE VI plan for Cabrini. (Hickman Aff., pars. 55-56.)

"[O]perating under the title of development manager pursuant to an agreement with the CHA . . . has permitted [the Receiver] to fulfill what he understands to be the obligation that he assumed when he became the Court's Receiver, and to do so in a manner that has been acceptable to the CHA and has avoided unnecessary disputes." (Exhibit G, counsel for the Receiver speaking, pp. 23-24.)⁶

The Eisendrath agreement for Cabrini was never signed. Although the Receiver performed as development manager throughout the first half of 1996 (Hickman Aff., pars. 28-39), and a development management agreement was later signed for a subsequent HOPE VI grant for CHA's Horner and ABLA developments (Exhibit K, attached), CHA's Executive Director, Joseph Shuldiner balked at executing the Cabrini agreement. Why?

⁶ The reference in the Eisendrath letter to Henry Horner is to a similar revitalization activity then underway. At the request of the parties the District Court had previously designated the Horner area as "revitalizing" and authorized the Receiver to develop 466 units of public housing within it (Exhibit-C). This was done in connection with a separate tenants' lawsuit against CHA and HUD, the settlement of which involved demolition of existing Horner public housing units and their replacement by the 466 authorized units. Since the Horner settlement provided for demolition and some rehabilitation of existing public housing, neither of which is a Receiver responsibility, and such non-Receiver work had to be coordinated with the development of new housing which is the Receiver's charge, a working arrangement at Horner was developed between CHA and the Receiver under which their respective Horner activities were (and are still) being coordinated. (Levin Aff., par. 14.) It is this working arrangement to which the Eisendrath letter refers.

Several answers may be gleaned from the Court filings, beginning with the clarification motion of September 30, 1997, though they date from a year and more later.

CHA's initial positions in the District Court were that the judgment order only applied to "incremental" housing that increased the aggregate CHA housing stock, "new housing . . . that adds to the stock" (Exhibit G, p. 37), not to replacement housing (HOPE VI housing is a subset of replacement housing), and that the HOPE VI program was incompatible with the judgment order. Neither position is tenable, as detailed below, and both are rejected by the February Order.

In more recent CHA filings, though the incremental and incompatibility arguments have not been formally abandoned, the emphasis has shifted to Shuldiner's loss of confidence in the Receiver, and finally to his inability to work with the Receiver, certainly not by the current HOPE VI application deadline of June 29, 1998. (CHA Motion for Stay, par. 15.)

These latter rationalizations are not credible, for as recently as September 1996 CHA was singing the Receiver's praises after having "worked with" and "collaborated" with the Receiver in the preparation of a HOPE VI application covering two CHA developments, Horner and ABLA. (CHA Motion to Expedite, Etc., par. 28.) Among other things the Horner/ABLA application states:

"Implementation of the program can begin quickly under the development management of The Habitat Company since they are fully operational as Receiver for CHA's Scattered Site Program."

"In 1987, The Habitat Company was appointed by the Federal Court as Receiver for CHA's Scattered Site

(non-elderly) Housing Program . . . Based on Habitat's experience and success in completing these programs in a cost-effective and timely manner, the company is also under contract to CHA in joint venture with CMHDC, an affiliate of CHA, to develop 375 units under the 'Demonstration Program.' "

"The CHA will contract with The Habitat Company as development manager for the implementation of the HOPE VI program (Horner and Brooks Extension [part of ABLA]). . . Habitat will be responsible for implementing the plan contained in this application. The financial arrangement will be similar to that approved by HUD for development as the Receiver."

"The contract with The Habitat Company as development manager will enhance the CHA ability to control costs and expand the supply of housing more quickly. Habitat is currently in the process of developing 466 Replacement Units at Horner and will provide continuity between the existing Replacement Program and the Gautreaux HOPE VI Program." (Attached as Exhibit L is the transmittal letter and excerpts from this HOPE VI application.)

Work at Cabrini came to a virtual halt about this time (fall 1996) because of another tenant lawsuit against CHA; since no housing development work was proceeding at Cabrini, the Receiver chose not to bring the Cabrini situation to the attention of the Court at that time. (Levin Aff., par. 21; Hickman Aff., par. 47.) But by mid-1997 relationships with CHA had deteriorated badly at Horner where work was ongoing (Cabrini was still stalled), leading the Receiver to request the assistance of the District Court in the Horner disputes. (Levin Aff., par. 23.) In that context the Receiver advised the District Court of the Cabrini HOPE VI difficulties as well. (Id., par. 26.)

The Court urged CHA and the Receiver to attempt to work out their differences, offering to appoint a special master as mediator, and for a time the parties did negotiate, a process

that ended when CHA filed its clarification motion on September 30, 1997. (Id., pars. 28-38.)

In abbreviated form the procedural situation from that date to the present is as follows:

- 9/30/97 CHA motion to clarify judgment order
- 2/25/98 District Court ruling ("February Order")
- 3/20/98 CHA motion to stay February Order
- 5/12/98 District Court denial of stay of February Order
- 5/18/98 Receiver motion for cooperation order
- 5/19/98 District Court ruling ("May Order")
- 5/19/98 CHA motion to stay February Order (Court of Appeals)
- 5/20/98 CHA motion to stay May Order (District Court)
- 5/20/98 CHA motion to expedite consideration of motion to stay February Order (Court of Appeals)
- 5/20/98 CHA motion to stay May Order (Court of Appeals)
- 5/22/98 District Court denial of stay of May Order

Against this background the questions before the Court are whether under the familiar criteria applicable to stay motions in a Court of Appeals, CHA's two pending stay motions should be granted or denied.

II. STAY OF THE FEBRUARY ORDER SHOULD BE DENIED

It is a temptation to turn immediately to the threshold burdens CHA's motion cannot sustain, "a substantial showing of likelihood of success, not merely the possibility . . ." Matter of Forty-Eight Insulations, Inc., 115 F.3d 1294, 1301 (7th Cir. 1997), and "proof of irreparable harm," TY, Inc. v. CNA Accessories, Inc., 132 F.3d 1167, 1172 (7th Cir. 1997). However,

because a stay of the February Order would constitute such a perversion of the very purpose of a stay, we first discuss the status quo.

A. Status Quo

The office of a stay is to preserve the last peaceable state of the parties before the outbreak of war, "last actual, peaceable uncontested status which preceded the pending controversy." LaRouche v. Kezer, 20 F.3d 68, 74, n.7 (2d Cir. 1994), quoting Black's Law Dict. 1410 (6th ed. 1990). Accord, Ramsburg v. American Invst. Co. of Illinois, 231 F.2d 333 (7th Cir. 1956); St. Charles Manuf. Co. v. St. Charles Furn. Corp., 482 F.Supp. 397, 405 (N.D. Ill. 1979).

"[T]he very purpose of an injunction is to preserve the status quo ante. That is a rather elegant piece of Latin which means the last existing state of peaceable, noncontested conditions which preceded the pending controversy. . . . [T]he complete phrase is status quo ante bellum which literally means 'that state of things before the war began.'" Religious Tech. Cont. v. F.A.C.T. NET, Inc., 901 F.Supp. 1519, 1523 (D. Colo. 1995).

Unquestionably the last peaceable status here was that the parties viewed the judgment order as applicable to HOPE VI-funded new non-elderly public housing, and acted accordingly. To wit:

Cabrini-Green.

Respecting CHA's first HOPE VI award, CHA flat-out told HUD that Cabrini's HOPE VI replacement housing would be sited in accordance with Gautreaux:

"The proposed new [Cabrini replacement] units will be built on sites in community areas around the Cabrini-

Green development, and on other sites throughout the Chicago metropolitan area, in accordance with the Gautreaux v. Chicago Housing Authority (Nos. 66 C 1459 et al.) modified Consent Decree and subsequent orders or waivers thereto."⁷

Later the "development plan" for the very first replacement units at Cabrini was submitted to HUD "pursuant to the Court Order [in Gautreaux] by the joint venture between the Receiver and an instrumentality of CHA."⁸ In addition, as we have seen, the Eisendrath letter confirmed CHA's understanding and agreement that the Receiver would act as development manager for the Cabrini HOPE VI project "as Receiver under the court order in the Gautreaux case"

Horner/ABLA.

CHA's second HOPE VI grant was for both Horner and ABLA. CHA concedes that this application was prepared cooperatively with the Receiver (CHA Motion to Expedite, Etc., par. 28), and the application itself states, "Habitat will be responsible for implementing the plan contained in this application."⁹

⁷ Letter dated March 18, 1995, and excerpt from accompanying "Application for Partial Demolition of Low Income Housing - IL2-20," attached as Exhibit M. The March 18, 1995 commitment to compliance with Gautreaux in the siting of HOPE VI replacement housing was a continuation of commitments made previously. Another example is included in Exhibit M.

⁸ Letter dated December 17, 1997, from the Habitat-led joint venture between Habitat and an affiliate of CHA, and cover pages of PHA Development Proposal, both attached as Exhibit N.

⁹ Because CHA represented that no replacement housing was contemplated, the Receiver did not participate in the application for CHA's remaining HOPE VI award for Robert Taylor Homes. (Hickman Aff., par. 59.)

Thus, the last peaceable state of the parties before controversy began was one in which CHA believed and acted as if the judgment order applied to HOPE VI replacement housing. HUD and the District Court, by the way, had the same understanding -- HUD's Midwest counsel wrote of his belief "that any funds under HOPE VI which go to replacement housing are currently a Receiver responsibility (see Exhibit O attached), and the Court early on, in its order of December 10, 1993 (Exhibit F), authorized the joint venture composed of the Receiver and a CHA affiliate to develop 190 replacement units at Cabrini.

CHA's contrary characterization of the status quo is that it has prepared "[t]wo successful HOPE VI applications" both "without interference by the receiver" (CHA Memo. pp. 24, 12), and that no contempt or other proceedings have been commenced on that account (id. at p. 28). Yet as soon as it learned of the first (Cabrini) application the Receiver asserted its position of development authority respecting replacement housing and sought to negotiate a resolution. (Levin Aff. beginning at par. 18, Hickman Aff. beginning at par. 18.) It apparently succeeded (the Eisendrath letter), then brought the disagreement to the attention of the Court in July 1997, well before CHA filed its clarification motion, and sought thereafter to carry out the Court's request to negotiate the differences until CHA's clarification motion in September 1997 ended that effort. (Levin Aff., pars. 25-28, Miller Aff. beginning at par. 7.)

Attempts to settle differences out of court are to be encouraged and courts will not "impel every disputant to

immediate litigation, without first seeking amicable settlement, for fear of being accused of undue delay." Massachusetts Mutual Life Ins. Co. v. Assoc. Dry Goods Corp., 786 F.Supp. 1403, 1427 (N.D.Ind. 1992, citations omitted). The status quo to be preserved is not a "photographic replication of the circumstances existing at the moment suit was filed"; if, as here, a defendant has "proceeded with a course of action known to be disputed," then courts may "defin[e] the status quo as the last peaceable uncontested status that existed before the dispute arose." Id., 786 F.Supp. at 1427.

CHA's stay motion must therefore be denied on the ground that by rendering the judgment order inapplicable for the duration of an appeal to the development of HOPE VI-funded public housing, staying the February Order would radically change the last peaceable status quo. To illustrate: It is the Receiver, not CHA who has submitted the development plan for the first replacement units at Cabrini (Exhibit N), and it is the Receiver, not CHA, who by contract with CHA is "responsible for implementing the plan contained in [the Horner/ABLA HOPE VI] application." (Exhibit-K.) Staying an order that confirms the Receiver's authority to act in these respects would amount to divesting the Receiver of these Cabrini and Horner/ABLA roles -- roles the Receiver is playing, even as these words are being written, by agreement with CHA. It is hard to imagine a more dramatic change in the present relationship of the parties than would be wrought by such a "stay." Simply put, for the duration of the appeal such a "stay" would effectuate the radical change

sought by CHA's clarification motion. As Judge Aspen put it in his order denying stay, "[A]n exemption for HOPE VI would have required modification of the judgment order." (Exhibit A, Order of May 12, 1998.)

B. Likelihood of Success.

Does CHA make a "substantial showing of likelihood of success, not merely the possibility . . ."? Matter of Forty-Eight Insulations, Inc., supra. CHA concedes -- "no question about it" -- that the plain language of the judgment order covers HOPE VI replacement housing. (Exhibit G, p. 37.) Its principal contention is that the plain language should be ignored and the judgment order should be "clarified" as not covering such housing because of the asserted incompatibility between the judgment order and HOPE VI.

CHA cannot show a likelihood that this contention will prevail because the asserted incompatibility is demonstrated by CHA's own actions to be imaginary -- CHA has already filed a successful HOPE VI application (i.e., the Horner/ABLA application funded by HUD) which is explicitly premised upon the applicability of the judgment order to the proposed HOPE VI project -- "Habitat is the court appointed receiver [and] will be responsible for implementing the plan contained in this application." (Exhibit K.) Obviously, if HOPE VI and the judgment order were incompatible, CHA would not have filed and HUD would not have funded an application under which the

Gautreaux Receiver, obligated to comply with Gautreaux orders, "will be responsible" for implementation.

Moreover HUD itself, which makes the HOPE VI funding decisions, has stated that the District Court's decision on whether the judgment order covers HOPE VI is a "non issue" so far as it is concerned, something it plainly would not say if the judgment order and HOPE VI were incompatible.

Thus even if the Court were to put to one side the mountain of other indicia to the contrary -- CHA's multiple representations to HUD that Cabrini replacement housing would be sited in accordance with Gautreaux, HUD's own view that the Receiver was to develop HOPE VI replacement housing, the District Court's reasoned opinion, etc. -- the historical fact of the CHA-submitted, HUD-approved HOPE VI application for Horner/ABLA and HUD's non-issue posture alone assure the demise of the incompatibility argument.¹⁰

¹⁰ Although the Horner/ABLA application, unlike those for Cabrini and Taylor, derived from a special Gautreaux-based arrangement, the issue is whether the judgment order and HOPE VI are compatible. The funding of the Horner/ABLA application shows that both CHA and HUD believe they are. Beyond a persistent mischaracterization of the judgment order (ignoring housing in revitalizing neighborhoods and pretending that the judgment order requires all new public housing to be split equally between "General" and "Limited" areas -- a mischaracterization addressed at length before the District Court, including in the oral argument of February 10, 1998 -- see Exhibit G, p. 45), CHA makes no serious effort to address the reasons why its incompatibility argument are totally unconvincing. These were addressed at length in the oral argument before the District Court (Exhibit G, pp. 13-17), and are restated in the Court's February Order (pp. 3-4). --

While Judge Aspen did not enter the judgment order he has presided over it for 17 years in active litigation involving the entry of numerous orders. His views are thus entitled to

Other CHA "merits" arguments do not require extended discussion. Most are based on extravagant rhetoric suggesting that the District Court has turned over the entirety of the HOPE VI program to the exclusive authority of the Receiver, including non-housing activities such as social services, and housing activities not encompassed by the Receiver's charge such as rehabilitation of existing public housing. As the District Court said in denying as moot plaintiffs' motion for further relief,

"We do not wish to be misunderstood; our order neither gave sole authority over HOPE VI in Chicago to the Receiver nor gave the Receiver sole authority to prepare Chicago's 1998 HOPE VI application, as a motion filed earlier today by the CHA states." (Exhibit A, Order of May 21, 1998.)

Respecting CHA's reference to unspecified separation of powers questions, we need only point out that the February Order does not restrict any action of the federal government or rewrite Congress' or HUD's HOPE VI rules. (Had either of these been the case the ruling could not have been a "non-issue" to HUD.)

Respecting CHA's reference to federalism concerns, it must be recalled that the judgment order is designed to remedy adjudicated unlawful state conduct in violation of the Fourteenth Amendment; principles of federalism are not abrogated by such a remedial order. CHA's citations to a model cities decision does not provide a useful analogy for "CHA does not provide any housing, low rent or otherwise, with any funds distributed under the Model Cities Program." Gautreaux v. Romney, 457 F.2d 124, 126 (7th Cir. 1972). Here, public housing under conventional

deference. Goluba v. School Dist. of Ripon, 45 F.3d 1035, 1038 n. 5 (7th Cir. 1995).

public housing statutes and regulations -- the very heart of the judgment order's remedial scheme -- is provided under HOPE VI, and the District Court has carefully limited its orders to such public housing: "[I]f the 1998 HOPE VI application will not request funds for the development of new housing, the Receiver would not need to be involved . . ." (Exhibit A, Order of May 22, 1998.)

CHA's motion to stay the February Order thus clearly fails to satisfy the threshold criterion of a substantial showing of likelihood of success.

C. Irreparable Harm to CHA

Is there "proof" of irreparable harm? Ty Inc. v. GNA Accessories, Inc., 132 F.3d at 1172. The answer is there is not.

CHA's irreparable harm argument is principally an in terrorem picture of the potential loss of HOPE VI funds should the February Order not be stayed. But the picture is painted with pigments of pure speculation; here too the successful Horner/ABLA application, and the Cabrini one as well, render it totally unbelievable. After all, HUD funded applications in 1993 and 1996, respectively, premised upon compliance with Gautreaux. CHA offers no reason why HUD should now decline to do the same for another, similarly premised application in 1998.

HUD's statement to the District Court makes it clear that the in terrorem scenario is an imagined one. When the District

Court invited HUD to speak its mind, the ensuing colloquy included the following:

"THE COURT: Well, by the fact that you have decided not to file a brief and are not prepared to address the issue, I take it that my ruling really is a non-issue as far as HUD is concerned?

"MR. JENSEN [representing HUD]: I think that is true. . . We had very definite opinions, very much reflected in Mr. Shakman's brief of the Receiver, that indeed the Receiver has all the responsibility connected with the development, whether HOPE VI or otherwise." (Exhibit G, p. 28.)

CHA's stay motion thus also fails to satisfy the proof of irreparable harm criterion.

D. Harm to Plaintiffs; Public Interest

The other stay criteria need not be reached when one (here both) of the threshold burdens are not carried.

"[I]f the movant does not make the requisite showings on either of these two factors [likelihood of success and irreparable harm], the court's inquiry into the balance of harms is unnecessary, and the stay should be denied without further analysis [citations omitted]" Matter of Forty-Eight Insulations, Inc., supra, 115 F.3d at 1301.

But harm to the plaintiffs could be serious. CHA wishes, during the indefinite, possibly prolonged, period of an appeal, to be permitted to continue to work on HOPE VI projects free of Gautreaux. Binding, irrevocable steps may well be taken.

Moreover we know that Mr. Shuldiner has expressed an intention to disregard the remedial desegregation thrust of this

Court's orders. (Levin Aff., pars. 39-40; Tab 12 to CHA Appendix accompanying its Motion to Stay, dated May 18, 1998 in this Court.) "A continuing violation of constitutional rights constitutes irreparable injury [citations omitted]." Walters v. Thompson, 615 F.Supp. 330, 341 (D.C. Ill. 1985).

As to the public interest, the February Order states: "Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing, and the CHA is duty-bound to vigorously pursue desegregation opportunities." The true public interest lies in not letting CHA further delay and frustrate the realization of those opportunities.

* * *

The February Order, entered by a judge who, though he did not craft the judgment order, has lived with and interpreted it for 17 years, does not expand upon or enlarge the judgment order; it merely clarifies that the order covers a category of housing which -- "no question about it" -- is embraced by its language. Contrary to the CHA's imputations that the District Court failed to consider its arguments, the February Order reveals a thoughtful consideration, and rejection, of CHA's principal argument of incompatibility. CHA's stay motion really seeks a radical change in the last peaceful status quo between the parties, and fails to satisfy either of the threshold criteria for stays in a Court of Appeals.

The motion should therefore be denied.

III. STAY OF THE MAY ORDER SHOULD BE DENIED

Like its February ruling, the District Court's May Order did little more than interpret a prior order, in this case the cooperation and funding application provisions of the 1987 Receivership Order. Since the Receivership Order was entered by Judge Aspen; his interpretation of it is entitled to substantial deference and will not be disturbed absent an abuse of discretion. Hastert v. Ill. State Bd. of Elect. Commis., 28 F.3d 1430, 1438 (7th Cir. 1993) ("district court is in the best position to interpret its own orders, and we will not disturb such an interpretation absent a clear abuse of discretion"); In Re Chicago Rock Island Rwy. Co., 860 F.2d 267, 272 (7th Cir. 1988) (same); Ferrell v. Pierce, 743 F.2d 454, 461 (7th Cir. 1984) (wide discretion given to district judge's interpretation of consent decree he has presided over for more than a decade); Goluba v. Sch. Dist. of Ripon, 45 F.3d 1035, 1038 n. 5 (7th Cir. 1995) (citing Ferrell) (deferential standard applies where "the judge oversaw the consent decree for an extended period of time"). In her concurrence in Rufo v. Inmates of Suffolk Jail, 503 U.S. 367, 394 (1992), Justice O'Connor said:

"In reviewing the District Court's judgment, we accordingly owe substantial deference to 'the trial judge's years of experience with the problem at hand.'"
Hutto v. Finney, 437 U.S. 678, 688 (1978)."

Having determined that HOPE VI is a "non-elderly public housing development program" within the meaning of the

Receivership Order, and concluding there was "no reason to treat those [HOPE VI housing] funds differently for purposes of the order appointing the Receiver" than other housing funds, the May Order said:

"[the Receivership Order] obligates the CHA to cooperate with the Receiver . . . [T]his means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver . . . It is so ordered." (May Order.)

