

RECEIVER'S STATEMENT IN RESPONSE TO CHA
STAY MOTION, WITH APPENDIX OF SEVEN VOLUMES
(IN SEPARATE BINDERS)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-1807

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

**RECEIVER'S STATEMENT IN RESPONSE
TO THE CHA'S STAY MOTIONS**

Daniel E. Levin and The Habitat Co., Inc. are the Court-appointed Receiver for the Chicago Housing Authority in the District Court ("Receiver"). The Receiver was the movant whose motion of May 18, 1998 was granted by the District Court on May 19, 1998, which the CHA now seeks to stay. The CHA's motion to stay the May 19 Order was denied by the District Court on May 22. See Ex. 9 attached hereto.^{1/} The Receiver submits the following statement in response to (i) Defendant-Appellants' Motion For Stay Pending Appeal, filed May 19, 1998 ("Stay Motion I") and (ii) Defendants-Appellants Emergency Motion To Expedite Consideration Of [Stay Motion I] And

^{1/} The Exhibits filed in support of this Statement are (with one exception) from the record before the District Court. Attached to this brief as Exhibits 1- 12 are copies of pertinent orders entered by the District Court and transcripts. Submitted in separate binders are additional materials from the record, Exhibits A-N, which consist primarily of Affidavits that were before the District Court and Exhibits attached thereto. The one exception is the Affidavit of Valerie Jarrett dated May 27, 1998. The Affidavit discusses two meetings held among the Receiver, CHA and the City concerning the preparation of a joint HOPE VI application following Chief Judge Aspen's Orders of May 19 and 22.

Emergency Motion To Stay May Order, filed May 20, 1998 ("Stay Motion II") (collectively, the "Stay Motions").^{2/}

I. INTRODUCTION

A. Why The Receiver Is Filing This Statement

As an agent of the District Court appointed to implement a desegregation remedy that CHA failed previously to carry out, and as the movant below, the Receiver is obligated to explain why it sought the Order of May 19, 1998 that the CHA seeks to stay. This Statement explains why the Receiver believes that staying that Order would be a mistake and contrary to the public interest in developing high-quality public housing that implements the desegregation orders of the Gautreaux litigation.

Since its appointment by Judge Aspen in 1987, the Receiver has worked to develop new housing for the CHA in compliance with the Court's desegregation orders, which were designed to repair the continuing effects of what the Court found were the CHA's violations of the Fourteenth Amendment.^{3/} Since 1987, through the construction of scattered-site housing and through the construction of new, less concentrated housing on and near the sites of former high-rises (such as

^{2/} On May 19, 1998 the District Court authorized the Receiver to participate in this appeal. See 5/19/98 Tr. at 9 (Ex. 11 attached hereto) and Order of 5/19/98 (Ex. 6 attached hereto).

^{3/} In an August 1997 opinion, Judge Aspen recounted that he had appointed the Receiver because "CHA proved inept at building public housing on scattered-sites," and that "it was not until then that construction began in earnest." Ex. 2 at *3.

the Henry Horner Homes), the Receiver has overseen the construction of over 2,200 units of housing.^{4/}

The Receiver's responsibility is to continue to develop high-quality replacement housing in furtherance of the District Court's desegregation orders. HOPE VI funding is an integral part of that process. Unfortunately, recent actions of the current CHA administration have impeded the Receiver's ability to do the job the Court appointed it to do. In particular, the CHA has tried to freeze the Receiver out of the HOPE VI process. It purports to want to submit a unilateral application to HUD that would provide for housing development without regard to the District Court's prior desegregation orders. The CHA's actions appear to be part of a broader effort on its part to avoid the desegregation requirements of Gautreaux and wrest control of all new housing development from the Receiver without obtaining Court permission to do so. Thus, the CHA's Executive Director told the Receiver on March 10 that "if the Receiver did not agree that the CHA would assume future housing development responsibility for projects not already specifically allocated to the Receiver, he would 'fight' and would oppose the Receiver in all respects." Levin Decl. ¶5 & Ex. A thereto at 3.

The 1987 Receivership Order requires the CHA to cooperate with the Receiver, and Judge Aspen found on May 19, 1998 that no prior administration has had difficulty complying with the cooperation requirement. Ex. 5. Judge Aspen stated:

^{4/} The Receiver does not perform the construction. It acts as developer, with the construction contracts usually awarded pursuant to an open and competitive process in conformance with HUD regulations.

Mr. Levin [the Receiver] has never done anything in the past, nor have I found any of his actions in the recent brouhaha to indicate that he wants to usurp any of Mr. Shuldiner's [CHA's Executive Director] authorities.

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

Ex. 11, 5/19/98 Tr. at 11. Later that day, the District Court specifically ordered the CHA to cooperate with the Receiver in connection with the preparation and submission to HUD of a HOPE VI funding application. Ex. 5.

The Receiver wants to build housing, not litigate. But the Receiver is an agent of the Court with duties to the Court. The Receiver sought the cooperation order entered by Judge Aspen on May 19 because such an order is necessary in the face of the CHA's avowed intention to ignore the Receiver and the desegregation requirements of Gautreaux.^{5/} The Receiver respectfully asks this Court not to stay Judge Aspen's ruling.

B. The March 31, 1998 Notice Of Funding Availability

Under the March 31, 1998 Notice of Funding Availability published by HUD, referred to as a "SuperNOFA," public housing authorities can apply for up to \$35 million in HOPE VI funds. Applications are due by June 29, 1998. There is no guarantee that HUD will award funds for the construction of replacement public housing in Chicago, but the Receiver wants the most competitive

^{5/} At the March 10, 1998 meeting between the Receiver and the CHA's Executive Director, the Executive Director stated that he did not believe that the desegregation remedy of the Gautreaux judgment order should apply to the CHA, that CHA intended to build new housing where it wished and that the Receiver could "try to stop" it. See 3/13 Letter, attached as Ex. A to App. Ex. E at 1-2. The CHA has not, however, filed a motion seeking any modification of the judgment order or the Receiver's responsibilities.

application possible to be submitted. The Receiver believes that the most competitive application would be one prepared with the cooperation and involvement of CHA, the Receiver, City officials, and tenants. The Receiver also believes that the unilateral application the CHA wants to submit -- and will submit if the Court enters the stay the CHA seeks -- would be less competitive and would be less likely to receive funding from HUD. See Ex. D (Hickman Aff't) ¶¶91-107.

C. CHA's Erroneous Premise

In trying to convince the Court to enter a stay, the CHA claims that it has a good track record with its prior HOPE VI applications. It claims that its prior applications excluded the Receiver and ignored the requirements of the Gautreaux Court. That is the premise of its Stay Motions. It wants the Court to believe that Judge Aspen's Orders place the chance to receive up to \$35 million at risk. But CHA's story is inaccurate, incomplete and misleading, as we explain in detail in this Statement.

One correction of the CHA's statements needs to be stated at the outset: Contrary to CHA's suggestions, HUD awarded prior HOPE VI funds to CHA when the applications included the Receiver, when the CHA stated that the Receiver would be responsible for developing the housing, and when it informed HUD that the housing would be sited in compliance with orders of the Gautreaux Court. In contrast, last year HUD denied a CHA application that was, like the one the CHA wants to submit now, prepared unilaterally, excluding the Receiver and ignoring the requirements of the Gautreaux Court. See p. 18