Analysis of the stay criteria respecting this order tracks closely the discussion of the criteria relating to the February Order, and a detailed separate analysis is not called for. For the most part CHA makes the same arguments again, including the principal one of incompatibility: "The CHA's position is based in principal part on the basic difference between the remedy provided by the Injunction and the remedy provided by Congress in HOPE VI" (Emergency Motion to Expedite Consideration, etc., par. 6.)

One new argument is now advanced, however, directed at both the February and May Orders -- vagueness. CHA says both the judgment order and the Receivership Order are too vague to be enforced against it in the HOPE VI context. (Id., pars. 9, 52.)

This belated argument, first mentioned in relation to a stay motion (CHA Reply, May 19, 1998), has not been seriously presented to the District Court in the form of a motion seeking modification or other relief. See Lemke v. City of Chicago, 100 F.3d 511, 514 (7th Cir. 1996). The argument is also pretty underwhelming. The judgment order and the Receivership Order have both stood the test of time, 29 and 11 years, respectively,

and HOPE VI has been around for five years; experience is usually a reliable guide and if as a practical matter these orders were really too vague to be operable, CHA would surely have raised the issue before now. All Rule 65(d) requires, after all, is "reasonable detail," not "the impossible." Scandia Down Corp. v. Euroquilt, Inc., 772 F.2d 1423, 1431 (7th Cir. 1985).¹¹

CHA also argues that the May Order is not sufficiently sensitive to federalism principles, citing Youakim v. McDonald, 71 F.3d 1274 (7th Cir. 1995). Both the claim and the citation are inapposite. The District Court's February Order simply clarifies that the judgment order applies to HOPE VI; it contains no prescriptions about what a HOPE VI program should look like. The May Order merely tells CHA that "cooperation" under the 1987 Receivership Order includes applying for HOPE VI funds; again nothing is said about what a HOPE VI application should look like. In Youakim, on the other hand, no receiver had been appointed to take over responsibilities the government agency had

¹¹ CHA asserts that something we said to the District Court demonstrates that the judgment and Receivership orders are too vague to be enforced (Motion to Expedite, Etc., par. 52). We said that the applicability of the judgment order "cannot be determined definitively at the HOPE VI application stage; HOPE VI applications, once granted, may be and have been subsequently amended before a final commitment of funds." (Plaintiffs' response to CHA emergency motion to clarify, p. 8.) - Obviously, if amendments add or subtract housing before the contours of a HOPE VI development are finalized, the way the judgment order would apply would be changed. That is what plaintiffs' sentence says. Substituting a period for a semi-colon and excising without deletion marks the rest of the sentence, CHA's assertion is but one more distortion.

failed to perform. Moreover, unlike the orders here, the order in Youakim did impose specific programmatic requirements.¹²

For the rest, with one exception what we have said about stay of the February Order should suffice. The exception is that events have overtaken CHA's irreparable harm argument and stripped it of any shred of persuasiveness. On Friday, May 22, and again on Tuesday, May 26, under the leadership of the City of Chicago, CHA and the Receiver began a cooperative process of preparing a new HOPE VI application. The affidavit of the Receiver describing the process makes it clear that CHA's fears that a competitive application could not cooperatively be prepared in timely fashion were indeed groundless. (Jarrett Aff., pars. 22-25, accompanying the Receiver's Statement.)

¹² In both motions for stay, CHA cites U.S. v. Bd. of School Commissioners, 128 F.3d 507 (7th Cir. 1997) for the proposition that the expansion of an injunction must be based on proper evidence and findings. School Commissioners involved a modification of an injunction not sought by either of the parties and entered without factual submissions or an evidentiary hearing supporting the modification. The February and May Orders here do not involve modifications. As the District Court itself said, the May Order

"...does nothing more than reaffirm that the Receivership Order means what it already says. Also the CHA's position that we committed an error by not making factual findings [citation] has the situation in reverse: only if we modified or terminated the Receivership Order (and the CHA has repeatedly threatened to make a motion to that effect but has not yet made one) would factual findings be necessary."
(Exhibit A, Order of May 20, 1998.)

CONCLUSION

For a decade CHA had been cooperative and the Receiver has produced hundreds and hundreds of remedial public housing units - and is producing them still -- of both the dispersed and replacement variety. Suddenly cooperation ceased, and the reasons given -- incompatibility, a loss of confidence, and the like -- are not credible. CHA cannot even believe in incompatibility since only a short while ago it happily filed the Horner/ABLA HOPE VI application which explicitly marries Gautreaux and HOPE VI, and in which it was full of praise for Habitat.

We are left at the end with a double absurdity. "What the stay would prevent," CHA says, "is plaintiffs' persistent efforts to force the CHA to cooperate with the court-appointed receiver . . ." (CHA Memo, pp. 22-23.) That is, the stay would prevent plaintiffs' efforts to have CHA do precisely what it is already required by court order to do!

The second absurdity is CHA's posture. Nearly 30 years after a judgment of purposeful public housing discrimination, and ten years after a receiver had to be appointed to carry out CHA's desegregation duties because of the agency's intransigence and incompetence, CHA now says it doesn't wish to obey the judgment and receivership orders and should be allowed to apply for and use federal public housing money without complying with their requirements, all without any claim that its desegregation

obligations have been satisfied and without even attempting to vacate or modify the judgment or receivership orders.

Respectfully submitted,


One of Plaintiffs' Attorneys

May 27, 1998

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-1807

DOROTHY GAUTREAUX, et al.,	)	Appeal from the United
	)	States District Court for
	)	the Northern District of
Plaintiffs-Appellees,	)	Illinois, Eastern Division
	)	
v.	)	No. 66 C 1459
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
and Executive Director Joseph	)	
Shuldiner in his official	)	
capacity,	)	
	)	
Defendants-Appellants.	)	

APPENDIX ACCOMPANYING
PLAINTIFFS-APPELLEES' RESPONSE
TO DEFENDANTS-APPELLANTS'

(1) MOTION FOR STAY PENDING APPEAL AND
THEIR MEMORANDUM IN SUPPORT THEREOF FILED MAY 19, 1998, AND
(2) EMERGENCY MOTION TO EXPEDITE CONSIDERATION OF
MOTION TO STAY FEBRUARY ORDER AND
EMERGENCY MOTION TO STAY MAY ORDER, FILED MAY 20, 1998

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Counsel for Plaintiffs

May 27, 1998

Index to Recent District Court Orders

1. February 25, 1998—"February Order"
2. May 12, 1998—denial of stay of February Order
3. May 19, 1998—"May Order"
4. May 21, 1998—denial of plaintiff's motion for further relief
5. May 22, 1998—denial of stay of May Order

EXHIBIT

A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, Chief Judge:

Nearly thirty years ago, United States District Judge Richard B. Austin entered a judgment order against the Chicago Housing Authority (the CHA) with the hopes of correcting the effects of that agency's unconstitutional public housing site selection and tenant assignment procedures. *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969). Blacks then made up 90% of the CHA's tenant base, but the CHA had deliberately restricted the number of blacks who could live in the four housing projects which were located in predominantly white areas, to the point where 93% to 99% of the tenants in those units were white. *Gautreaux v. CHA*, 296 F. Supp. 907, 909 (N.D. Ill. 1969). The other CHA units – the 99 1/2 % which were located in predominantly black areas – housed the rest of the CHA's tenants, 99% of whom were black. *See id.* at 910. This arrangement, ruled Judge Austin, violated the Fourteenth Amendment. *See id.* at 914. And in a comment worth recalling here for its relevance today, he wrote:

It is . . . undeniable that sites for the projects which have been constructed were chosen primarily to further the praiseworthy and urgent goals of low cost housing and *urban renewal*. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued.

Id. (citing *Brown v. Board of Educ.*, 347 U.S. 483 (1954)) (emphasis added).

The building block of Judge Austin's remedial judgment order was the Dwelling Unit, "an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA." *Gautreaux*, 304 F. Supp. at 737. He barred the CHA from "authoriz[ing], approv[ing], or implement[ing] any plan for Dwelling Units" or from "seek[ing] any approval or request or accept[ing] any assistance from any government agency with respect thereto" unless the plan's Dwelling Units were located in conformity with the order's requirements. *Id.* at 738. The order mandated that the CHA erect three Dwelling Units in a General Area (i.e. areas in Cook County with a white population of 70% or more) for every one Dwelling Unit it erected in a Limited Area (i.e. areas with a minority population of 30% or more), *id.* at 738-39, though it did not *require* any new construction. This ratio was later changed from 3-to-1 to 1-to-1.

In 1993, the CHA applied for and received \$50 million from the Department of Housing and Urban Development (HUD) under the auspices of the HOPE VI program (an acronym for Homeownership and Opportunity for People Everywhere). Congress created the HOPE VI program in 1992 with the goal of "empower[ing] the] residents of severely distressed and obsolete public housing." S. REP. 102-356, at 70 (1992). It intended to accomplish this via a three-part plan: (1) eliminating and (in some form) replacing dilapidated public housing structures, (2) providing residents of those structures with the skills necessary to achieve self-sufficiency, and (3) instilling a sense of community activism in residents of the blighted areas. *See id.* at 71.

It is the first part which is now at issue, as the CHA believes that it must spend its HOPE VI construction funds exclusively in the "3 separately defined areas containing the community's most severely distressed projects," to which the 1992 HOPE VI appropriation refers. *See* Pub. L. No. 102-389, 106 Stat. 1579 (codified as a Note to 42 U.S.C. § 1473). This would mean, of

course, that any construction of new public housing units¹ would take place in the distressed areas, which, by unfortunate circumstance, are also Limited Areas as defined by the judgment order. Recognizing that the judgment order requires equal construction in the General and Limited Areas, the CHA has asked that we "clarify" the judgment order and read it as not governing any use of HOPE VI funds.

The plaintiffs take issue with this request. They have previously pointed out to this Court that the construction of new public housing units is no longer in vogue, *see Gautreaux v. CHA*, 981 F. Supp. 1091, 1093 (N.D. Ill. 1997), and the HOPE VI money may be one of the few remaining funding sources for the construction of desegregated housing. Of course, if construction funds permanently dry up (and if the plaintiffs do not succeed in convincing us to modify the judgment order, *see, e.g., id.* at 1093-94), then this particular effort to desegregate public housing in Chicago will come to an end. We need not contemplate this possibility today, however, for the dilemma posed by the CHA — that the HOPE VI program compels spending only in Limited Areas while the judgment order compels equal spending in General Areas — rests on an illusion.

The 1992 HOPE VI authorization contemplates an "urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects," which is to be focused on "up to 3 separately defined areas containing the community's most severely distressed projects." Pub. L. No. 102-389. This does not, however, amount to a

¹ The CHA attempts to draw a distinction between replacement construction — construction which does not add to the agency's aggregate housing stock — and wholly new construction; the CHA argues that the injunction only governs the latter. This distinction may, as the CHA claims, have great significance to other housing decisions, but the judgment order does not differentiate between reconstruction and new construction: it speaks simply of Dwelling Units "initially make available to and occupied by a low-income, non-elderly family, subsequent to the date hereof." *Gautreaux*, 304 F. Supp. at 737. Housing units constructed with HOPE VI funds obviously qualify, and the use of such funds for the ends of desegregation is in keeping with the sweeping nature of the judgment order, the terms of which are as broad as the violation which it was designed to correct.

requirement that all HOPE VI money must be spent physically within those distressed areas. One way to revitalize a distressed public housing neighborhood is to tear down some of the units there and rebuild them elsewhere, thereby lessening the concentration of public housing on the old site. See Pub. L. No. 104-134, 110 Stat. 1321 (the 1996 HOPE VI appropriation, providing funds for "replacement housing which will avoid or lessen concentration of very low-income families"); Pub. L. No. 104-204, 110 Stat. 2874 (the 1997 HOPE VI appropriation, providing for the same). HUD's HOPE VI Guidebook contemplates just such an approach, discussing "[p]ublic housing development (including on-site reconstruction *as well as construction of off-site housing*) funded by HOPE VI," Pls.' Br. Ex. D (Guidebook p. 1.D.1) (emphasis added), and the legislative history is in agreement, see S. REP. 102-356, at 73 ("The balance of the [demolished] units could be replaced through . . . traditional replacement means, including major reconstruction and *scattered-site development* [emphasis added]. . . ."). In a similar vein, the HOPE VI program also requires that some demolished public housing be replaced by Section 8 housing vouchers, see Pub. L. 103-124, which may be used without regard to the boundaries of the General or Limited Areas. See 42 U.S.C. § 1473f(r). We see no incompatibility between the HOPE VI program and the judgment order.

It is ironic that the CHA has chosen to argue that it must use the HOPE VI funds for urban renewal and to the exclusion of desegregation, for, as we observed earlier, in 1969 it attempted to characterize desegregation as a byproduct of urban renewal efforts. No matter: Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing, and the CHA is duty-bound to vigorously pursue desegregation opportunities. See *Gautreaux*, 304 F. Supp. at 741 (judgment order Article VIII); see also *Gautreaux v. Landrieu*, 498 F. Supp. 1072, 1075 (N.D. Ill. 1980) ("Difficulty in attaining racially integrated public housing shall not be further condoned. . . . The CHA must have only one concern, housing in compliance with the repeated orders of this Court.").

We hold that the judgment order governs the CHA's use of HOPE VI funds. Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements. It is so ordered.


MARVIN E. ASPEN
United States District Judge

Dated

2/23/58

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/12/1998
CASE TITLE	Gautreaux, etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] CHA's motion to stay enforcement pending appeal of our order of 2/25/98, is denied.
- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court.		☒ 8	Document Number
☐ No notices required.		number of notices	
☒ Notices mailed by judge's staff.		date docketed	
☐ Notified counsel by telephone.		docketing deputy initials	
☐ Docketing to mail notices.		5/12/1998	
☐ Mail AO 450 form.		date mailed notice	
☐ Copy to judge/magistrate judge.		GL	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

ORDER

Now before us is defendant Chicago Housing Authority's motion to stay enforcement pending appeal of our order of February 25, 1998, which held that the judgment order entered in *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969), governed the CHA's use of HOPE VI funds.

Rule 62(a), the basis for this motion, provides our order "shall not be stayed . . . during the pendency of an appeal" unless we "otherwise order[]." The parties agree that the usual four injunction factors govern our analysis here: to obtain a stay, the CHA must show "(1) some likelihood of winning its appeal, (2) some likelihood of irreparable injury absent a stay, (3) that the stay would not unduly harm plaintiffs, and (4) that the stay would be consistent with the public interest." *Thomas v. City of Evanston*, 636 F. Supp. 587, 590 (N.D. Ill. 1986) (Aspen, J.); *see also* 12 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* § 62.06[3] (3d ed. 1997).

First. We seriously doubt that the CHA will win its appeal. Beyond our usual confidence in our own decisions, *see Thomas*, 636 F. Supp. at 590, we observe that the plaintiffs have presented to the Seventh Circuit a substantial motion to dismiss for lack of jurisdiction. The CHA's original motion to us was to clarify the injunction, and it insisted that it was not asking for a modification thereof. In fact, at oral argument, the CHA's attorney stated that "We agree that the HOPE VI new construction . . . does fall within the definition of dwelling unit, no question about it." This was, of course, our eventual holding; an exemption for HOPE VI would have required a modification of the judgment order. We therefore doubt that the Seventh Circuit's jurisdiction may be predicated on 28 U.S.C. § 1292(a)(1). *See ACORN v. Illinois State Bd. of Elections*, 75 F.3d 304, 306 (7th Cir. 1996) ("[I]nterpretations of injunctions as distinct from modifications of them are not appealable. . . , [and this] injunction has not been changed."). We also doubt that 28 U.S.C. § 1291 will suffice for appellate jurisdiction, as we think it is a stretch to say, as the CHA does (in its Seventh Circuit docketing statement with a citation to *ACORN, supra*), that our order "sets forth the steps that the CHA must take to comply with the Injunction." (We note as an aside that the Seventh Circuit will, of course, decide its jurisdiction for itself.)

Second. We question whether the CHA will suffer any irreparable injury. The only claimed injury which does not spring from wholesale speculation is that the CHA will have to devote time and resources to bringing itself into compliance with our order, but the CHA's Executive Director has stated that "All Judge Aspen said is that locational restrictions apply *as we have assumed that they do throughout*. We asked that they did not, and he said no, they do. Judge Aspen did not break new ground, he maintained the status quo." Pls.' Resp. Ex. A (emphasis added). It seems that the CHA has been planning its HOPE VI expenditures on this basis all along.

Third. The requested stay would harm the plaintiffs. As they argue, they have waited decades for the desegregation of public housing, and we see no reason to extend that period any longer than necessary.

Fourth. A stay would not be consistent with the public interest. The public's interest here is in the desegregation and modernization of its public housing, and nothing in the CHA's submission has convinced us that our order is inconsistent with those goals.

For the foregoing reasons, we deny the CHA's motion to stay. It is so ordered.



Minute Order Form (05/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/19/1998
CASE TITLE	Gautreaux, et al vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Receiver's emergency motion for entry of order implementing CHA's duty of cooperation.

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Motion is granted.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court.			Document Number _____
☐ No notices required.			
☐ Notices mailed by judge's staff.			
☒ Notified counsel by telephone.			
☐ Docketing to mail notices.			
☐ Mail AO 450 form.			
☐ Copy to judge/magistrate judge.	courtroom deputy's initials _____	Date/time received in central Clerk's Office _____	number of notices _____ date dictated _____ dictating deputy initials _____ date mailed notice _____ mailing deputy initials _____
GL			

ORDER

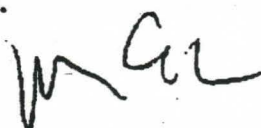
Now before us is the "Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation." In it the Receiver asks that we order the CHA to cooperate with the Receiver and other parties in preparing and filing a 1998 HOPE VI application with HUD and to provide the Receiver with the information it needs to proceed with this project.

This motion is the outgrowth of three of our earlier decisions. In the first, issued August 14, 1987, we appointed the Receiver on the joint motion of the plaintiffs and the CHA. We gave the Receiver "all powers of CHA" with regard to the development and administration of the *Gautreaux* scattered site program, which included "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. In the second, issued February 23, 1998, we held that the *Gautreaux* "judgment order governs the CHA's use of HOPE VI funds" distributed by HUD. Our conclusion was compelled by the clear language of the judgment order and our view that there was no conflict between its requirements (as later amended) and those of the HOPE VI program. The CHA appealed this order. In the third, issued May 12, 1998, we denied the CHA's motion to stay our February 23 order pending appeal. The CHA filed today a motion to stay with the Seventh Circuit.

The CHA, in open court this morning, made clear that the basis for its objection to the Receiver's motion is its view that our February 23 order did not directly address the Receiver's status with regard to the HOPE VI program and that the Receiver's status is not obvious from our prior orders in this case. We disagree. HOPE VI is a "non-elderly public housing development program[] . . . authorized during the pendency" of the *Gautreaux* litigation, and it therefore fits entirely within the Receiver's jurisdiction. On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the *Gautreaux* judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver. Moreover, the Receiver has indicated its willingness to work with CHA to ensure that the 1998 HOPE VI proposal meets the requirements of both the HOPE VI program and the *Gautreaux* judgment order, as well as to assist in making that proposal as competitive as possible. The Receiver even indicated its interest in the CHA's thoughts on decisions which are ultimately the Receiver's responsibility. We hope that this open-minded and enthusiastic offer of cooperation sets an example for everyone involved in this case.

We denied the CHA's motion for stay pending appeal, and unless and until the Seventh Circuit issues its own stay or reverses our underlying order, the parties must comply with our orders. Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

It is so ordered.



United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/21/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

--

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Plaintiffs' motion for further relief is denied as moot.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

No notices required, advised in open court.		4	Document Number
No notices required.		number of notices	
☒ Notices mailed by judge's staff.		date docketed	
Notified counsel by telephone.		docketing deputy initials	
Docketing to mail notices.		5/21/1998	
Mail AO 450 form.		date mailed notice	
Copy to judge/magistrate judge.		GL	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

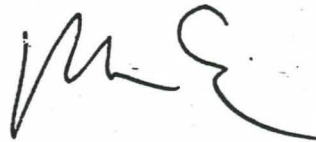
ORDER

Now before us is the plaintiffs' "Motion for Further Relief." In it they register their concerns with the CHA's conduct vis-à-vis the Receiver and ask that we enter a detailed order directing the CHA to take certain steps to rectify the situation.

We do not believe that such an order will be necessary. In an order issued on May 19, in response to an emergency motion from the Receiver, we wrote that "we [have previously] held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the Gautreaux judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver." Accordingly, we held that the parts of the HOPE VI program discussed in our opinion of February 23 "fit[] entirely within the Receiver's jurisdiction." (We do not wish to be misunderstood; our order neither gave sole authority over HOPE VI in Chicago to the Receiver nor gave the Receiver sole authority to prepare Chicago's 1998 HOPE VI application, as a motion filed earlier today by the CHA states. See CHA's Emergency Mot. to Stay Order Pending Appeal at ¶¶ 13, 14, 27.) Many of the problems detailed in the plaintiffs' motion concern the CHA's HOPE VI-related activity, and those problems were addressed by our prior order.

To the extent that the plaintiffs' motion raises issues unrelated to the Receiver's role in the HOPE VI program, we think it best that the Receiver bring those issues to this Court's attention if it so chooses.

It is so ordered.

A handwritten signature in black ink, appearing to be "MSE", is written in the center of the page.

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/22/1998
CASE TITLE	Gautreaux, et al vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] CHA's emergency motion to stay order of May 19, 1998, pending appeal is denied.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

No notices required, advised in open court.		number of notices date docketed docketing deputy initials date mailed notice mailing deputy initials	Document Number
No notices required.			
Notices mailed by judge's staff.			
☒ Notified counsel by telephone.			
Docketing to mail notices.			
Mail AO 450 form.			
Copy to judge/magistrate judge.			
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	

ORDER

Now before us is the CHA's "Emergency Motion to Stay Order of May 19, 1998, Pending Appeal." In that order we held that the terms of the receivership order in this case clearly encompassed construction paid for by HOPE VI dollars and that the CHA was duty-bound to cooperate with the Receiver on HOPE VI matters, specifically the CHA's 1998 HOPE VI application, insofar as those matters fell within the Receiver's delegated duties.

We first observe that the CHA's motion rests at least in part on untenable overreadings of our May 19 order. That order did not "turn over all of the CHA's powers and responsibility for the 1998 HOPE VI application to the Receiver." CHA's Mot. ¶ 13; *see also id.* ¶ 14. It merely stated that the Receiver would have to be involved (i.e. that the Receiver and the CHA would have to cooperate) in preparing the application in light of the fact that the receivership order gave the Receiver "all powers of CHA" with regard to the development and administration of "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. (Of course, if the 1998 HOPE VI application will not request funds for the development of new housing, the Receiver would not need to be involved with it.) We do not believe that this order may fairly be characterized as a new "mandatory injunction," CHA's Mot. ¶ 13, since it does nothing more than reaffirm that the receivership order means what it already says. Also, the CHA's position that we committed an error by not making factual findings, *see* CHA's Mot. at pp. 5-7, has the situation in reverse: only if we modified or terminated the receivership order (and the CHA has repeatedly threatened to make a motion to that effect but has not yet made one) would factual findings be necessary.

We do not believe that the traditional four "stay" factors favor the CHA. *See Thomas v. City of Evanston*, 636 F. Supp. 587, 590 (N.D. Ill. 1986) (Aspen, J.). First, we doubt that the CHA will win its appeal. It has never offered any argument as to how the plain language of the receivership order could be interpreted to give the Receiver no role in HOPE VI-funded development, and we are aware of none. The CHA's only hope of achieving that outcome is to move for a modification (or termination) of the receivership order, but it has not made such a motion, it has not presented any evidence justifying such a motion, and a modification of the receivership order is not before the appellate court. Second, we doubt that the CHA will suffer irreparable injury if we do not issue a stay. The Receiver and the plaintiffs, responding to the CHA's motion, presented substantial, credible evidence that the CHA's prior HOPE VI applications acknowledged the role of the Receiver and of the *Gautreaux* requirements in proposed HOPE VI development projects. Also, the HUD representative present at the February oral argument stated that from HUD's perspective compliance with the *Gautreaux* requirements was a "non-issue," so we do not credit the CHA's claim that it will not be able to prepare a competitive HOPE VI application if the Receiver is involved. Third, a stay may harm the plaintiffs, for if the CHA is permitted to submit a HOPE VI application without the Receiver's input, that application may violate the *Gautreaux* requirements and cause further unnecessary delay in the desegregation of Chicago public housing. Fourth, a stay would not be consistent with the public interest. We know of no possible justification for the presumption offered by the CHA on this issue -- that since it is a public agency, its interests are the public's interests, for under this logic the original segregation of Chicago public housing was in the public interest. The public's interest is in the speedy desegregation and modernization of its public housing, and nothing in the CHA's motion convinces us that our order is inconsistent with these goals.

Accordingly, the CHA's motion for a stay pending appeal is denied. It is so ordered.



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

Vacated by
1/13/84 order

DOROTHY GAUTREAUX, et al.,
Plaintiffs,
vs.
SAMUEL R. PIERCE, Secretary
of the U.S. Department of
Housing and Urban Development,
and CHICAGO HOUSING AUTHORITY,
et al.,
Defendants.

No. 66 C 1459
66 C 1460
(Consolidated)

O R D E R

This matter coming on to be heard pursuant to this Court's order of July 13, 1983, and plaintiffs' motion dated October 25th, 1983, and the Court having heard the presentations of the parties and having determined that the proposed order is appropriate in furtherance of the judgment orders entered in this consolidated cause, it is hereby ordered:

1. The Court intends to appoint a receiver, effective on February 15, 1984, to administer the development of non-elderly public housing of the defendant Chicago Housing Authority (CHA) (hereafter "the scattered site program") in compliance with the orders of this Court. Plaintiffs and CHA shall submit suggested names of individuals to serve as such receiver to the Court on or before December 15, 1983. Until February 15, 1984, CHA shall continue to be responsible for implementing the scattered site program in compliance with the prior orders of this Court.

EXHIBIT

B

2. The receiver shall have and exercise all powers of CHA respecting the scattered site program, including:

a. Determining policies governing the scattered site program in compliance with prior and future orders of this Court, including policies relating to submission to defendant, Department of Housing and Urban Development (HUD), of applications for funding, development programs and other documents; site acquisition (including policies respecting the location of parcels and buildings to be acquired); and construction and rehabilitation of dwelling units.

b. Executing the policies so determined, including, without limitation, the negotiation and execution of any contracts or other documents necessary or appropriate to the implementation of the scattered site program; the employment, transfer or discharge of employees (including employees currently assigned to the scattered site program); and the doing of all such acts and things, including site acquisition and construction and rehabilitation of dwelling units, as are determined by the receiver to be necessary and appropriate to the implementation of the scattered site program.

3. The receiver shall turn over to CHA any non-elderly unit as to which construction or rehabilitation has been completed to the satisfaction of the receiver promptly after such satisfactory completion.

4. The receiver shall file status reports with the Court respecting implementation of the scattered site program as of March 31, June 30, September 30 and December 31 of each year. Copies of the same shall be served on the parties.

5. CHA shall at its expense provide full cooperation and assistance to the receiver in the performance of the receiver's responsibilities hereunder, including without limitation:

a. Clerical staff, office space, office equipment and office supplies, and reimbursement for out-of-pocket expenses incurred by the receiver in the performance of receivership duties;

b. Full access to all information, records, documents, files, and scattered site properties and buildings owned by CHA;

c. Salary and fringe benefits as determined by the further order of this Court;

d. Indemnification in the same fashion and to the same extent as is provided to CHA's chief executive officer.

6. CHA and ^{HUD} ~~all other parties in this consolidated cause,~~ m ea
their agents, servants and employees, and all persons in active concert or participation with them, are hereby enjoined from failing to provide full cooperation and assistance to the receiver in the performance of receivership duties hereunder, and from interfering in any manner, directly or indirectly, with the receiver's performance of such duties.

7. Except as and to the extent specifically provided in this order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect. This Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion,

of orders modifying or supplementing the terms of this order upon the presentation of relevant information, material changes in conditions existing at the time of this order or any other matter.

ENTER:

Marvin E. Aspen

Judge, United States District Court

DATED: _____

11-21-83

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Marvin E. Aspen

Cause No. 66 C 1459 / 66 C 1460

Date November 21, 1983

Title of Cause Dorothy Gautreaux, et al., v. Samuel R. Pierce, ect., et al.,

Brief Statement
of Motion

ORDER

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (seperate lists may be appended).

Names and
Addresses of
moving counsel

Representing

Names and
Addresses of
other counsel
entitled to
notice and names
of parties they
represent

RECEIVED
NOV 28 1983

Reserve space below for notations by minute clerk

Plaintiffs' motion to enter order appointing receiver is allowed. Enter
order. (Draft)

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

Marvin E. Aspen

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

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

vs.

SAMUEL R. PIERCE, JR., Secretary
of the Department of Housing and
Urban Development, and CHICAGO
HOUSING AUTHORITY, et al.,

Defendants.

Civil Action No. 66C1459
66C1460
(Consolidated)

O R D E R

This matter coming on to be heard pursuant to plaintiffs' motion dated May 8, 1987 for the appointment of a receiver for the scattered site program (defined below), due notice having been given and the Court having heard the presentations of the parties, the Court makes the following findings of fact and conclusions of law:

(A) The Chicago Housing Authority (the "CHA") has joined in plaintiffs' Motion for the appointment of a receiver for the reasons which CHA has heretofore stated in this cause.

(B) This Court has concluded that it has no reasonable alternative but to exercise its inherent power to effectuate its own orders and to so appoint said receiver for the scattered site program in accordance with the provisions of this order. It is the expectation of this Court that the appointment of a receiver will facilitate cooperation between the United States

EXHIBIT

C

Department of Housing and Urban Development ("HUD"), CHA and the receiver respecting the scattered site program.

(C) For purposes of this Order the "scattered site program" shall mean (i) the buildings and vacant sites listed in Exhibit A attached hereto (collectively, the "Uncompleted Units") and (ii) CHA Development Programs numbered I1 2-096, I1 2-098, I1 2-103 through I1 2-109, and I1 2-113 (excluding any completed buildings in such programs) and all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459.

WHEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby appoints Daniel E. Levin and The Habitat Company jointly as receiver ("Receiver") to develop and administer the scattered site program as effectively and expeditiously as possible in compliance with the orders of this Court, such appointment to be effective as of the Effective Date (defined below). Until the Effective Date, CHA shall continue to be responsible for implementing the scattered site program in compliance with the prior orders of this Court. On the Effective Date CHA shall turn over to the Receiver possession and control of the Uncompleted Units, it being understood, however, that title to the Uncompleted Units shall remain in the name of CHA.

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), (iii) the relocation of occupants, when necessary and (iv) construction and rehabilitation of dwelling units and the design and specifications therefor in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation (i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program, (ii) employing, transferring and discharging staff for the scattered site program, (iii) purchasing insurance insuring the Receiver, and the interest of CHA if feasible and available at no additional cost, against liability for such risks and in such amounts as the Receiver and HUD shall from time to time agree upon, (iv) managing and administering buildings included within the scattered site program prior to the turnover thereof to the CHA in accordance with Paragraph 5 below, and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel, consultants, attorneys, accountants and other professionals, as are determined by the Receiver to be necessary and appropriate to implement the scattered site

program and to enable the Receiver to discharge its duties pursuant to the provisions hereof.

3. The Receiver shall have the right at any time, upon due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.8, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgement by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief.

4. The Receiver shall have no obligation to make any expenditure except from funds provided by HUD in accordance with procedures to be agreed upon between HUD and the Receiver. The Receiver shall keep separate accounts for costs incurred in connection with the scattered site program from and after the Effective Date. The Receiver shall not be responsible for (i) payment of any costs or performance of any obligations incurred

by CHA prior to the Effective Date, except obligations incurred pursuant to the ACC unless the Receiver is excused from complying with the terms thereof pursuant to Paragraph 3 above, or (ii) payment of any costs or performance of any obligations incurred by CHA thereafter, except as may be specifically authorized by the Receiver in writing. Notwithstanding the foregoing, the Receiver shall not be responsible for (iii) compliance with the provisions of any ACC with respect to buildings and sites previously acquired or completed by CHA except those described in Exhibit A, or (iv) any act or omission of CHA either before or after the Effective Date.

5. The Receiver shall promptly turn over to CHA, and CHA shall accept, any building within the scattered site program upon completion of construction or rehabilitation of each such building. For purposes hereof, subject to the reasonable approval of HUD, construction or rehabilitation of a building shall be deemed to be completed when the Receiver's project architect determines that such building is ready for occupancy, and, if required by applicable law or ordinance, a certificate of occupancy has been issued for such building.

6. The Receiver shall prepare reports respecting the status and implementation of the scattered site program as of the end of each month in the year 1987, commencing with the month of September, 1987, and thereafter quarterly as of March 31, June 30, September 30 and December 31 of each year. Copies of the same shall be filed with the Court and served on

the parties within 20 days following the end of the period covered by each such report.

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program.

8. There shall be paid to the Receiver from funds provided by HUD pursuant to the ACC or Annual Contributions Contracts entered into between the Receiver and HUD, or by CHA if appropriate, (i) all direct costs and expenses reasonably incurred by the Receiver in connection with the performance by the Receiver of its duties pursuant hereto, (ii) to the extent not included in clause (i), a pro-rata share of all salary, compensation and other direct costs of those employees of The Habitat Company (other than Daniel E. Levin, James P. McHugh and Douglas R. Woodworth), James McHugh Construction Co. (other than James P. McHugh) or other entities which are affiliates of or controlled either directly or indirectly by the Receiver, who at the direction of the Receiver perform services on behalf of the scattered site program, for the actual time devoted by said employees to the performance of services for the scattered site program, and (iii) a fee in the amount of three percent (3%) of the aggregate development costs (excluding the costs described in clause (ii) above and any costs previously incurred by CHA)

for each building in the scattered site program (except buildings developed pursuant to a turnkey development) as reflected on the original development budget(s) therefor submitted by the Receiver and approved by HUD, the fee for such building being payable upon the completion thereof as determined in accordance with Paragraph 5 hereof. The Court will set a reasonable fee with respect to turnkey developments. The Court hereby determines that included in the category of expenditures for which the Receiver shall be entitled to reimbursement are all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) reasonably incurred or sustained by the Receiver by reason of the performance by the Receiver of its duties pursuant to the provisions hereof to the extent said costs, expenses and liabilities are not covered by the insurance described in Paragraph 2(b)(iii) above.

9. Nothing in this Order shall (i) preclude or restrict the Receiver or any party hereto from asserting any claims against the Receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or any other party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such claim, (ii) obligate HUD to furnish funds to the Receiver in addition to any funds which HUD would otherwise be obligated to provide

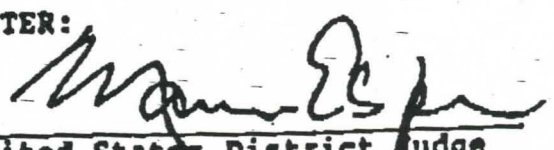
to CHA by virtue of any previous order of this Court or otherwise, or (iii) constitute a determination of the amount of funds which HUD is obligated to furnish by virtue of such previous orders or otherwise.

10. The Receiver is hereby excused from complying with Rule 9(b) of the Civil Rules of the United States District Court for the Northern District of Illinois.

11. The effective date of this Order (the "Effective Date") shall be the date upon which the Receiver has filed with this Court and served upon the parties hereto a notice signifying that the Receiver is satisfied that there is in force the insurance coverage referred to in Paragraph 2(b)(iii) above.

12. Except as and to the extent specifically provided in this Order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect. The Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information or material changes in conditions existing at the time of this order or any other matter.

ENTER:


United States District Judge

August 14, 1987

RECEIVED

AUG 14 1995

Judge Marvin E. Aspen
U.S. District Court

Plaintiffs,

V.

66 C 1459

66 C 1460

(Consolidated)

Defendants.

This matter came on to be heard on the motion of plaintiffs, pursuant to this Court's order of March 9, 1995, which authorized public housing units to be provided within the Horner Revitalizing Area ("HRA") subject to a further order of Court specifying the number of such units and the conditions relating thereto, and which approved certain paragraphs of a proposed consent decree in Henry Horner Mothers Guild v. CHA and HUD, 91 C 3316 (USDC N.D. Ill.) ("Horner litigation"); and

The Court having heard the presentation of plaintiffs in support of their proposed further order, including advice of a Settlement Agreement in the Horner litigation, signed August 7, 1995; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the HRA respecting the appropriate number of public housing units to be

EXHIBIT

EXHIBIT 2
D

provided therein and the conditions to be made applicable thereto, and that they join in plaintiffs' motion, believing that the further order proposed by plaintiffs embodies both an appropriate number and appropriate conditions as contemplated by this Court's order of March 9, 1995; and

The Court having heard the presentations of the defendants, U. S. Department of Housing and Urban Development ("HUD") and Chicago Housing Authority ("CHA") with respect to said proposed further order; and

The Court being cognizant that the principle remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be provided in census tracts other than the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the HRA if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED:

(1) In the event the five buildings owned by CHA at 2111, 2145, 2029 and 2051 West Lake Street, and at 124 North Hoyne Street, containing 466 dwelling units in the aggregate, are

demolished, the Receiver shall be free to provide within the HRA, through new construction and/or acquisition with rehabilitation, 466 replacement dwelling units; provided, however, that one-half of such replacement dwelling units are occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and that such units are geographically distributed approximately evenly among replacement dwelling units, and provided further that in accordance with paragraphs 2(a) and 2(c) of a Settlement Agreement in the Horner litigation signed August 7, 1995, and subsequently approved by the Court in that litigation, of which this Court has been advised and a copy of which has been attached hereto and is hereby incorporated by reference, the parties shall be free to seek a modification of such number of replacement dwelling units to be provided within the HRA;

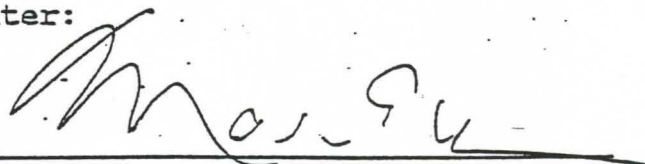
(2) Plaintiffs shall be free to allocate up to \$20 million of the fiscal year 1995 "set-aside" available to them under the Consent Decree approved by this Court in 66 C 1460 to aid in implementing paragraph (1) of this Order, and the Receiver may build and CHA may provide on a priority basis to families who reside in the CHA developments known as Henry Horner Extension, Henry Horner Homes and Henry Horner Annex ("Horner residents"), scattered site units pursuant to paragraph (3)(b) of this Order, provided that scattered site units furnished to residents of the Henry Horner Extension shall be made available without reimbursement therefor from funding supplied under the Consent

Decree in the Horner litigation; and

(3) The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified (a) to afford Horner residents a priority to be housed in one-half of the replacement dwelling units in the HRA as to which the income requirement specified in paragraph (1) of this Order does not apply, and to provide for occupancy of the other half of such replacement dwelling units by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and (b) to afford Horner residents who elect scattered site units in Phase I of the Horner Revitalization Program a priority to be housed in one-half of future scattered site units to be provided by the Receiver elsewhere than in the HRA, all upon presentation of appropriate orders therefor.

August 14, 1995

Enter:



Judge

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

DOROTHY GAUTREAU, et al.	)	
Plaintiffs,	)	
	)	
vs.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY and	)	
HENRY CISNEROS, Secretary of	)	(Consolidated)
Department of Housing and Urban	)	
Development,	)	
Defendants.	)	

ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs, and Defendants Chicago Housing Authority and Department of Housing and Urban Development, for an order designating a North Kenwood-Oakland Revitalizing Area and permitting development of family public housing units therein, and the Court having heard presentations concerning the proposed order; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the proposal respecting the appropriate number of public housing units to be provided therein and the conditions to be made applicable thereto, and that they support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has

EXHIBIT

E

permitted public or assisted housing to be provided in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the North Kenwood-Oakland Revitalizing Area if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED:

1. The Court designates as the North Kenwood-Oakland Revitalizing Area ("Revitalizing Area") that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-way on the east, 47th Street on the south, and Cottage Grove Avenue on the west;

2. The Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop, through new construction or rehabilitation of existing buildings, up to 241 units of public housing within the Revitalizing Area, subject to the following conditions:

- a) No more than 100 units of public housing shall be developed on CHA-owned land that is the site of CHA's Lakefront high-rise buildings (the area bounded by 40th Street on the north, the Illinois Central Railroad right-of-way on the east, 42nd Place on the south, and Lake Park Avenue on the west).

- b) No more than approximately 50 units of public housing shall be developed on the site of the demolished Washington Park buildings (the CHA-owned property bounded by 41st Street on the north, Drexel Avenue on the east, Cottage Grove Avenue on the west, and Bowen Avenue on the south) and adjacent property.
- c) The balance of such units of public housing within the Revitalizing Area, in addition to those referred to in subparagraphs (a) and (b) above, shall be developed on other sites distributed throughout the Revitalizing Area.
- d) One-half of the public housing units developed pursuant to subparagraphs (a) and (b) above shall be occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and such units shall be geographically distributed approximately evenly among the units developed pursuant to subparagraphs (a) and (b).

3. The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified to afford eligible displaced Lakefront tenant families, as defined in the "Revised Agreement Regarding Former Residents of the Lakefront Properties and the Future Use of Those Properties," dated September 22, 1995, between CHA and the Lakefront Community Organization, first

priority to all public housing units developed pursuant to subparagraphs 2(a), (b) and (c) of this Order, subject only to the provisions of subparagraph 2(d) of this Order.

ENTER:

Myron E. Asper

Judge

Date: *June 3*
~~May 11~~, 1996

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

RECEIVED

DEC 3 1993

DOROTHY GAUTREAUX, -et al.

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and HENRY
CISNEROS, Secretary of Department of
Housing and Urban Development

Defendants.

Judge Marvin E. Asper
U.S. District Court

66 C 1459

66 C 1460

(Consolidated)

DOCKETED

DEC 15 1993

AGREED ORDER

WHEREAS, on August 14, 1987 the Court entered an Order
appointing the Habitat Company as Receiver and giving the
Receiver

all powers of CHA respecting the scattered site program
necessary and incident to the development and administration
of such program, including: (1) Making all determinations
governing the scattered site program in compliance with
prior and future orders of this Court, including without
limitation (1) submission to HUD of applications for
funding, development programs and other documents
(Order, pp. 2-3);

WHEREAS, on March 9, 1990, the Court entered an Agreed Order
recognizing that the August 14, 1987 Order had given the Receiver
the authority to develop and administer the scattered site
program "on an exclusive basis" (Order, p. 1), but nonetheless
granting CHA the authority to develop up to 350 units of
scattered site housing as a demonstration program (the
"Demonstration Program");

EXHIBIT

WHEREAS, on August 3, 1993 in a status conference with the parties conducted by telephone, the Court approved a Joint Venture Agreement between the Receiver and the Chicago Metropolitan Housing Development Corporation, an affiliate of CHA, for the development of the 350 Demonstration Program units, which agreement contemplated the possibility that the Joint Venture would seek authority to develop 18 units of scattered site housing in the North Lawndale area (as replacement for 18 public housing units proposed to be demolished in that area) and 25 units of scattered site housing under the Family Self-Sufficiency Program (Agreement, p. 5);

WHEREAS, CHA has submitted applications to HUD for funding to develop such 18 scattered site units and such 25 scattered site units, as well as for 377 units of additional scattered site units (Projects IL06-P002-180 and P002-182) to replace certain other public housing units proposed to be demolished;

WHEREAS, the 18 scattered site units proposed to be constructed in the North Lawndale area are in the Limited Public Housing Area as defined by previous Court orders; and

WHEREAS, believing that it is in the best interests of the Gautreaux plaintiff class that the Joint Venture be authorized to develop the scattered site units referred to above, the parties are in agreement that the aforementioned Court orders should be modified as set forth below;

THEREFORE, IT IS HEREBY ORDERED THAT:

1. CHA shall be deemed, nunc pro tunc, to have had the authority to apply for funding for the development of 18 units of

scattered site housing in the North Lawndale area as replacement for 18 units of public housing proposed to be demolished in that area, 25 units of scattered site housing under the Family Self-Sufficiency Program, and 377 additional scattered site units (Projects IL06-P002-180 and P002-182) to replace certain other public housing proposed to be demolished, provided, however, that unless otherwise ordered by this Court all future funding applications for scattered site development shall be submitted by the Receiver in accordance with the August 14, 1987 Order of this Court;

2. The Joint Venture is hereby authorized to develop such 18 units of scattered site housing in the North Lawndale area of Chicago, a Limited Public Housing Area, in addition to the 350 Demonstration Program units previously authorized;

3. The Joint Venture is hereby authorized to develop such 25 units of scattered site housing under the Family Self-Sufficiency program, in addition to the 350 Demonstration Program units previously authorized, subject to further orders of this Court, if necessary, respecting the location of such units;

4. The Joint Venture is hereby authorized to develop such numbers of units of scattered site housing as HUD may authorize pursuant to such CHA applications for funding for 377 additional scattered site units to replace certain other public housing units proposed to be demolished, subject to further orders of this Court, if necessary, respecting the location of such units; and

5. Except as provided above, all other currently effective orders of the Court in these consolidated cases shall remain in full force and effect.

ENTERED:

Man

December 10, 1993

United States District Judge

AGREED TO ON BEHALF OF:

Richard P. Perry
Plaintiffs

Robert A. Allen 12/1/93
Chicago Housing Authority

U. S. Department of Housing
and Urban Development

Receiver

5. Except as provided above, all other currently effective orders of the Court in these consolidated cases shall remain in full force and effect.

ENTERED:

December __, 1993

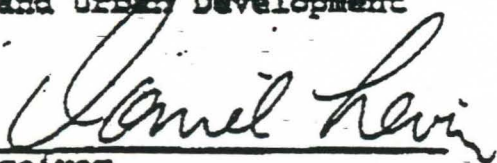
United States District Judge

AGREED TO ON BEHALF OF:

Plaintiffs

Chicago Housing Authority

U. S. Department of Housing
and Urban Development



Receiver

DANIEL LEVIN
THE HABITAT COMPANY

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
	)	February 10, 1998
SAMUEL R. PIERCE, et al.,	)	10:30 o'clock a.m.
	)	
Defendants.	)	

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

APPEARANCES:

For the Plaintiffs:

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
BY: MS. SUSAN GETZENDANNER
(333 West Wacker Drive
Chicago, Illinois 60606)

For Defendant Department
of Housing and Urban
Development:

MR. JOHN A. JENSEN
(77 West Washington Street
Chicago, Illinois 60604)

ALSO PRESENT:

MR. MICHAEL SHAKMAN

MS. MARY M. GALLAGHER
Official Court Reporter
219 South Dearborn Street
Room No. 2524A
Chicago, Illinois 60604
(312) 663-0049

1 THE CLERK: 66 C 1459, Gautreaux versus CHA.

2 MS. GETZENDANNER: Good morning, Judge.

3 MR. POLIKOFF: Good morning, your Honor.

4 THE COURT: Good morning.

5 Okay. This is the motion of the CHA, so I guess the
6 CHA will go first, right?

7 MS. GETZENDANNER: Judge, if you have any questions, I
8 would be happy to answer them, otherwise I am content to rely
9 on the briefs, so long as I can go after these fellows.

10 THE COURT: Okay.

11 Anything you wish to say?

12 MR. POLIKOFF: I will be happy to start, your Honor.

13 THE COURT: All right.

14 MR. POLIKOFF: Thank you.

15 Your Honor, as we see it, CHA advances two basic
16 arguments to support its view that the judgment order does not
17 apply to new HOPE VI funded public housing. One is that the
18 order only covers funding that adds to the aggregate housing
19 stock, not replacement funding; and the other is that the
20 judgment order's locational requirements are incompatible with
21 HOPE VI. And if you were to rule that the order applies to new
22 HOPE VI housing, you would effectively eject CHA from the HOPE
23 VI ballgame.

24 I will address these two basic arguments momentarily
25 and persuade you, I believe, that the judgment order clearly

1 does cover replacement housing based on its language, its logic
2 and the conduct of the Court and the parties in carrying it
3 out. And we will also show that there is no incompatibility
4 whatsoever between the judgment order and HOPE VI.

5 But first I would like, in a few words, to place this
6 HOPE VI dispute within the larger framework of the litigation.

7 The Fisher and Hickman affidavits attached to our
8 brief demonstrate that a dramatic current racial imbalance
9 still persists in CHA's housing stock. Largely thanks to the
10 receivership and your subsequent orders, the figure has been
11 reduced from 99 percent to the middle 80's, but we've still got
12 a long way to go.

13 It is, of course, indisputable that sufficient
14 desegregated housing opportunities for plaintiff class families
15 have not been provided to enable anyone to say -- and CHA
16 doesn't even assert -- that this principle remedial purpose of
17 the judgment order has been achieved.

18 Under these circumstances, the law places the burden
19 on CHA, not the plaintiffs, to show that the current racial
20 imbalance is not traceable in a proximate way to the prior
21 violation. That's a quote, as you may recognize, from Freeman
22 versus Pitts, 503 U.S. at 494.

23 And subsequent to Freeman the Supreme Court in U.S. v.
24 Fordice reiterated the same point, quote, that the burden of
25 proof falls on the state, not the aggrieved plaintiffs, to

1 establish that it has dismantled its prior de jure segregated
2 system.

3 Therefore, your Honor, with a current racial imbalance
4 not shown by CHA to be divorced from its original
5 constitutional wrong and as yet unachieved principle remedial
6 purpose, the law stands flatly opposed to CHA's desire to have
7 the judgment order interpreted in a relief-limiting way.

8 We've set forth some of the relevant cases at pages 13
9 to 17 of our written response. CHA's reply brief doesn't
10 address those cases, doesn't even refer to CHA's continuing
11 desegregation obligation. And I suggest, your Honor, that
12 those cases provide the legal framework within which the CHA
13 arguments, to which I now turn on the HOPE VI matter, must be
14 considered.

15 The first of the two major CHA arguments that the
16 judgment order should be interpreted as not applying to
17 replacement housing, flies in the face of the unambiguous
18 language of the judgment order. Indeed, CHA concedes that HOPE
19 VI funded replacement housing is covered by the dwelling unit
20 definition in the judgment order.

21 CHA says -- and I quote from page 6 of its reply brief
22 -- quote, the CHA does not disagree that HOPE VI funded units
23 would come within the definition of dwelling unit in the
24 judgment order. It's perfectly understandable that CHA doesn't
25 disagree. That dwelling unit definition was obviously written

1 to cover every imagineable way in which CHA might provide new
2 housing -- and I am quoting now from the order -- directly or
3 indirectly, whether in a structure owned in whole or in part by
4 CHA, whether or not newly constructed, whether otherwise made
5 available by or through CHA.

6 Plainly, Judge Austin was strained not to overlook any
7 kind of new housing CHA might provide.

8 THE COURT: How about replacement housing on the site
9 that's demolished?

10 MR. POLIKOFF: Replacement housing -- it is new
11 construction -- is covered by this, your Honor, clearly, new
12 housing initially made available after the date of the judgment
13 order. And as I will show you in a moment, you have already
14 ruled, already exercised jurisdiction over replacement housing
15 designed for precisely that purpose.

16 THE COURT: How does that differ from a situation
17 where CHA might rehab completely?

18 MR. POLIKOFF: Big difference, because the judgment
19 order says, "initially made available after the date of the
20 order."

21 As we pointed out in our briefs, we have not sought --
22 ever in this case we have not sought to stretch the judgment
23 order to cover a rehab of a prior unit.

24 We have only said, when you are putting up a new unit,
25 even if it's in replacement of a demolished unit, it's covered

1 by the language of the judgment order, which, as I point out,
2 CHA itself concedes.

3 THE COURT: As a practical matter, is there really any
4 difference between the two?

5 Let's assume a hypothetical of 100 units; CHA razes
6 the building, puts up another building of 100 units, or, CHA
7 takes that original building, really guts it, rehabs it and
8 comes up with 100 units. You're saying one would be treated
9 differently than the other?

10 MR. POLIKOFF: Enormous difference, your Honor. Why?

11 THE COURT: But as a practical matter, should there be
12 any difference?

13 MR. POLIKOFF: Yes, there should be, and I will tell
14 you why.

15 If CHA razes a 100-unit building and is going to build
16 100 new replacement units, it has the opportunity thereby to
17 provide relief for the plaintiff class, because the 100 new
18 units don't have to be built in the same place that the razed
19 building stands. If you're gutting a building and rehabbing it
20 on site, you don't have that opportunity.

21 So desegregation opportunities, relief for the
22 plaintiff class, can be provided by the new 100 units. You can
23 put 50 of them out there, 50 of them in here, under your
24 current orders 50/50, so we would get 50 units of desegregated
25 housing.

1 If, on the other hand, they are simply rehabbing a
2 building, we could have drafted the order differently -- I
3 don't know whether Judge Austin would have gone along -- but we
4 made a distinction right at the outset between -- and he made a
5 judgment order on his own, a judgment decision on his own, I am
6 not going to tell CHA how to run its existing housing stock.
7 They want to rehab it -- and we didn't oppose that. We never
8 argued for that.

9 The distinction then is the distinction between an
10 opportunity to provide remedial housing opportunities to the
11 plaintiff class through newly constructed housing which has no
12 locational requirements imposed upon it and rehabbing an
13 existing building which obviously isn't being moved.

14 From the look on your face, I'm not sure you're 100
15 percent persuaded, but --

16 THE COURT: Well, following your construction, CHA may
17 have the -- assuming that your construction is the one that
18 will be followed, CHA may have the very difficult task of
19 making a policy decision that would be more costly.

20 For example, if CHA decides that it wants to keep the
21 100 units in the hypothetical building that I suggested and the
22 cost to rehab those units is more than the cost to raze the
23 building and put up 100 new units, CHA would be in a position
24 of having to pay that extra cost in order to keep those units
25 at the same site.

1 MR. POLIKOFF: They may very well, your Honor, if the
2 economics worked out that way; they might work out differently.
3 But --

4 THE COURT: It's taxpayers' money that we're talking
5 about, though.

6 MR. POLIKOFF: Yes, but if CHA has an obligation to
7 provide desegregation housing opportunities to the plaintiff
8 class members, which it does, that decision as to which way to
9 go ought to include a consideration of that persisting CHA
10 obligation to provide desegregation.

11 Indeed, I would argue -- not here arguing this point,
12 but in a hypothetical situation I would argue that that
13 obligation to provide desegregation housing for the plaintiff
14 class should weigh very heavily in CHA's decision-making.

15 But we have not tried to get into that, your Honor.
16 And if they decide to rehab under the language of the order,
17 they are free to do it without consequences under the Gautreaux
18 orders.

19 I pointed out that your Honor is being asked to
20 interpret the order in a way that does violence to its
21 language. For the reasons we have just discussed, it also does
22 violence to the logic.

23 The purpose of the order can be served, i.e.,
24 desegregation housing opportunities provided to the plaintiff
25 class through replacement housing just as effectively as

1 through incremental housing. So the purpose of the order also
2 argues for not imposing the restrictive limitation on it that
3 CHA is proposing. Indeed, I would say that CHA's request to
4 you is at war not only with the language of the order, but also
5 with its logic.

6 Finally, and perhaps most tellingly, the Court and the
7 parties have already interpreted the judgment order to embrace
8 replacement housing, starting with the Court's order of
9 December 10, 1993. The order is cited and discussed in the
10 briefs, but I've made extra copies for the Court and counsel.
11 This is the order that HUD calls the nunc pro tunc order.

12 (Document tendered.)

13 MR. POLIKOFF: Do you need an extra copy?

14 MS. GETZENDANNER: Sure.

15 MR. POLIKOFF: On page 2 and 3 of this so-called nunc
16 pro tunc order, you see that paragraph -- it's at the bottom of
17 page 2 -- paragraph number 1 refers to CHA funding applications
18 for the familiar 18 units in Lawndale.

19 But paragraph 1 over at the top of page 3 now, your
20 Honor, also covers an additional 377 units. And two project
21 numbers are referenced there, which are at Washington Park,
22 which is at North Kenwood/Oakland, for 187 units, and Cabrini
23 Green for 190, making the total of 377.

24 Paragraph 2 of the order in the middle of page 3
25 authorizes the joint venture, led by Habitat as Receiver and

1 previously approved by the Court, to develop those 18 Lawndale
2 units. And then if you drop down to paragraph 4, at the bottom
3 of page 3, you see that that authorizes the same joint venture
4 to develop the 377 Washington Park and Cabrini units.

5 Now, your Honor, a couple of months before you entered
6 this order the funding for these same 377 units had begun to
7 come from HUD.

8 On September 10, 1993, HUD notified CHA that its
9 funding application for these Washington Park and Cabrini units
10 had been partially approved, quote -- and I emphasize this --
11 for replacement housing. That's in one of the letters that was
12 delivered to the Court and counsel early last week, and I
13 emphasize those replacement housing words. In other words,
14 your Honor, these 377 units were being funded with true
15 replacement, not incremental dollars.

16 Incidentally, the same HUD letter, which is signed by
17 Mr. Shuldiner, who was then in Washington with HUD, also says
18 -- and I am quoting -- these fund reservations are conditioned
19 upon agreement of the parties to the Gautreaux litigation and
20 approval by the Court of the entity that will develop these
21 replacement units, end quote.

22 So two months later, when the Court signed the nunc
23 pro tunc order you're holding in your lap, it was not only
24 authorizing the joint venture to develop true replacement
25 housing funded with replacement, not incremental dollars; it

1 was also satisfying the HUD requirement that the Court and the
2 Gautreaux parties agree on the entity to do the developing of
3 those 377 units.

4 By the way, your Honor, the Gautreaux-funded portion
5 of the 466 units at Horner, those are also true replacement
6 dollars, not incremental dollars.

7 Now, of course, we pointed out in our brief, referring
8 to this nunc pro tunc order, that true replacement housing
9 funding had already been subjected to the Court's orders.

10 Now, what does CHA say about that? Well, in its reply
11 brief CHA says correctly that the 18 Lawndale units are being
12 built with incremental funding. But CHA is then thunderously
13 silent about the Washington Park and Cabrini Green units,
14 thereby implying that the nunc pro tunc order relates only to
15 incremental funding and does not embrace true replacement
16 funding as well.

17 We are not favored with an observation from CHA,
18 therefore, your Honor, on the fact that the Court, with the
19 written approval of all the parties -- you will note that that
20 order was consented to in writing; the signature pages are also
21 in your lap, by all the parties. The Court and all the parties
22 already agreed upon an exercise by the Court of its
23 jurisdiction over true replacement housing.

24 Parenthetically, I want to note that this nunc pro
25 tunc order covers not only true replacement housing in a

1 non-HOPE VI context, which is Washington Park in North
2 Kenwood/Oakland, but it also covers replacement housing funding
3 to be used in a HOPE VI project at Cabrini Green, 190 out of
4 those 377 units.

5 It's true, those aren't HOPE VI dollars, but they are
6 dollars to be used in a HOPE VI project for the same
7 replacement housing purpose as HOPE VI dollars themselves may
8 be used.

9 In conclusion, your Honor, the replacement housing
10 horse has long since left the barn. The Court, with the
11 written concurrence of CHA and the other parties, has already
12 exercised judgment-ordered jurisdiction over replacement
13 housing, specifically including replacement housing for HOPE VI
14 projects. And you've done this not just in the nunc pro tunc
15 order but in subsequent orders.

16 As to the location of those replacement units, you
17 will note that paragraph 4 of that order refers to subsequent
18 orders having to do with location.

19 In the face, your Honor, of these several orders
20 relating to North Kenwood/Oakland, Cabrini, Henry Horner and
21 with the language of the judgment order concededly covering
22 replacement housing, while the rationale of the order supports
23 such coverage, it would be totally inappropriate to now reverse
24 field and act inconsistently with a whole series of the Court's
25 orders as well as extensive conduct of the parties based on

1 those orders.

2 I turn to the second major CHA argument, which is the
3 supposed incompatibility between HOPE VI and the judgment
4 order, a point made about a dozen times -- I counted them -- in
5 the CHA's briefs.

6 HOPE VI and the judgment order are said to be
7 inherently and absolutely inconsistent. We are told that CHA
8 could not hope to be competitive in HOPE VI awards if the
9 judgment order applied, and that denying CHA's motion is the
10 functional equivalent of enjoining CHA from HOPE VI
11 participation.

12 Simple answer to all this: It ain't true. It is not
13 true if one compares HOPE VI and judgment order language, and
14 it is not true if one looks at the competitive record of CHA in
15 HOPE VI competitions.

16 Let me turn to the language first. CHA says -- and
17 I'm quoting -- HOPE VI has clear locational requirements for
18 which proposition it cites and quotes the HOPE VI statute which
19 provides funding for addressing, as you know, severely
20 distressed or obsolete public housing projects, for the HOPE VI
21 statute does say the following: No more than 500 units shall
22 be provided to each participating city, and such units shall be
23 located in up to three separately defined areas containing the
24 community's most severely distressed projects, including family
25 high-rise projects, end quote. That's from the HOPE VI

1 statute, which is Exhibit B to CHA's brief.

2 And this is the locational requirement, the one I just
3 quoted, to which CHA refers when it says we are, quote, clearly
4 wrong in contending that HOPE VI has no locational requirements
5 for replacement housing.

6 But, your Honor, this locational requirement I just
7 quoted applies only to the 500 selected distressed or obsolete
8 units, not to their replacement units. That's perfectly clear
9 from the statutory, quote, such units, end quote, language that
10 I just quoted. Just read it; you can see it.

11 Moreover, the same statute specifically says
12 replacement housing may include tenant-based Section 8, which,
13 of course, can be located anywhere.

14 Now, if there were any doubt about the statutory
15 language point I am making, which there is not, there is a HUD
16 HOPE VI handbook, as you know, and that would resolve the
17 doubt.

18 For the guidebook says explicitly -- and the relevant pages are
19 in the exhibits to the briefs -- that replacement housing may
20 include, quote, construction of off-site housing, end quote,
21 and it says not one word about where off site.

22 And if there were any doubt about that, under the
23 heading Purpose of the HOPE VI Program, the guidebook includes
24 the following quote as a purpose: Lessening concentrations of
25 poverty by placing public housing in non-poverty neighborhoods.

1 Obviously the neighborhoods that contain the community's most
2 distressed and obsolete public housing units are not likely to
3 be non-poverty neighborhoods.

4 In short, your Honor, there exists no locational
5 requirement for HOPE VI replacement housing at all, and CHA is
6 simply wrong in implying that the locational requirement
7 applicable to the 500 selected distressed or obsolete units
8 applies to the replacement housing for those units.

9 Now, CHA then attempts to buttress this mistaken
10 argument with a flat-out misstatement, presumably designed to
11 show that contrary to the statutory and guidebook language,
12 replacement housing is confined to these severely distressed
13 neighborhoods.

14 Referring to each of CHA's HOPE VI applications, CHA
15 says at page 15 of its reply brief, "All new construction was
16 designated for neighborhoods that were in limited areas." And
17 again, "No application called for the building of any new units
18 in any general area."

19 From among many statements which demonstrate the
20 contrary, I will refer to but one which has to do with
21 replacement housing for Cabrini.

22 Here is what CHA said in its August 11, 1993
23 application to HUD, which is another of the letters that was
24 delivered to Court and counsel early last week. In this letter
25 CHA seeks HUD's approval to demolish the first building it

1 wanted to tear down at Cabrini. The sentence appears under the
2 heading, quote, Location of Replacement Units, and I now quote
3 the sentence: The proposed new units will be built on
4 scattered sites in community areas around the Cabrini Green and
5 in other sites throughout the Chicago metropolitan area in
6 accordance with the consent decree and subsequent orders of the
7 Gautreaux litigation, end quote. That statement and the others
8 like it cannot be reconciled with CHA's reply brief assertion
9 that all new construction was designated for limited areas.

10 I turn to the competitiveness issue, the other aspect
11 of this HOPE VI judgment order alleged incompatibility.
12 CHA won its initial HOPE VI award at the end of '93 in a
13 nationwide competition.

14 Now, look at the dates of the letters I've just
15 referred to. In August '93 CHA says, we're going to develop
16 replacement housing in accordance with Gautreaux. In September
17 CHA receives its first HOPE VI replacement housing funding from
18 HUD.

19 Moreover, we know what HUD believes from its own
20 lawyer's legal opinion; I'm quoting from Receiver Exhibit B.
21 Quote, in regard to the 377 replacement units for Cabrini and
22 Washington Park approved for funding by HUD in September of '93
23 and '94, the joint venture has clearly been authorized by Judge
24 Aspen. Still quoting, we also believe that any funds under
25 HOPE VI which go to replacement housing are currently a

1 engaged in the development of the very first Cabrini
2 replacement units. These are the 44 units in the Mohawk North
3 development adjacent to Cabrini that you yourself drove right
4 by, and they were pointed out to you in the bus tour
5 Mr. Shuldiner took you on last year.

6 Now, recently Habitat submitted a public housing
7 development proposal to HUD as Receiver for CHA -- it says it
8 right on the cover -- for these very first replacement units in
9 that Mohawk North development. This is the October 24th
10 letter, also delivered to the Court and counsel last week.

11 These units, by the way, represent not only the first
12 replacement unit at Cabrini, but a potentially important
13 forward step toward mixed income housing for Gautreaux
14 plaintiff class families because they are part of and dispersed
15 throughout a market rate development.

16 Getting approval for these units from HUD is a big
17 deal, as you can easily see by the thickness of the development
18 proposal, which I'm not going to do anything more than show
19 you. These are two thick volumes. (Indicating.)

20 The cover page, which you received as part of the
21 letter that was given to you last week, says, CHA development
22 proposal, Cabrini extension, replacement units, 44 units, the
23 Habitat Company as Receiver for the Chicago Housing Authority
24 Scattered Sites Program, two volumes to get HUD approval for
25 those units. And it was Habitat, as Receiver, that submitted

1 that.

2 But another letter had to be sent, which was the
3 fourth and final letter delivered to you and counsel last week.
4 Why? Because on receipt of this huge two-volume development
5 proposal for the 44 Mohawk North replacement units, HUD pointed
6 out that a couple of the certifications contained in the
7 proposal, the development proposal, were made by CHA and not by
8 the joint venture.

9 You see, these first 44 units, replacement at Cabrini,
10 are part of the original 190 units your nunc pro tunc order
11 authorized the joint venture to develop. Under that order the
12 joint venture, not CHA, has development authority for the
13 units, so HUD wanted the certifications to come from the joint
14 venture, not from CHA. And that's what was done in the second
15 letter sent to HUD December 17, 1997. You have that letter and
16 what was delivered last week.

17 The letter explicitly says, by the way, that the
18 development proposal for these 44 units is submitted pursuant
19 to your order of ten years ago appointing Habitat as Receiver.

20 So much, your Honor, for the assertions that the
21 Cabrini HOPE VI project is going forward without any
22 involvement of the Receiver.

23 A final CHA subsidiary argument seeks to draw an
24 analogy between our current dispute here and your 1991
25 Kenwood/Oakland order as well as a Seventh Circuit decision in-

1 Romney. Suffice it to say that our controversy here is about
2 developing new public housing, something clearly covered by the
3 judgment order, whereas the 1991 Kenwood/Oakland order involved
4 only rehabilitation of existing housing, something not covered
5 by the judgment order, as we discussed a few minutes ago, and
6 the Romney model city's order involved no housing at all.

7 Your Honor, you will be pleased to know I am ready to
8 conclude.

9 Even if in the face of the language of the judgment
10 order, the logic of the order and the conduct of the Court and
11 the parties under the order, you were to accept CHA's view that
12 the judgment order doesn't cover new HOPE VI housing, it would
13 be the responsibility of the Court, as we have argued in our
14 briefs, to exercise its, quote, inherent capacity to adjust
15 remedies under Freeman, 503 U.S. at 487, to see to it that the
16 remedial possibilities offered by the new HOPE VI funded public
17 housing aren't lost to the plaintiff class.

18 But given the language, the logic and the conduct of
19 the Court and the parties that we do have, the right answer is
20 not to reach that issue of inherent capacity to adjust
21 remedies, but simply to deny CHA's motion.

22 What is really at stake here, your Honor, is neither
23 the figment of a judgment order that fails to embrace
24 replacement housing, nor an imagined incompatibility between
25 the judgment order and HOPE VI.

1 What is really at stake is whether CHA shall be free
2 to replace its old high-rise ghettos with new low-rise ones
3 and, thereby, deny Gautreaux families the remedial
4 opportunities HOPE VI replacement housing holds out to them.

5 The judgment order in this case is all that prevents a
6 CHA, whose briefs don't even mention its desegregation
7 obligations, from once again taking great swaths of Chicago
8 neighborhoods and thousands of families who have not yet
9 received the relief they are entitled to, down the old familiar
10 path of least resistance to hyper-segregation and concentrated
11 poverty.

12 Happily, your Honor, the judgment order by reason of
13 its language, its logic and your enforcement orders entered
14 with the concurrence of all the parties, does stand in the way.

15 I thank you.

16 THE COURT: Thank you, Mr. Polikoff.

17 Before -- yes, Mr. Shakman, you want to say something
18 on behalf of the Receiver?

19 MR. SHAKMAN: Yes. On behalf of the Receiver, if you
20 would like to hear a little bit, we had some comments.

21 THE COURT: Sure.

22 MR. SHAKMAN: Really three points, your Honor.

23 First, Mr. Levin, who's present in court today and is
24 available to answer any questions the Court may have,
25 recognizes that he serves as the Court's agent and at the

1 Court's discretion. He has not sought to be and does not want
2 to be in an adversarial relationship with anybody, but he does
3 think to the extent he has information that bears on the issue
4 before the Court, it's appropriate that he present that to the
5 Court.

6 It's for that reason that we filed a brief on behalf
7 of the Receiver. And in the brief we pointed out that from the
8 beginning of the appearance on the radar screen of HOPE VI, the
9 Receiver has taken the position that he reads the Court's order
10 appointing the Receiver as requiring that the Receiver
11 construct all new housing that is not elderly housing, and that
12 that includes the HOPE VI program.

13 At times the CHA has agreed with that, and we have
14 attached a letter from Mr. Eisendrath that reflects that
15 agreement. At other times the CHA has not agreed with that, as
16 they do not agree now.

17 Throughout that process Mr. Levin has asked me to
18 emphasize his attitude has been to try to avoid unnecessary
19 disputes with the CHA or with anyone else and to find a way of
20 working through these problems. And he's often been able to do
21 that by agreement with the CHA; for example, by operating under
22 the title of development manager pursuant to an agreement with
23 the CHA, which has permitted him to fulfill what he understands
24 to be the obligation that he assumed when he became the Court's
25 Receiver, and to do so in a manner that has been acceptable to

1 the CHA and has avoided unnecessary disputes. That's point
2 one. I have two more points.

3 The second point I would like to make relates to
4 correcting some errors that are found in the CHA's last brief
5 that, of course, we didn't have an opportunity to respond to.
6 Part of those issues have been addressed by Mr. Polikoff and I
7 won't repeat what he has said. They relate to the Cabrini
8 Green project.

9 But one point he didn't focus on that the Receiver has
10 asked me to respond to, to mention, is this: The last brief
11 filed by the CHA states in passing, but it's one of those
12 passing comments that stings and hurts, that the Receiver has
13 sought to extract a three percent fee solely for its work on
14 these 44 townhouses that Mr. Polikoff just referred to.

15 The Receiver asked me to mention to the Court that its
16 involvement in Cabrini Green went way beyond that. It included
17 at least a thousand hours of effort, over a year-and-a-half in
18 planning the redevelopment project, in hiring architects, in
19 preparing the request for proposal that then generated ten
20 responses.

21 In reviewing all of those responses and meeting with
22 the city, with the Park District, with the Board of Education,
23 of course with HUD, of course with the CHA, and in formulating
24 plans and responding to a large redevelopment program, the
25 Receiver also developed initially in Kenwood/Oakland the

1 concept of using rental units on a long-term lease basis for
2 CHA resident housing, and that was then applied and that led to
3 this 44-unit development in Mohawk North that is actually the
4 first housing that -- new housing that Cabrini Green residents
5 have moved into.

6 When it came time to build the 44 units, the
7 Receiver's fee for that would have been \$120,000 computed at
8 the three percent rate. The CHA's brief does not mention that
9 the Receiver offered to accept less than that and, in fact,
10 accepted \$35,000. And the brief doesn't mention that this was
11 the first townhouse -- that the townhouse occasion was the
12 first occasion on which the Receiver could seek to be
13 compensated because it was the first project being built.

14 Perhaps this is more detail than the Court needs in
15 connection with the present motion. I simply wanted to put it
16 before the Court because we did not want to leave you with the
17 impression that those inappropriate comments by the CHA,
18 suggesting a mercenary attitude on the part of the Receiver,
19 were accurate.

20 Indeed, Mr. Eisendrath and Mr. Shuldiner, both of the
21 CHA, told the Receiver that they recognized that the Receiver
22 was entitled to be compensated for efforts made in connection
23 with Cabrini Green. The question was not whether but how it
24 should be structured, out of what project funds it should come.

25 So then I would like to come, if I may, to the third

1 point that the Receiver would like me to make. And he is, as I
2 mentioned, available in court to answer any questions the Court
3 may have.

4 The third point is this: That from the Receiver's own
5 experience in creating housing pursuant to the court order
6 appointing him as Receiver, he has something to say about
7 whether it is possible, as Mr. Polikoff says, or impossible, as
8 CHA says, to provide housing that meets both the goals of HOPE
9 VI and the goals of the Gautreaux receivership.

10 And what he has to say is this: If you look at the
11 material that's attached as Exhibit B to the initial motion
12 filed, the brief filed by CHA, it includes the guidebook
13 published by HUD. And the guidebook makes it quite clear that
14 the purposes of HOPE VI housing are, as Mr. Polikoff indicated,
15 quote, tearing down the eyesores that are often identified with
16 obsolete public housing and replacing them with homes that
17 complement the surrounding neighborhoods and are attractive and
18 marketable to the people they are intended to serve, end of
19 quote. And that they are, quote, intended to lessen
20 concentrations of poverty by placing public housing in non-
21 poverty neighborhoods or by promoting mixed-income communities
22 where public housing once stood, thereby ending the social and
23 economic isolation of public housing residents, end of quote.

24 What Mr. Levin would like me to mention to the Court
25 is that that is exactly what he has been doing in implementing

1 Gautreaux and in using HOPE VI funds, because ABLA and the
2 Horner Phase II are both Receiver projects that use HOPE VI
3 funds. So the notion of incompatibility is inconsistent with
4 what is actually happening in the field.

5 And in doing that, the objective that is reflected in
6 the HUD guidebook, which is a terribly important piece of
7 national policy as well as Gautreaux objective, of
8 deconcentrating and integrating public housing residents into
9 the community so that they have an opportunity for all of the
10 advantages that flow from that kind of deconcentration and that
11 kind of integration, economic, educational, employment
12 opportunities, many others -- that's precisely what the
13 Receiver has been doing in working with the community, because
14 there is an intensive community component in persuading
15 communities that CHA replacement housing will be an asset to
16 the community, in working with elected officials, in working
17 with HUD, in working with the CHA.

18 The message that I have been asked to deliver, and I
19 hope I have, is that there appears to be, to the Receiver, no
20 incompatibility whatsoever between those two programs; that is,
21 this Court's Gautreaux objectives and what the Receiver is
22 actually doing in implementing Gautreaux housing, in some cases
23 using HOPE VI funds.

24 If you have questions for Mr. Levin, he is available.

25 THE COURT: Thank you, Mr. Shakman.

1 Is there anybody from HUD here who wishes to address
2 the Court?

3 MR. JENSEN: Good morning, your Honor. I am Jon
4 Jensen. We did file a brief response.

5 THE COURT: I know you did.

6 MR. JENSEN: But we really had not been prepared to
7 address this particular issue, unless you had any questions for
8 us.

9 THE COURT: Well, by the fact that you have decided
10 not to file a brief and are not prepared to address the issue,
11 I take it that my ruling really is a non-issue as far as HUD is
12 concerned?

13 MR. JENSEN: I think that is true.

14 I guess the only point is, we decided -- HUD decided,
15 that is, to defer to the suggestion in CHA's original brief.
16 In a footnote in their brief they claim that the issue was not
17 who had development responsibility for HOPE VI funding but
18 whether HOPE VI funded activity was subject to the basic order
19 of the Court.

20 We had very definite opinions, very much reflected in
21 Mr. Shakman's brief of the Receiver, that indeed the Receiver
22 has all responsibility connected with the development, whether
23 HOPE VI or otherwise.

24 But CHA indicated in its footnote that that was not
25 the issue that was being presented to the Court. I think they

1 said that that would entail an entirely different briefing
2 schedule and -- a motion and entirely different briefing. HUD
3 as a department deferred to CHA's suggestion in that regard.

4 THE COURT: Thank you.

5 MR. JENSEN: Thank you.

6 THE COURT: Ms. Getzendanner?

7 (Brief pause.)

8 THE COURT: Let's take about a two-minute break for
9 this case so I can call one other case and let the lawyers go
10 on their way.

11 (Whereupon, the Court directed its attention to another
12 matter on its call, after which the following proceedings were
13 had herein:)

14 THE CLERK: Clerk 66 C 1459, Gautreaux versus CHA.

15 MS. GETZENDANNER: The CHA paid \$35,000 for these two
16 volumes. They have paid him nothing more, the Receiver.

17 The Receiver has no contract with respect to Cabrini
18 Green, he has no role with respect to Cabrini Green. He did
19 ask for a three percent fee based on the building of the
20 townhouses, and knowledge of that was more than the work he had
21 done for which he could be compensated. I believe that's what
22 he said. For the work where he could not be compensated, he
23 wanted that fee to cover that work and the CHA refused. It's
24 that simple.

25 There is no role for the Receiver at Cabrini Green and

1 that's been clear, I think, from the outset, since 1993.

2 To the extent that HOPE VI funds were made available
3 to this Court and to the Gautreaux plaintiffs, those were
4 pursuant to a set-aside that was negotiated back in 1993 when
5 HUD was still in the case.

6 Basically what happened was, HUD agreed to 350 units
7 that could be built with HOPE VI money, provided they got
8 credit under Gautreaux for it. And so that's what brought the
9 Gautreaux order into that 350 units.

10 HUD is no longer a party to the case, at least I don't
11 think -- has it been dismissed?

12 THE COURT: I believe so.

13 MS. GETZENDANNER: They're not here.

14 So the only time HOPE VI money has been used has been
15 for that, quote, replacement housing pursuant to a negotiated
16 deal between HUD, the Receiver and the plaintiff.

17 No other HOPE VI funds have been drawn down, nothing.
18 Nothing has been used at Cabrini Green. No HOPE VI funds are
19 used there.--They haven't been drawn down yet. HUD is waiting
20 for the Court's order.

21 So there is no precedent here that HOPE VI funds have
22 been used willy-nilly for replacement housing. That's not what
23 has happened.

24 The public housing, a program that HOPE VI presents,
25 is wildly different from the Gautreaux judgment. We believe

1 there are geographic requirements in the HOPE VI program. The
2 whole thing talks about neighborhoods where distressed public
3 housing exists.

4 If CHA were to submit an application that met the
5 terms of the decree, it would provide 50 percent of any funds
6 used for new construction would be used in general areas. And,
7 Judge, it's the CHA's position that that is a non-starter.
8 That will not be approved by HUD.

9 THE COURT: I think HUD has had the opportunity to
10 speak to that point and apparently has chosen not to.

11 MS. GETZENDANNER: Pardon?

12 THE COURT: I say, HUD has had the opportunity to
13 speak to that point and apparently has chosen not to.

14 MS. GETZENDANNER: There's no question that we have a
15 letter from HUD that says that we cannot draw down the HOPE VI
16 funds unless we get this Court's approval, and that's what
17 drove us to file our motion. And we do not believe that the
18 Court has jurisdiction over the HOPE VI funds.

19 The HUD lawyer who wrote the letter, I am told, was
20 reprimanded for writing that letter. I don't think there's any
21 basis for HUD's conclusion that the injunction governs HOPE VI.

22 They looked at the order appointing the Receiver,
23 which is different. The Receiver has no authority if the
24 plaintiffs have no authority. So the fact that the Receiver's
25 order is broadly stated is not terribly relevant to what we are

1 raising with this Court, which is, what is the scope of this
2 injunction.

3 Now, I think the best way to talk about why HOPE VI
4 isn't covered by the injunction is to assume that it is. If
5 HOPE VI applies to -- or, I'm sorry, if the injunction applies
6 to HOPE VI, what will happen is that to present a competitive
7 application to HUD we will need a waiver from this Court. We
8 cannot submit a program that calls for 50 percent of new
9 construction in general areas.

10 It's the waiver process that is the most intrusive,
11 and we've spent a lot of time in our briefs talking about the
12 waiver process. But here's how it goes in reality: CHA needs
13 to get a waiver from the Court to do a HOPE VI program. That
14 means the Court will ask us to negotiate with Mr. Polikoff, as
15 plaintiffs' representative. And that's a perfectly appropriate
16 thing for the Court to do, to ask the parties to sit down --

17 THE COURT: It's gone on for a couple decades.

18 MS. GETZENDANNER: Yes, no question about it. So we
19 will sit down and negotiate.

20 Mr. Polikoff will begin the negotiations by first
21 examining what neighborhood it is we're focusing on; next, what
22 buildings do we want to demolish; next, what buildings do we
23 want to rehabilitate; next, where are we going to build the
24 replacement housing; and then it's going to go all the way down
25 to tenant selection and then to all of the other miscellaneous

1 things that were brought to the attention of the Court by the
2 Receiver in connection with Horner.

3 So the negotiation that would be required by the
4 Court, and properly so, would bring the plaintiffs into the
5 whole program. It's very intrusive. I don't think that their
6 statement that all they care about is new construction -- the
7 new construction of new units is just part of the whole. It's
8 part of the whole program designed by CHA.

9 So they are going to want to negotiate from the
10 beginning, and in order to get an agreed waiver we would have
11 to negotiate.

12 Now, when CHA negotiates and they agree on a waiver
13 and they bring it to you, they're not happy with that order.
14 That's what they've been able to negotiate. That's not what
15 they wanted, it's not what they hoped for, but it was what they
16 were able to negotiate. So you would be subjecting the entire
17 HOPE VI program to that process because you cannot expect any
18 application to meet the HOPE VI objectives and comply with the
19 injunction. -- The injunction will have to be waived.

20 And I think when you look at it that way, how can the
21 injunction cover this, this whole program, which is designed to
22 rehabilitate neighborhoods which are in limited areas? I don't
23 -- all the social services, for example -- 20 percent of the
24 funds have to be used for social services. I don't think you
25 can build the units in general areas and have social services

1 make any difference.

2 The whole thing is pointing to neighborhood
3 redevelopment and it's a new program. We cannot agree to waive
4 the HOPE VI requirements. CHA has no power to do that.

5 I think when HUD was in the case this Court had a lot
6 of authority because the HUD consent decree required them to
7 build so many new units, but that authority is now gone. The
8 Court can't tell HUD what to do, and I don't think the Court
9 would want to. I think that really would interfere with the
10 federalism concerns.

11 Mr. Polikoff argued in terms of HOPE VI presents an
12 opportunity for desegregation opportunities for his class.
13 HOPE VI does not provide a desegregation opportunity in the
14 general areas; it simply does not. And that's what the whole
15 injunction is tilted toward, building in general areas. It's a
16 way to achieve integration. It's a 30-year-old way; it's not
17 the way Congress is doing it today.

18 THE COURT: What about the language in the HOPE VI
19 manual? It seems to be consistent with the aims of the
20 plaintiffs.

21 MS. GETZENDANNER: Judge, think of the general areas
22 in the City of Chicago. How can building in the few remaining
23 general areas in the city help the reconstruction of the Robert
24 Taylor home neighborhood? It can't. It's unconnected. It's
25 not part of the program. It's an integrated program, it

1 requires demolition, rehabilitation, Section 8 certificates,
2 building of new replacement units and social services, job
3 training, the whole thing, all devoted to that neighborhood.
4 And the goal is to make it an economically diverse
5 neighborhood.

6 I don't think you can take a line out of a handbook
7 and ignore the legislative history, the language of the
8 statute, the fact that this is a new program that's supposed to
9 reform public housing policy. It's a brand new program. It's
10 never been before this Court before in this context directly:
11 Does HOPE VI apply? Is it governed by the injunction?

12 The CHA is required under HOPE VI to work with the
13 local government, which is the City of Chicago. There's no
14 requirement to -- there's no opportunity to use HOPE VI funds
15 for any remedial injunctive relief. After the Cisneros
16 set-aside for the 350 units, Congress amended the act and said
17 that's not going to happen again. So there really is no
18 opportunity to use those monies for the Gautreaux remedy.

19 We did not respond to the cases cited in
20 Mr. Polikoff's brief -- he made that point -- because they are
21 general statements and totally inconsistent with the Seventh
22 Circuit.

23 So if you look at the Seventh Circuit law, I don't
24 think since alliance to end repression, which was my case -- I
25 don't think there's been a consent decree that the Seventh

1 Circuit hasn't sent back for re-writing, which I think the
2 Rockford case -- or totally rejected; they set it aside. So no
3 consent decree has survived Seventh Circuit scrutiny.

4 I think there was a recent case --

5 THE COURT: CHA has never moved to terminate the
6 consent decree.

7 MS. GETZENDANNER: Nor do we want to, Judge.

8 THE COURT: With your track record in the Seventh
9 Circuit, it might be in your interest to do so.

10 (Laughter.)

11 MS. GETZENDANNER: We think that the evidentiary
12 battle necessary to establish the grounds for changing the
13 injunction would be very divisive for the community. You know,
14 is there segregation, who's responsible for it, what impact
15 does white flight have on it, what impact does any number of
16 factors have to do with it. We don't want that fight, Judge.
17 We don't want it for the community.

18 The Gautreaux remedy should stay in place. In the
19 event future funding is made available which would permit the
20 CHA to build housing in general areas, where we have an
21 opportunity to use that funding for that purpose, a Gautreaux
22 remedy will be there. Perhaps at that time we will move to
23 vacate the decree, but there is no need to do that now.

24 Just as the Court held that the Section 8 certificates
25 are not governed by this decree, there is no distinction

1 between that analysis and the HOPE VI funds.

2 We agree that the HOPE VI new construction, forgetting
3 that it is replacement housing, that does fall within the
4 definition of dwelling unit, no question about it. But we are
5 asking the Court to construe the injunction in a way that's
6 consistent with its requirements, and its requirements are
7 geographical.

8 Judge Austin required the building of housing in
9 general areas. He said, if you're going to build, build one
10 here and three there, and now it's 50/50. And those kinds of
11 requirements only are applicable to new housing, housing that
12 adds to the stock.

13 THE COURT: How do you square that with the language
14 that Mr. Polikoff read about replacement housing in the decree?

15 MS. GETZENDANNER: In the what?

16 THE COURT: How do you square that with the language
17 that Judge Austin used which specifically dealt with
18 replacement housing, the language that Mr. Polikoff read
19 before?

20 MS. GETZENDANNER: I don't recall him saying that.

21 THE COURT: Okay.

22 MS. GETZENDANNER: Surely the rehabilitation process
23 of existing housing was left to the CHA.

24 Mr. Polikoff, what did you say?

25 THE COURT: Well, he will have a chance in a minute.

1 MS. GETZENDANNER: I would like to respond. I just
2 don't recall what he said.

3 THE COURT: I will let you respond to that later, if
4 need be.

5 MS. GETZENDANNER: Okay.

6 I don't think that the Court should interpret the
7 order as applying to HOPE VI because it is, in effect, an
8 injunction against the CHA from applying for the funds. That's
9 exactly the essence of it.

10 The CHA knows they're not going to get funds if you're
11 going to build in general areas, so we can't apply. And we
12 would suggest to the Court that that's as a result of the court
13 order. And that raises concerns, federalism concerns,
14 separation of power concerns, which we have addressed in our
15 brief.

16 Judge, the program, the HOPE VI program, cannot be cut
17 into pieces. It's an integrated, complex solution. Congress
18 has said it's new, it's to reform a new way of thinking about
19 public housing. It is clearly designed to repair neighborhoods
20 that have been destroyed by distressed public housing.

21 There is no possibility that we can apply for funds
22 and expect to use those funds for general areas.

23 We've gone back and forth in our briefs about who said
24 what to whom. And again, we don't want an evidentiary battle
25 here, but there are some things that are in the record,

1 including the letters Mr. Polikoff sent to you. But there are
2 also clear indicia that plaintiffs have known for years that
3 HOPE VI funds were not considered to be under the injunction.

4 On July 11, 1996, Mr. Cisneros wrote to Mr. Polikoff,
5 and that's at Exhibit D attached to our original memorandum,
6 and he says, as a matter of law we cannot use HOPE VI funds as
7 a set-aside for Gautreaux. As a matter of law we can't do
8 that. A set-aside to the Receiver is not appropriate because
9 the statute in the first instance leaves to the public housing
10 authority's discretion whether it wants to apply for a HOPE VI
11 grant at all and how it would want to use the funds for which
12 it applies.

13 So that's a clear statement by the then secretary of
14 HUD that the HOPE VI money could not be used for the Gautreaux
15 remedy, and this is after the 1993 set-aside, which did get
16 through but which Congress then condemned with an amendment to
17 the law. I withdraw condemned. They made sure it wasn't going
18 to happen again.

19 So the plaintiffs have known. We think that their
20 application on the Section 8 certificates is pretty positive
21 proof that they didn't think HOPE VI was governed.

22 There's nothing in the record that should be binding
23 on the CHA that their view is that the injunction covers HOPE
24 VI funds. I don't think there's anything in Edwin Eisendrath's
25 letter from several years ago; I don't think there's anything

1 THE COURT: No, and I understand that completely.

2 MR. POLIKOFF: Okay.

3 THE COURT: I am just concerned about whether the
4 persons in the new housing in the general areas will, by
5 necessity, not have the benefit of the HOPE VI dollars for
6 these other ancillary activities.

7 MR. POLIKOFF: It's up to CHA, your Honor, and I refer
8 to the example of Horner. In Horner a vote was taken -- which
9 is not a HOPE VI project but which CHA acknowledges in its
10 brief in many respects is like a HOPE VI project.

11 The tenants were given an opportunity to express their
12 choice with respect to the form of replacement housing, on
13 site, in the neighborhood, in other neighborhoods, scattered
14 site or Section 8. Roughly about half chose one, half chose
15 the other. So half of the Horner people have been dispersed to
16 other neighborhoods of the city.

17 Are the job training dollars, if there were any at
18 Horner, all the social services activities at Horner, to follow
19 those people to West Rogers Park? That's for CHA to decide or
20 not to decide. I think it's pretty clear that they are not.

21 Indeed, there was supposed to be a family needs
22 assessment taken under the Horner consent decree of all of the
23 people, and my understanding is it's pretty well decided not to
24 take such an assessment of people who have chosen to leave.
25 But even if it is taken, not to follow up the services.

1 Ms. Getzendanner is right when she says there is a
2 neighborhood focus to HOPE VI activities, and the focus on the
3 neighborhood of the job training dollars would be perfectly
4 appropriate.

5 If CHA wanted to offer any of those social services to
6 people who moved, it would be up to them. They could do that;
7 nothing to prevent them. We are not asserting, have not
8 asserted, any claim by a Gautreaux on anything but the
9 replacement housing, where it's located.

10 THE COURT: Okay.

11 Ms. Getzendanner --

12 MR. POLIKOFF: By the way, I want to add a footnote to
13 what I just said. That's consistent with the language of HOPE
14 VI. HOPE VI talks, as I quoted to you, about replacement
15 housing going into non-poverty neighborhoods. There is not one
16 indication in the statute or the guidebook that the HOPE VI
17 proponent, in this case CHA, has got to follow those people
18 into non-poverty neighborhoods with job training.

19 The whole theory of desegregation is that if you
20 enable families to move into non-poverty neighborhoods, they
21 would be forced to get into places where security is better,
22 where access to jobs is better, where schools is better and
23 they have a lesser need by reason of their location for social
24 services.

25 THE COURT: You quoted some language earlier of Judge

1 Austin's that applied to replacement housing in particular.

2 Ms. Getzendanner, I think --

3 MR. POLIKOFF: Yes. I think Ms. Getzendanner is -- it
4 pains me to say this, your Honor -- right and that we were not
5 right in this respect.

6 THE COURT: All right.

7 MR. POLIKOFF: I think what she is referring to and
8 what you were asking about was language that I quoted from the
9 judgment order.

10 THE COURT: Okay.

11 MR. POLIKOFF: And it referred -- it didn't use the
12 word replacement. It did talk in terms of housing provided
13 directly or indirectly by CHA, whether in a structure owned in
14 whole or in part by CHA, whether or not newly constructed or
15 not, et cetera. It did not use the word replacement.

16 THE COURT: It did not use the word replacement.
17 Okay. That's fine.

18 It's your contention that that language embraces
19 replacement housing, is that correct?

20 MR. POLIKOFF: Well, not only the language embraces
21 it, but as I argued, that's the rational thrust of the order,
22 because through replacement housing you can provide
23 desegregation opportunities. But, also, that your prior
24 orders, the nunc pro tunc and subsequent orders --

25 THE COURT: I understand my prior orders. I just want

1 to make sure we all have the same reference to Judge Austin's
2 --

3 MR. POLIKOFF: When I say embraces -- answer you
4 affirmatively by saying, yes, it's my contention it embraces
5 replacement housing, I mean that not because it says that in so
6 many words, but that it obviously sought to cover all kinds of
7 housing provided by CHA which could be used to provide
8 desegregation opportunities, and replacement housing answers
9 that description.

10 THE COURT: Okay. Thank you.

11 MR. POLIKOFF: Thank you, your Honor.

12 THE COURT: Do you want to reply to either of those
13 points, Ms. Getzendanner?

14 MS. GETZENDANNER: No. I'm happy to have his
15 concession.

16 MR. SHAKMAN: Mr. Levin asked me if I would poke my
17 nose in for a moment. May I?

18 THE COURT: Sure.

19 MR. SHAKMAN: He asked me to make this point, that
20 Cabrini, Horner II, which is a HOPE VI program, and ABLA, which
21 involves HOPE VI money, none of those required a waiver from
22 Gautreaux to permit a HOPE VI application. He asked me to
23 underscore that point for the Court.

24 Therefore, the statement that automatically you must
25 have a Gautreaux waiver in order to implement a HOPE VI

1 activity, for example, in those revitalizing areas, is not
2 correct.

3 And I am going to resist the urge to further debate
4 the scope of the --

5 THE COURT: You don't have to debate any ancillary
6 issues. I understand your position.

7 MR. POLIKOFF: Your Honor, might I make one more
8 observation?

9 THE COURT: Yes.

10 MR. POLIKOFF: Ms. Getzendanner has repeatedly said,
11 both today and in the briefs, they couldn't file a HOPE VI
12 application that provided 50/50. The answer is that in your
13 Horner order you have clearly recognized that housing on site,
14 if done under the right conditions imposed by your orders, as
15 at Horner, mixed income and so on, under revitalizing
16 conditions, is an alternative way of providing desegregation
17 opportunities to the plaintiffs. And the Horner precedent
18 stands against the contention that the only way is to do 50/50.

19 THE COURT: Okay. Thank you.

20 MS. GETZENDANNER: Your Honor, I just make the
21 observation that there's your orders to which we could agree --
22 CHA could agree to those orders. The CHA cannot agree to
23 divert money from HOPE VI to general areas.

24 THE COURT: Okay. Thank you very much.

25 I will rule in due course and due course will be soon.

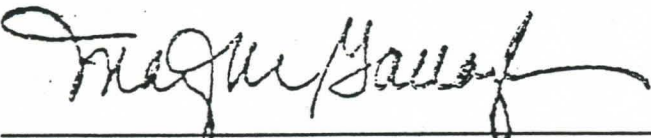
1 Thank you.

2 MR. POLIKOFF: Thank you, your Honor.

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

5 CERTIFICATE

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

9
10 
11 _____

12 Official Court Reporter
13 U.S. District Court
Northern District of Illinois
Eastern Division

3/5/97

Date

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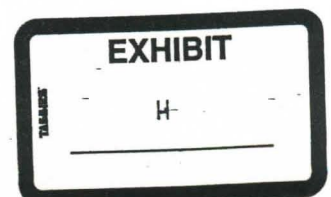
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PURPOSE OF THE HOPE VI PROGRAM

HOPE VI was originally conceived as a demonstration program which would promote fundamental changes in the way PHAs developed and administered public housing, and in the way HUD related to those PHAs. Its purpose was and remains to revitalize severely distressed or obsolete public housing developments. HOPE VI is a key ingredient in the Department of Housing and Urban Development's Transformation of Public Housing efforts. The elements of public housing transformation that have proven key to HOPE VI include:

1. Changing the physical shape of public housing. This includes tearing down the eyesores that are often identified with obsolete public housing and replacing them with homes that complement the surrounding neighborhoods and are attractive and marketable to the people they are intended to serve, meeting contemporary standards of modest comfort and liveability. HOPE VI funds should be used to create institutional and physical structures that serve the needs of public housing residents over the long term in a cost-effective manner.
2. Establishing positive incentives for resident self-sufficiency and comprehensive services that empower residents. Programs should be outcome-based, directed at residents moving up and out of public housing.
3. Enforcing tough expectations through strict occupancy and eviction rules, such as the "One Strike and You're Out" policy supported by the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120; approved March 28, 1996). The goal of these rules is to improve the quality of life for residents, create safer, family-friendly environments conducive to learning, and make areas around public housing more attractive to businesses that can create well-paying jobs.
4. Lessening concentrations of poverty by placing public housing in nonpoverty neighborhoods, or by promoting mixed-income communities where public housing once stood alone, thereby ending the social and economic isolation of public housing residents, increasing their access to quality municipal services such as schools, and increasing their access to job information and mentoring opportunities.
5. Forging partnerships with other agencies, local governments, nonprofit organizations, and private businesses to leverage support and resources, whether financial or in-kind.



HOPE VI ACTIVITIES AND PROGRAM REQUIREMENTS

In the absence of program Regulations, each HOPE VI grant is governed by the NOFA under which the grant was awarded, and the Grant Agreement executed between the Grantee and HUD.

In addition, the administration of grant and sub-grant funds is subject to all applicable rules, regulations, and policies issued by the Office of Management and Budget (OMB), the General Accounting Office (GAO) and HUD, and to other applicable state and Federal laws and regulations.

The following is a list of eligible HOPE VI activities and the corresponding HUD regulations that apply.

1. Total or partial demolition of buildings or disposition of property (subject to the requirements of section 18 of the 1937 Act (42 U.S.C. 1437p). Demolition and disposition activity funded by HOPE VI must be conducted in accordance with 24 CFR part 970.
2. Capital costs of major reconstruction, rehabilitation, and other physical improvements (including energy retrofits) (subject to TDC limitations). Rehabilitation and physical improvement activities must be conducted in accordance with 24 CFR 968.112(b), (d), (e), and (g)-(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d). These provisions were published in the Federal Register on March 5, 1996 (61 FR 8712, 8738), and are included in the May 1, 1996 codification of the Code of Federal Regulations.
3. Capital costs of replacement housing, including homeownership housing (subject to TDC limitations).

Public housing development (including on-site reconstruction as well as construction of off-site housing) funded by HOPE VI must be conducted in accordance with 24 CFR part 941. (Streamlined 941 subparts A-E were published in the Federal Register on July 22, 1996.)

Mixed finance development must be conducted in accordance with 941 subpart F (published in the Federal Register on May 2, 1996 (61 FR 19708, 19714)).

Units acquired or otherwise provided for homeownership under section 5(h) of the 1937 Act must be administered in accordance with 24 CFR part 906; housing opportunity programs of construction or substantial rehabilitation of homes must be administered in accordance with 24 CFR part 280 (the Nehemiah Program);

Housing activities under the HOPE II program must be conducted in accordance with 24 CFR subtitle A, appendix B;

Housing activities under the HOPE III program must be conducted in accordance with 24 CFR subtitle A, appendix C;

U. S. Department of Housing and Urban Development
Secretary's Representative

November 14, 1995

Distribution: 11/17/95 kac
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A. Retyas
File

Mr. Daniel Levin
Chairman
The Habitat Company
350 West Hubbard Street
Chicago, IL 60610

RE: Cabrini Green Development Program

Dear Mr. Levin:

This will confirm our understanding and agreement that as Receiver under the court order in the Gautreaux case, you will perform the function of CHA's "development manager" for the Cabrini Green development program, including the Hope VI program, similar to the manner in which you are functioning in the Henry Horner Homes development program.

Sincerely,



Edwin Eisendrath
Secretary's Representative

Copy to: ~~Joe Shuldiner~~



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

June 2, 1995

Chicago Housing Authority
Board of Commissioners
626 W. Jackson Blvd.
Chicago, IL 60661

SUBJECT: Declaration of Substantial Breach and Substantial
Default of the Annual Contributions Contract

Dear Commissioners:

By this letter the Department of Housing and Urban Development ("HUD") hereby accepts the resolution of the Board of Commissioners of the Chicago Housing Authority, adopted on May 26, 1995, whereby the Board transferred operational control of the operations of the Chicago Housing Authority to HUD. The Department also acknowledges the resignations of all of the present members of the Board provided for in the Board's May 26 resolution.

On June 13, 1972, the Chicago Housing Authority (the "Authority" or "CHA") and the Secretary of the United States Department of Housing and Urban Development, entered into Consolidated Annual Contributions Contract No. C-1014, which as amended from time to time is hereafter referred to as the "ACC."

Pursuant to Sections 501 and 502 of the ACC, HUD has determined that the Authority is in Substantial Breach and Substantial Default of the ACC as such terms are defined in Section 506 and 507. Specifically, you have failed to operate the housing projects, developed with Federal financial assistance, for the purpose of providing decent, safe, and sanitary housing within the financial reach of low-income families as required by Section 201 of the ACC. This violation constitutes a Substantial Default under Section 506 (4) of the ACC. Moreover, you have flagrantly failed to maintain the projects in good repair, order and condition as required by Section 209 of the ACC. In addition you have flagrantly failed to operate the housing projects in an efficient and economic manner consistent with the requirements of Section 201 of the ACC. These violations constitute a Substantial Breach under Section 507(7) of the ACC.

These contractual violations also constitute the occurrence of a Substantial Default as that term is defined in Section 6(j) of the United States Housing Act of 1937 (the "Act") and 24 C.F.R. Section 901.05(y).

EXHIBIT

In accordance with Sections 501 and 502 of the ACC, Section 6 (j) of the Act and 24 C.F.R Section 901.215, upon the occurrence of a Substantial Breach or a Substantial Default, the Local Housing Authority shall, upon demand by the Government, deliver possession of the projects to the HUD.

HUD recognizes CHA's cooperation to remedy these violations as evidenced by the Board's voluntary transfer of the CHA's projects and assets, including the day-to-day control over the operations of the CHA to HUD. On the effective date of this resolution, May 30, 1995, HUD took possession of CHA's projects.

During HUD's possession of CHA's projects, HUD's rights and obligations are defined by Section 505 of the ACC and by 24 C.F.R. Section 901.220(a). The ACC and the regulations explain that during possession of the projects, HUD assumes the operational responsibility of any or all existing public housing projects administered by the CHA.¹ In addition, the ACC allows HUD, while in possession of CHA's projects, to act in its own name and on its own behalf or to act as the CHA. ACC, Section 505(B). The regulations further support HUD's ability to act exclusively as the CHA during possession. 24 C.F.R. Section 901.220 (a).

Consistent with Section 505 and 24 C.F.R. Section 901.220 (a), HUD, while in possession of the CHA projects, will act in the name of and on behalf of the CHA. HUD's possession of the CHA's projects does not, however, supersede or replace the CHA Board of Commissioners as created in accordance with Illinois statutes. During HUD's possession of CHA's projects, the CHA Board loses all authority and power to operate and create policy relating to its public housing projects. However, the CHA remains liable for its acts and omissions prior to the effective date of HUD's possession. In addition, post-takeover, HUD, in its legal capacity as the CHA, does not impose liability on HUD for any acts or omissions committed by HUD, acting in its legal capacity as the CHA, while in possession of the projects. In other words, CHA and HUD retain their separate legal identities.

Once again thank you for your spirit of cooperation. It is my sincere hope that substantial and positive change can be made for the benefit of the residents of Chicago's public housing.

Sincerely,


Henry G. Cisneros

¹ This breach determination does not alter or affect existing court orders running against CHA, including its present receivership for development.



The Chicago Housing Authority

Edwin Eisendrath
Chairman

Joseph Shuldiner
Executive Director

Executive Committee
Rosanna Marquez
Artensa Randolph
Timothy W. Wright III
Dr. Mildred Harris

Ed Moses
Deputy Executive
Director for Community
Relations & Involvement

Ana Vargas
Deputy Executive
Director for Finance and
Administration

Jerome M. Buder
General Counsel

April 30, 1997

Mr. Daniel Levin
Chairman
The Habitat Company
350 W. Hubbard St.
Chicago, Illinois 60610

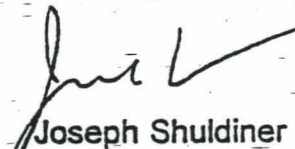
Dear Mr. Levin:

**SUBJECT: TRANSMITTAL OF EXECUTED HORNER HOPE VI
AND ABLA/BROOKS EXTENSION HOPE VI
DEVELOPMENT MANAGEMENT AGREEMENT**

Enclosed is one (1) original executed Horner HOPE VI and ABLA/Brooks Extension HOPE VI Development Management Agreement dated April 21, 1997. This document details provisions for The Habitat Company to perform development manager services for the 350 public housing replacement units contemplated under the HOPE VI Program. ABLA/Brooks Extension will receive 200 replacement public housing units and Henry Horner homes will receive 150 replacement public housing units.

Please do not hesitate to contact Andrew Rodriguez of my staff at (312) 791-8500, Extension 4501 if you have any questions or if we can provide assistance.

Sincerely,


Joseph Shuldiner
Executive Director

Enclosure

cc: Andrew Rodriguez, Director, Redevelopment Division
Valerie Jarrett, Executive Vice-President, The Habitat Company
Phillip Hickman, Senior Vice-President and Director of Scattered
Sites, The Habitat Company

HORNER HOPE VI AND
ABLA/BROOKS EXTENSION
HOPE VI DEVELOPMENT MANAGEMENT AGREEMENT

April 21

This AGREEMENT ("Agreement") is made and entered into as of _____, 1997 between the Chicago Housing Authority, a municipal corporation organized and existing under the laws of the State of Illinois (the "Authority"), and The Habitat Company, an Illinois corporation ("Habitat").

RECITALS:

- A. The Authority is a public housing agency authorized to operate public housing in the City of Chicago pursuant to the Illinois Housing Authorities Act. Daniel Levin and The Habitat Company were appointed Receiver for the development of all non-elderly CHA public housing development programs on August 14, 1987, by the U.S. District Court (Gautreaux Case).
- B. The Authority submitted an application to the United States Department of Housing and Urban Development ("HUD") for funding of a Hope VI-Urban Revitalization Demonstration Program (Hope VI) pursuant to which HUD authorized the development of 200 units of housing to replace units scheduled for demolition in the public housing development community known as Brooks Extension (IL 2-31), which is a part of the combined public housing property known as ABLA (Abbott, Brooks, Loomis, Addams) and 150 units of housing to replace units scheduled for demolition in the public housing development community known as Henry Horner Homes - Phase II (IL 2-19), and Extension (IL 2-35), all as described in the application.
- C. HUD approved funding for the Hope VI-Urban Revitalization Demonstration Program and pursuant thereto, HUD and the Authority plan to enter into an Implementation Grant Agreement (Form HUD- 1 044) to develop 200 replacement public housing units for the total amount of twenty-four million four hundred eighty-three thousand two hundred fifty dollars (\$24,483,250), and to develop 150 replacement public housing units for the total amount of eighteen million four hundred thirty-five thousand three hundred dollars (\$18,435,300).
- D. Hope VI provides for the integration of public housing units into a sustainable, mixed-income community, which requires coordinated and comprehensive planning, and effective implementation of the plan.
- E. The Authority desires to contract with Habitat to be development manager for the 350 public housing replacement units contemplated under HOPE VI Program (The Program). The Authority may desire to delegate to Chicago Metropolitan Housing Development Corporation (CMHDC) certain responsibilities/activities referred to in this Agreement as those of the Authority.

- F. Notwithstanding this contract, the terms of the Receivership Order in the Gautreaux Case dated August 14, 1987, appointing Daniel Levin and The Habitat Company as Receiver for the development of all non-elderly CHA public housing development programs (Receiver) are not affected or altered in any way by this contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Obligations of Habitat and the Authority. Habitat and the Authority shall cooperate with each other in coordinating and managing the planning and implementation of the Program in accordance with the provisions of the Program in accordance with the provisions of the Annual Contribution Contract No. IL06URD00___ (Note: issuance by HUD is pending at this time (the "ACC")), as the same may be amended from time to time, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. Habitat agrees that in performing its obligations hereunder, it will comply with all applicable laws, including but not limited to, the applicable provisions of the United States Housing Act of 1937, as amended, the ACC and the applicable HUD regulations and HUD handbooks, but nothing shall prevent Habitat from requesting the Authority to seek a waiver of any of the applicable provisions of any of the foregoing. Habitat understands that although the Authority may request a waiver from HUD, there is no guarantee that HUD will grant such a waiver. In such event, Habitat shall not be relieved of performing its obligations hereunder in accordance with all applicable laws and regulations.
- A. Planning Phase. The Authority in conjunction with Habitat shall solicit comment from the City of Chicago agencies, elected officials, community and business organizations and residents of ABLA. The Authority and Habitat shall solicit qualifications and proposals from, and retain design professionals and other consultants deemed necessary by Habitat to assist in the physical planning and coordination of the development contemplated. The Authority shall review with Habitat the proposals and approve of the contracts for the selected design professionals and consultants.

Habitat and the Authority shall solicit and analyze the proposals in light of the comments received. Habitat shall assist, as requested, and cooperate with the Authority with regard to the preparation of a revised HOPE VI Revitalization Plan for submission to HUD, if necessary, and after seeking approval from counsel for the Gautreaux plaintiffs, shall prepare a request to the U.S. District Court for permission to build replacement public housing in the ABLA area by declaring it a "Revitalizing Area."
- B. Implementation Phase. Upon the Authority's and HUD's approval of an acceptable development program (the "Approved Program"), Habitat shall in cooperation with the

Authority, be responsible for all aspects of the implementation phase of the Approved Program including, without limitation:

- 1) Land acquisition, as necessary;
- 2) Unit design and density;
- 3) Determination of form of construction arrangement and negotiation of terms thereof;
- 4) Development budgets for each phase of the Program;
- 5) Selection of design professionals and consultants;
- 6) Negotiation of contracts with developers selected by Habitat to implement the Approved Program and
- 7) Supervision of the construction during the construction phase and coordination with the Authority and HUD during the warranty and post-construction phases.

The Authority and Habitat shall each delegate a staff person as the Official Representative (O.R.) to respectively represent the Authority and Habitat in business matters regarding this Agreement. The O.R. (or his/her designee) of the Authority shall provide prompt review of any request for approvals by Habitat. Examples of situations/activities requiring prior approval by the Authority's O.R. are:

- a. Contracts to acquire real property;
- b. Final design and the development site plan;
- c. Selection of design professionals and consultants;
- d. Construction contracts;
- e. The total development cost (TDC) budget prepared for HUD approval.

The Authority's approval of the total development cost budget attached hereto as Exhibit B expressly authorizes Habitat to expend and draw down funds from CHA to the extent the amounts are within the limitations in the following budget categories: administration, planning and IOD, site acquisition (except for the property purchases).

Habitat shall advise the Authority in advance of all communications, presentations and submissions to government officials, community organizations or representatives in connection with its role as Development Manager for the Program. Should the Authority deem it appropriate for Authority personnel to become involved in the aforesaid activities, Habitat shall fully operate with the Authority in any such effort.

- C. Personnel and Performance Habitat shall devote such time and personnel as necessary for the diligent, effective, thorough and careful performance of its duties hereunder. Habitat agrees to use its best skill and judgment in the performance of its obligations hereunder and to cooperate with Authority staff or agents in promoting the interests of the Approved Program. Habitat agrees to provide timely administration and advice, and to provide professional superintendence and administration of the work related to the Approved Program.

- D. No Employer/Employee Relationship. Notwithstanding the foregoing, it is explicitly acknowledged that Habitat is engaged as an independent contractor for the performance of the services described herein. The Authority and Habitat are not partners, or joint venturers, and have no employer/employee relationship.
2. Compensation. Habitat shall be paid a development manager fee ("Developer Fee") equal to the greater of 3% of the Total Development Cost ("TDC") or \$3672.49 per unit, for each completed unit of public housing under the Approved Program. This fee is provided for in the "planning" category of the Development Budget. Additionally, Habitat shall be reimbursed for all administrative costs directly associated with site acquisition, administration and planning ("Costs") listed in the Development Budget. Notwithstanding the foregoing, the sum of all Developer Fees and Administrative Costs payable by the Authority shall not exceed the greater of 7% of the TDC, or \$8569.14 per unit, whichever is greater. The portion of the Developer's Fee attributable to each completed unit shall be earned and paid upon completion (denoted by issuance of a Certificate of Occupancy by the City of Chicago) and transfer of such unit. Costs shall be paid within 30 days of receipt of an invoice. Habitat shall invoice the Authority no more than once each month. Notwithstanding the foregoing, it is expressly agreed to and acknowledged that the Authority shall not be responsible for the payment of salaries, wages or other employee compensation and benefits, FICA, payroll taxes, administrative costs, or any federal, state or local taxes relative to Habitat's business. In addition to the above fees and administrative costs to Habitat, the Authority shall receive fees of 3% of the TDC.

The Program contemplates the development of public housing but there may also be market rate housing in a mixed-income setting. To the extent that Habitat receives any development management fees or other compensation in connection with its role in the planning for and/or development of market rate housing, such fees or other compensation shall be divided between the Authority and Habitat as follows: 1/3(one third) to the Authority, 2/3(two thirds) to Habitat.

3. Resident Outreach. The Authority shall be the principal public spokesperson with respect to the Approved Program. As such, the Authority shall coordinate with, and be the principal communication link to the ABLA residents, their official representatives and their consultants. The Authority shall provide Habitat advance notice of such meetings and communications and shall cooperate with Habitat to facilitate the coordination of such communication by joint attendance at such meetings.

The Authority shall be responsible for the demolition and social service components of the Hope VI Program.

4. Cooperation of the Parties. The Authority and Habitat agree to fully cooperate with one another to carry out the planning and implementation of the Approved Program. Both parties agree to execute and deliver any all documents reasonably requested by the other or required

by any governmental authority relative to the Approved Program. The parties agree that if modifications of the ACC or waivers of HUD regulations or provisions are necessary to appropriately implement the Program, they will seek such amendments or waivers from HUD.

5. Indemnification. The Authority shall indemnify and hold Habitat harmless from and against all liabilities, costs, damages and expenses (including without limitation, reasonable attorneys' fees, disbursements and amounts paid in settlement of claims) incurred by Habitat in connection with the Authority's breach of any of its duties and obligations under this Agreement, except any resulting from the gross negligence, or willful breach of any obligation under this Agreement by Habitat, its agents, or others under its direct control. Habitat shall indemnify and hold the Authority harmless from and against all liabilities costs, damages and expenses (including without limitation, reasonable attorneys' fees, disbursements and amounts paid in settlement of claims) incurred by the Authority in connection with Habitat's breach of any of its duties and obligations under this Agreement, except any resulting from the gross negligence of Authority or its willful breach of its obligations under this Agreement.
6. Term. The term of this Agreement shall commence on the date hereof and shall expire upon completion of the Approved Program unless sooner terminated in accordance with the terms hereof. In the event that the (Program or) Approved Program is terminated, or otherwise limited or forestalled for reasons beyond the Authority's control, the Authority may, at its option, terminate this Agreement by written notice to Habitat. Upon termination of this Agreement, including termination pursuant to default, as provided in paragraph 7, Habitat shall immediately refrain from entering into any further contracts or agreements with respect to the implementation of the Approved Program, subject however to its obligations as Receiver, to the extent any obligations exist. Habitat shall also transfer to the Authority, at the time and in the manner reasonably directed by the Authority, all of its right, title and interest in completed and uncompleted work, supplies, materials, contracts, agreements, guarantees, books, papers, reports, records, plans, specifications, drawings, surveys, schedules, reports, and all other property resulting from and related to the performance of Habitat's obligations under this Agreement. Habitat shall be relieved of all responsibility to provide any further services hereunder and the Authority shall assume all and full responsibility for all matters and contracts assigned to it and for the performance of Habitat's obligations hereunder. Furthermore, upon such termination, Habitat shall be promptly paid all compensation for services provided prior to such termination.
7. Default. In the event that Habitat breaches any of its duties or fails to meet any of its obligations hereunder, the Authority shall notify Habitat in writing of such breach or failure. Habitat shall have thirty (30) business days from the date of receipt of such notice to cure such breach or perform such deficient obligation. It shall be an event of default if Habitat has failed to cure any breach or correct any performance deficiency within thirty (30) business days after receipt of notice given in accordance with the terms of this Agreement. Upon the occurrence of an event of default, the Authority shall have the following rights and remedies.

- (a) The right to terminate this Agreement as to any or all of the Approved Program activities effective at a time specified by the Authority;
- (b) All other rights and remedies available at law or in equity.

The parties acknowledge that this provision is solely for the benefit of the Authority and that if the Authority permits Habitat to continue to perform despite Habitat's default, Habitat shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the Authority waive or relinquish any of these rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law or in equity. No delay or failure to exercise any right or power accruing upon any event of default shall impair any such right or power nor shall it be construed as a waiver of any event of default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

- 8. Minority and Women Business Enterprise Commitment. Habitat agrees to comply with the terms and conditions of the Authority's Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") conditions, provided, however, that the Executive Director may waive the MBE and WBE participation requirements. The MBE and WBE schedules are attached as Exhibit C.

During the term of this Agreement, Habitat hereby agrees to provide, and to contract with all contractors and subcontractors performing work/services pursuant to this Agreement to provide, opportunities to the Authority Residents in accordance with C.F.R. Part 135. The MBE and WBE schedules and 24 C.F.R. Part 135 Participation plans shall be attached hereto as Exhibit C and incorporated by references as if fully set forth herein.

- 9. Audit Requirement. Habitat shall keep books, documents, paper, records and accounts in connection with the Approved Program accessible and open to audit by the authority, HUD, the Comptroller General of the United States or their duly authorized representatives, and allow inspection, copying, abstracting and transcriptions. Habitat shall make these records available to the Authority at reasonable times during the performance of this Agreement. In addition, Habitat shall retain all such documents and records in a safe place and make them available for at least three (3) years after the final payment is made in connection with this Agreement and all other pending matters are closed.

Payment of any invoice by the Authority does not constitute a waiver of the Authority's rights to subsequently question, compromise or request repayment or future credit for any invoice previously paid. Habitat shall maintain records showing actual time devoted and

costs incurred.

10. Drug-Free Workplace. Habitat should establish procedures and policies to promote a "Drug-Free Workplace" and should notify all employees of this policy for maintaining a "Drug-Free Workplace," including the penalties that may be imposed for drug abuse violations occurring in the workplace. Habitat agrees to notify the Authority, in writing, if any of its employees are convicted of a criminal drug offense in the workplace no later than ten (10) days after such conviction.
11. Conflict of Interest and Anti-Lobbying. No member of the governing body of the Authority or other units of government and no other officer, employee, or agent of the Authority or other unit of government who exercises any functions or responsibilities in connection with the Approved Program to which this Agreement pertains, shall have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and/or Authority executive and senior staff or employee shall be admitted to share in any part of this Agreement or any financial benefits arising thereunder.

Pursuant to the conflict of interest requirements in OMB Circular A- 1 02 and 24 CFR §85.36(b)(3), no person who is an employee, agent, consultant, officer, or appointed official of the Authority and who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for itself or for those whom it has family or business ties, during his or her tenure with the Authority or for one year thereafter. Furthermore, the Authority represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C. subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended.

12. Compliance with HUD Regulations. In addition to the obligations stated in Paragraph 1, Habitat shall comply with the applicable provisions of HUD regulations, and all state and local laws, ordinances and executive orders including, but not limited to, the Uniform Administrative Requirements contained in 24 C.F.R. §§ 85.1 et seq., (1993), as amended; Title VI of the Civil Rights Act of 1967 (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601-20 et seq.); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Rehabilitation Act of 1973 (29 U.S.C. 794); Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5); Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); National Environmental Policy Act of 1969 (24 CFR Part 58); Clean Air Act (42 U.S.C. § 7401 et seq.); Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended; Flood Disaster Protection

Act of 1973 (42 U.S.C. 4106); Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601); Executive Order 11246, as amended by Executive Orders 12086 and 11375; Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 483 1 (b)); Executive Order 12372; Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276); Byrd "Anti-Lobbying" Amendment (31 U.S.C. § 1352); Debarment and Suspension (Executive Orders 12549 and 12689); and the regulations implementing the laws as set forth in 24 C.F.R. Section 85.1 et seq., (1993), as amended.

13. Governing Law : Dispute Resolution. This Agreement will be governed as to performance and interpretation in accordance with the laws of the State of Illinois.

All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the performance thereof may, if so elected by a party, be submitted to, and determined by, arbitration if good faith negotiations among the parties do not resolve such claim, dispute or other matter within sixty (60) days. Such arbitration shall proceed in accordance with the Commercial Arbitration rules of the American Arbitration Association then pertaining (the "Rules"), insofar as such Rules are not inconsistent with the provisions expressly set forth in this Agreement, unless the parties mutually agree otherwise, and pursuant to the following procedures:

- (a) Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Each party shall appoint an arbitrator, and those party-appointed arbitrators shall appoint a third neutral arbitrator within ten (10) days. If the party-appointed arbitrators fail to appoint a third neutral arbitrator within ten (10) days, such third neutral arbitrator shall be appointed by the American Arbitration Association in accordance with the Rules. A determination by a majority of the panel shall be binding.
- (b) Reasonable discovery shall be allowed in arbitration.
- (c) The costs and fees of the arbitration, including attorney's fees, shall be allocated by the arbitrators.
- (d) The award rendered by the arbitrators shall be final and judgement may be entered in accordance with applicable law and in any court having jurisdiction thereof.

14. Patents and Copyrights. The Authority reserves an exclusive, perpetual and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for the Authority's purposes, including, but not limited to, commercial exploitation: (a) the copyright or patent in any work or deliverables developed in connection with the implementation of the Approved Program under this Agreement; and (b) any rights of copyright or patent to which Habitat purchases ownership with the funds awarded pursuant to this Agreement. If HUD determines that the patent or copyright, which is

either developed or purchased by Habitat serves a federal government purpose, a royalty-free, non-exclusive and irrevocable license shall vest in HUD.

Any discovery or invention (37 C.F.R. part 40) arising out of, or developed in conjunction with the work to be performed under this Agreement shall become the exclusive property of HUD and be promptly and fully reported to HUD for a determination as to whether patent protection on such invention or discovery should be sought.

15. Religious Activities. Habitat agrees that in connection with this Agreement: (a) it shall not discriminate against any person on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion; (b) it shall not discriminate against any person applying for employment on the basis of religion and shall not give preference to persons on the basis of religion; and (c) it shall provide no religious instruction or counseling, conduct no religious worship services, engage in no religious proselytizing, and exert no other religious influence in connection with its performance hereunder.
16. Miscellaneous.
 - A. Further Assurances. Each party shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement as are not inconsistent with the terms hereof.
 - B. Reporting. Each quarter, during the term of this Agreement, Habitat shall prepare a written report to the Authority describing the status of the Approved Program. Specifically, the report shall include an accounting of all expenditures made or incurred in connection with the Approved Program, and summaries of actions taken pursuant to Paragraph 1(b) hereof. Said report shall be delivered to the Executive Director of the Authority no later than the 20th day following the beginning of each quarter. In addition, Habitat shall attend regularly scheduled meetings at such time intervals the Authority deems desirable regarding Habitat's progress in implementing the Approved Program.
 - C. Authority. Each party warrants and represents to the other that its execution of this Agreement has been duly authorized and the individuals signing this Agreement on behalf of each party have the authority to do so.
 - D. Construction. The paragraph captions used in this Agreement are for the purposes of convenience only and are not intended to, and shall not, affect the meaning, interpretation or construction of the text of this Agreement.

- E. Entire Agreement: Amendment. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. It may not be modified or amended except with the written consent of both parties.
- F. Confidentiality. Each party, for itself and its agents and employees, agrees that the documents and information made available to it (other than documents and information otherwise available in the public domain) are to be held by each party in the strictest confidence, that copies shall not be distributed to any party other than such parties whose knowledge of such documents and information is reasonably necessary to effect the purposes of this Agreement.
- G. Enforcement Costs. If either the Authority or Habitat brings an action against the other party to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action shall be entitled to recover from the other party costs, reasonable attorney's fees and any other expenses incurred in connection therewith.
- H. Notices. All notices, waivers demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when received; provided that no item shall be deemed received unless such messenger obtains a written receipt therefor, (ii) if mailed, on the third business day after deposit in the United States mail, certified or registered, postage prepaid, return receipt requested, (iii) if telexed or telecopied, twenty-four hours after being dispatched by telex or telecopy with confirmation of valid transmittal with a copy delivered by mail in the manner set forth in subsection (ii) above, and (iv) if sent by commercial overnight carrier, prepaid for next day delivery, on the next business day after delivery to such courier, in each case addressed to the party's address appearing below:

Authority: Chicago Housing Authority
626 W. Jackson Boulevard
7th Floor
Chicago, Illinois 60661
Attention: Executive Director

Habitat: The Habitat Company
350 West Hubbard Street
Chicago, Illinois 60610
Attention: Chairman

or to such other address(es) or addressee(s) as any party entitled to receive notices hereunder shall designate to others in the manner provided herein for the service of notices.

IN WITNESS WHEREOF, Habitat and the Authority have executed this Agreement as of the day and year first above written.

THE CHICAGO HOUSING AUTHORITY

By: _____
Executive Director

THE HABITAT COMPANY

By: _____
Chairman



The Chicago Housing Authority

September 9, 1996

Mr. Christopher Hornig
Deputy Assistant Secretary
Office of Public Housing Investments
U.S. Department of Housing and
Urban Development
451 Seventh Street, SW., Room 4138
Washington, DC 20410

Dear Mr. Hornig:

It is my pleasure to submit this HOPE VI application to continue the revitalization already underway at the Henry Horner Homes and to begin redevelopment at the 3,500 unit complex known as ABLA.

HOPE VI is critical to the continued recovery and long-term sustainability of the CHA. With the most severely distressed public housing developments in the nation, the CHA is wholly dependent on the HOPE VI program to redevelop these communities. To underscore the overwhelming need, the mandatory conversion language in this year's appropriation bill would require the demolition of nearly 19,000 units of public housing. This funding would enable CHA to demolish some of the most run down, crime infested high rises while upgrading and expanding the affordable housing stock in Chicago.

Three high rises have already been torn down at Henry Horner, and two more will be demolished later in the year. Replacement housing is under construction on the existing site and in the surrounding community. This activity has been the catalyst for the redevelopment of the entire Near West side of Chicago, transforming a desolate, poverty stricken inner city area into a vibrant mixed income community. This HOPE VI funding would add 150 units of new low rise housing to the 466 units already under construction or in the planning stages. All of the units built both on and off site will be divided equally between very low income and working families.

ABLA offers revitalization possibilities on a par with Cabrini-Green—prime real estate with high potential for mixed income development. This funding would enable the demolition of three dilapidated high rises and the construction of 200 replacement units on the existing site and on vacant parcels in the vicinity. ABLA is also included in the Authority's vacancy consolidation plan—relocation has begun in two separate sections of the development.

Thank you for your consideration of this funding request.

Sincerely,

John Nelson

John Nelson
Deputy Executive Director, Operations

the CHA successfully met the expected goals for the quarter. The Authority received an overall average of "C" for its 1995 modernization score. The Authority is not on the "modernization troubled list."

3. Audit

a. CHA

The FY 94 found the CHA to be lacking in certain major systems critical to support the operations of the Authority. Immediately upon its arrival the new HUD management team developed a comprehensive plan to address the outstanding HUD findings; many of these findings have been successfully addressed as noted in the draft FY 95 audit.

b. Habitat (as receiver)

On June 21, 1996, upon completion of their audit of both the Scattered Site Program and the Chicago Metropolitan Housing Development Corporation (CMHDC)/The Habitat Company Joint Venture, Peat Marwick LLP issued the statement that the Scattered Site Demonstration Program complied, in all material respects, with all HUD and government accounting requirements and standards for the year ended December 31, 1995.

4. Implementation

a. CHA

The CHA is confident of its capacity to quickly implement the HOPE VI Revitalization Program at Homer Homes. First, as noted above, the CHA has made a strong commitment of time and resources to its redevelopment program and has been moving forward aggressively at four developments. In April 1996, the CHA established a separate Redevelopment Division, charged with oversight of these various redevelopment efforts. This division, having been intimately involved in developing the HOPE VI proposal will be perfectly poised to begin the necessary next steps in the event of an award.

b. Habitat (as receiver)

Implementation of the program can begin quickly under the development management of The Habitat Company since they are fully operational as Receiver for CHA's Scattered Site Program. Staffing (acquisition, planning, construction management, accounting, administration) and processes (RFPs, design, community relations, Section 3, etc.) are currently in operation.

5. Prior experience in financial / leveraging / partnership

As noted above, it is only under the leadership of the new management team that the Authority has made progress in the revitalization of its public housing communities. However, at each of its redevelopment projects described

above, the CHA is pursuing innovative financing models and working to promote public private partnerships. The CHA is committed to using federal dollars to leverage funding and support from the private market as well as other City agencies. The Chicago Metropolitan Housing Development Corporation (CMHDC) a CHA subsidiary may also play a significant role in pursuing innovative financing partnerships to ensure the implementation of the proposed revitalization plan.

6. Receivership

a. CHA

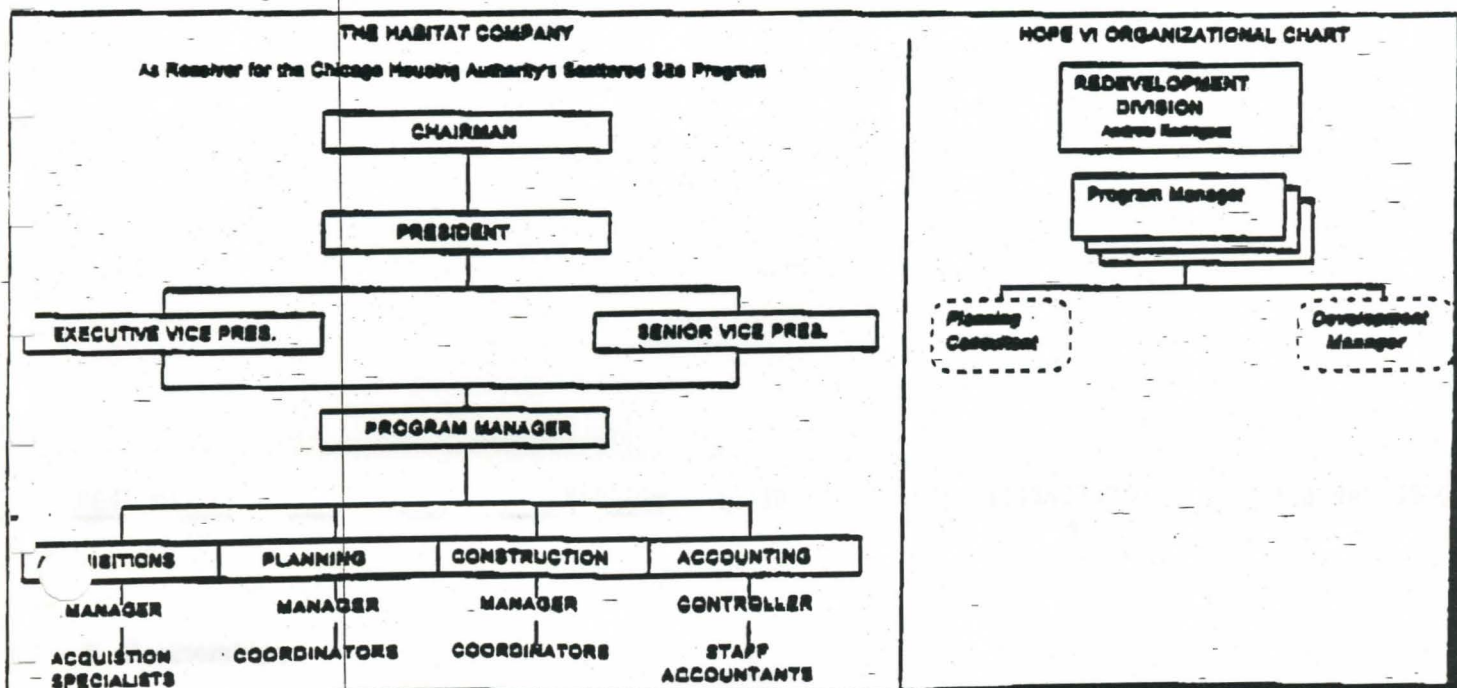
Following the takeover in 1995, HUD is still legally responsible for the operations of the Authority through the person of the Secretary's Representative—who acts as CHA Chairman.

b. Habitat (as receiver)

In 1987, The Habitat Company was appointed by Federal the Court as Receiver for CHA's Scattered Site (non-elderly) Housing Program. The last of the 1,608 units (approximately 250) are currently under construction. Based on Habitat's experience and success in completing these programs in a cost-effective and timely manner, the company is also under contract to CHA in joint venture with CMHDC, an affiliate of CHA, to develop 375 units under "Demonstration Program." Habitat is responsible for the acquisition of land, planning, development, construction management and all related accounting functions.

Proposed Staffing

See organization charts from CHA and Habitat below.



3. Partnerships

a. The CHA will contract with The Habitat Company as development manager for the implementation of the HOPE VI Program (Homer and Brooks Extension). The Habitat Company is a full service real estate brokerage, management and development company. Habitat is the court appointed receiver for the development of The Chicago Housing Authority's Scattered Site (non-elderly) program. Under this program, Habitat has completed over 1,350 units and has additional 330 units under construction. Habitat will be responsible for implementing the plan contained in this application. The financial arrangement will be similar to that approved by HUD for development as the Receiver. The Habitat administrative costs are budgeted at 4.5% of Total Development Cost and the development fee is 3%. Other administrative funds are for CHACMHDC staff and overhead.

The self-sufficiency program is being carried out through a joint partnership of two social service consortiums already serving the area: 1. The West Side Consortium has existed since 1985 and is made up of 18 organizations and 100 service providers who service the needs of the Near West Side generally and which has as its mission the "Raising of funds and other resources for the redevelopment, transformation and economic integration of the Near West Side" (fuller explanation of each member organizations background and service specialty can be found under Exhibit E,) and 2. New Unity West Organization, which is made up of over a dozen social service, health, day care, education, and job training providers who present serve Homer. This newly formed partnership brings hundreds of professionally trained staff and literally hundreds of years of experience in the comprehensive provision of services to Homer residents for self-sufficiency. The group will presently use existing funding to streamline the delivery of services, reduce duplication, and cooperate with government agencies seeking to create a "one stop" comprehensive social service mechanism to Homer residents. The group in conjunction with the HRC, BPI, and Central West Community Organization has pledged to seek additional funding necessary to accomplish a holistic program to bring residents to full self-sufficiency.

The University and the Illinois Medical Center Commission have pledged to assist in job development, job qualification review, training, and job placement within their joint 54,000 job employment base. Both groups will identify new and turnover jobs before they become available and assist the Consortium in training residents for these jobs.

b. The contract with The Habitat Company as development manager will enhance the CHA ability to control costs and expand the supply of housing more quickly. Habitat is currently in the process of developing 465 Replacement Units at Homer and will provide continuity between the existing Replacement Program and the Gautreaux HOPE VI Program.

The West Side Consortium/New Unity West Partnership will guarantee existing providers and their local clients a voice in the type, scope, and delivery methods to be established to bring families to self-sufficiency. Further, these



The Chicago Housing Authority

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Daniel Solis

Graham C. Grady
Chief Operating Officer

May 18, 1995

VIA MESSENGER

Mr. Edwin Eisendrath
Secretary's Representative
United States Department of
Housing and Urban Development
77 West Jackson Boulevard
Room 2608
Chicago, Illinois 60604-3507

Re: Application for Partial Demolition of Low
Income Public Housing (IL2-20)

Dear Mr. Eisendrath:

This correspondence is written to transmit to your office for approval the Chicago Housing Authority's ("Authority") formal "Application for Partial Demolition of Low Income Public Housing - IL2-20".

The Application requests HUD's approval for demolition of 398 units at the Cabrini Green Extension (IL2-20) for the following buildings:

1150-60 N. Sedgwick	262 units
1157-59 N. Cleveland	136 units

The 1157-59 N. Cleveland building is currently vacant and boarded-up and will be part of Phase I demolition. The 1150-60 N. Sedgwick structure presently has an occupancy rate of 67.94 percent and will be included in Phase II demolition.

The Application has been prepared in compliance with 24 C.F.R. Part 970, Public Housing Program-Demolition or Disposition of Public Housing Projects; HUD Handbook and Conversion Handbook; HUD Notice PIH 93-17 and 57 FR 46074, Requirements Relating to the Resident Organizations' Opportunity to Purchase Development proposed for Demolition.

Mr. Edwin Eisendrath, HUD
May 18, 1995
Page 2

These buildings are being proposed for demolition due to their physical conditions as well as de-densification of the development.

Approval of this demolition request is vital to the Authority's efforts to rebuild and extend the life of this public housing development through the reduction of housing density as expressed in the Authority's May, 1993 Urban Revitalization Demonstration Application.

The Demolition Plan and the actions proposed therein are in compliance with applicable HUD regulations and the Authority's action is in compliance with applicable civil rights laws and compliance agreements.

Should you have any questions concerning the Application, please contact Andrew Rodriguez, Director, Construction Management at (312) 567-7775, extension 1004.

Sincerely,



Marilyn F. Johnson
Acting Executive Director/
General Counsel

MFJ:PNB:mr

a:Boc9.Demolit.let

4. Location of Replacement Units

The proposed new units will be built on sites in community areas around the Cabrini-Green development, and on other sites throughout the Chicago metropolitan area, in accordance with the *Gautreaux v. Chicago Housing Authority* (Nos. 66 C 1459 *et al.*) modified Consent Decree and subsequent orders or waivers thereto. All sites will be selected in accordance with applicable HUD requirements and the City of Chicago's Comprehensive Housing Affordability Strategy (CHAS).

5. Development Schedule

The replacement housing units will be developed in accordance with time frames and requirements of the HOPE VI Grant Agreement between CHA and HUD. The schedule, which is subject to change with HUD approval is:

ACTION	ESTIMATED TIMEFRAME
HUD approval of HOPE VI Revised Plan to Revitalize Cabrini-Green and bond issue	Expected May 1995
Contract of Sale	November 1996
Construction Start	December 1996
Occupancy (Date of Full Availability) for all replacement units	December 1998

6. Resident Relocation

The building at 1157-1159 North Cleveland was vacated in October 1993 due to dangerous and hazardous conditions. Relocation of the 1150-1160 North Sedgwick building will occur as described in Section E and in accordance with the HUD relocation requirements.



The Chicago Housing Authority

August 11, 1993

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Daniel Solis

Robert Whitfield

Chief Operating Officer

Dr. Daniel W. Blue, Jr.

Deputy Chief Operating Officer

F. Willis Caruso

General Counsel

Mr. Joseph P. Garaffa
Acting Regional Administrator
United States Department of Housing
and Urban Development
77 West Jackson Blvd-Room 2608
Chicago, Illinois 60604-3507

Re: **APPLICATION FOR DEMOLITION OF PARTIAL
LOW INCOME PUBLIC HOUSING PROJECT IL2-20**

Dear Mr. Garaffa:

This correspondence is written to transmit the Chicago Housing Authority's formal "Application for Demolition of Partial Low Income Public Housing Project - IL2-20", to your office for submission and approval.

The Application requests HUD approval for the demolition of a 262 unit building located at 1117-1119 N. Cleveland in the Frances Cabrini Homes Extension (IL2-20).

This Application has been prepared in compliance with 24 CFR Part 970, Public Housing Program-Demolition or Disposition of Public Housing Projects; HUD Handbook 7486.1, The Public Housing Demolition, Disposition and Conversion Handbook; HUD Notice PIH 93-17 and 57 FR 46074, Requirements Relating to the Resident Organizations' Opportunity to purchase Development proposed for Demolition.

The demolition of this nineteen-story vacant structure is an integral part of the Authority's Urban Revitalization Demonstration (URD) proposal submitted to the HUD Washington D.C. office in May, 1993.

In this proposal, the Authority requested \$50 million dollars in URD funding to aid in its comprehensive plan for the physical, social and economic restructuring and rebirth of the Cabrini-Green communities.

EXHIBIT E

3. DEVELOPMENT METHOD

The Authority intends to develop the 190 new development replacement units through new construction utilizing a modified Turnkey Development method, wherein CHA will acquire the sites required for construction.

The additional 72 replacement units are part of the Authority's Urban Revitalization Demonstration program application, which permitted treatment of up to 500 units of distressed housing in one development. The Authority intends to combine its development and rental program in the Cabrini area with a Mixed Income New Communities Strategy (MINCS) Program, as detailed in the URD application submitted to HUD on May 5, 1993.

Replacement of these URD units in the Cabrini Extension will be provided by a variety of means, including the development of new low-income units in multi-family housing complexes on existing large sites in the community surrounding area and in other areas throughout the city and suburbs; rehabilitated apartments in the Cabrini complex; renovated existing housing in the surrounding community; rental or purchase of housing in HUD, Fannie Mae, and Freddie Mac foreclosed or assigned properties through the Chicago metropolitan area.

4. LOCATION OF REPLACEMENT UNITS

The proposed new units will be built on scattered sites in community areas around the Cabrini-Green, and in other sites throughout the Chicago Metropolitan area, in accordance with the Consent Decree (and subsequent orders) of the Gaurteaux litigation. All sites will be selected in accordance with the City of Chicago's Comprehensive Housing Affordability Strategy (CHAS).

Of the 500 total URD units, the Authority plans to replace 285 by constructing new low-income housing units on vacant land which presently exists in a one mile by three quarter mile area immediately surrounding (and including) the Cabrini-Green complex. The proposed replacement housing will be matched with development or market rate units to promote and economic, racial and cultural mix. The areas bounded by North Avenue on the North; Wells Street on the East; Superior on the South; and Chicago River and Halsted on the West.

The area contains over 40 acres of land, with about 25 acres of 62 percent already in public ownership by CHA, the Board of Education, or the City of Chicago. The remaining 16-plus acres of existing vacant land will be acquired on the open market at the fair market value or through eminent domain with court established compensation.



THE HABITAT COMPANY

December 17, 1997

Mr. Kevin Emanuel Marchman
Acting Assistant Secretary
Office of the Assistant Secretary for Public and Indian Housing
U.S. Department of Housing and Urban Development
451 Seventh Street SE
Washington, D.C. 20410-5000

RE: Submission of Development Plan for Mohawk North and Old Town Square

Dear Mr. Marchman:

The Habitat Company ("Habitat"), as Receiver for Chicago Housing Authority's Scattered Site Program, submitted the above referenced Development Plan (the "Plan") on October 24, 1997. With this letter, please note that the Plan is hereby submitted, pursuant to the Court Order, dated August 14, 1987, Gautreaux v. CHA and HUD, U.S. District Court, Northern District of Illinois, Case Nos. 66 C 1459 and 66 C 1460, by the Joint Venture between Habitat and the Chicago Metropolitan Housing Development Corporation ("CMHDC"), hereafter referred to as the "Joint Venture".

In addition, on Pages 14 and 29 of the Plan, it states that "CHA certifies...". Please strike those references and add the following in their place:

Page 14: The Joint Venture certifies that it will comply with the Uniform Relocation Act and all other applicable Federal relocation requirements.

Page 29: The Joint Venture hereby certifies, makes assurances and warrants to HUD in accordance with Section 941.606 (n) of the Regulations:

"That is has the legal authority under State and local law to develop public housing units through the establishment or selection of an owner entity, and to enter into all agreements and provide all assurances required under the Regulations..." (See Exhibit III for correspondence from HUD in regards to their opinion on the concept of the lease.)

The Joint Venture will be responsible to HUD for ensuring that the public housing units are developed in accordance with all applicable public housing requirements, including the ACC, and all pertinent statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time.

EXHIBIT

N

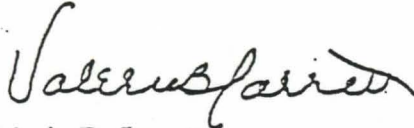
Page 2

Letter to Kevin Emanuel Marchman
December 17, 1997

If you have further questions please feel free to contact us at 312.527.7471 (Jarrett), or 312.422.1680 (Leon).

Sincerely,

The Joint Venture Between Habitat and CMHDC



Valerie B. Jarrett
Executive Vice President
The Habitat Company, as Receiver



Rafael M. Leon
Executive Director
Chicago Metropolitan Housing Development Corporation

VBJ/RML/mjn

c: Louis Berra
Joseph Shuldiner
Jeffrey C. Rappin

HDRAFTADMINCABRINTMOHWKOLD JV
197

**THE HABITAT COMPANY
AS RECEIVER FOR
THE CHICAGO HOUSING AUTHORITY**

SCATTERED SITES PROGRAM

**PHA DEVELOPMENT PROPOSAL
CABRINI EXTENSION (IL2-20) REPLACEMENT UNITS**

44 UNITS

**CABRINI EXTENSION
IL06-P002-182
CHICAGO, ILLINOIS**

Volume 1 of 2

**THE HABITAT COMPANY
AS RECEIVER FOR
THE CHICAGO HOUSING AUTHORITY**

SCATTERED SITES PROGRAM

**PHA DEVELOPMENT PROPOSAL
CABRINI EXTENSION (IL2-20) REPLACEMENT UNITS**

44 UNITS

**CABRINI EXTENSION
IL06-P002-182
CHICAGO, ILLINOIS**

Volume 2 of 2



U.S. Department of Housing & Urban Development
Office of the Assistant General Counsel - Midwest
77 West Jackson Boulevard, Room 2833
Chicago, IL 60604-3807

July 29, 1997

MEMORANDUM FOR: Richard Kruschke, Public Housing Director,
Office of Public Housing, Illinois State
Office, 5APH

ATTENTION: Louis Berra, Director, Distressed and Troubled
Housing Recovery, 5APH

FROM: *Katherine Abraham*
Lewis M. Nixon, Assistant General Counsel for the Midwest,
SAC

SUBJECT: Development Authority Under Gautreaux

At the oral request of Richard Kruschke and Louis Berra on July 28, 1997, we are responding to the question of whether the Chicago Housing Authority or the court appointed Receiver has the general responsibility for development of non-elderly public housing serving as replacement units at Cabrini-Green.

The August 14, 1987 Gautreaux order appointed Daniel E. Levin and the Habitat Company jointly as receiver to develop the scattered site program. The 'scattered site program' was defined to include all CHA non-elderly public housing development programs which might in the future be authorized by HUD. The December 3, 1993 order, the nunc pro tunc order as we typically refer to it, specifically gave development authority for 377 additional scattered site units to serve as replacement housing for Washington Park and Cabrini Green to the Joint Venture comprised of the Receiver and the Chicago Metropolitan Housing Development Corporation ("CMHDC"). In the same order, the Joint Ventura was given authority for the eighteen unit Lawndale replacement units, the 350 unit demonstration program and the 25 Family Self Sufficiency Program.

In the August 15, 1993 Joint Venture Agreement, CMHDC is described as an affiliate of the CHA. Provision 5.1 of the Agreement states that overall management and control of the business of the Joint Venture shall be vested in Habitat provided that Habitat would consult with CMHDC on Major Decisions.

Based on the referenced materials, it is the belief of this office that either the Receiver, for general purposes, or the Joint Ventura, under the nunc pro tunc order for specific projects, has development authority. In regard to the 377

EXHIBIT

9

replacement units for Cabrini and Washington Park approved for funding by HUD in September 1993 and 1994, the Joint Venture has clearly been authorized by Judge Aspen. We also believe that any funds under HOPE VI which go to replacement housing are currently a Receiver responsibility. We do not believe the CHA currently has any development authority for non-elderly units.

We have reviewed David Sowell's letter of July 14, 1997 to Rich Monocchio concerning a draft proposal for 44 units of replacement units for Cabrini Green and note that Mr. Sowell says CMHDC would have to separate from CHA and have its own identity. If that is true, then the Joint Venture Agreement and the draft proposal are inconsistent because as stated above, under the Joint Venture Agreement CMHDC is described as an affiliate of CHA. It is our understanding the reason behind the Joint Venture was for CMHDC to develop expertise under the wing of the Receiver, so it could become the development arm of the CHA.

Depending on the nature of Judge Aspen's expected August 15, 1997, ruling it may be time for the parties to consider dissolving the Joint Venture and for filing a motion before Judge Aspen based on such a discussion. It may also be appropriate to ask the court for clarification concerning development authority under HOPE VI.

If you have further questions please send a memorandum to the attention of Jan Elson.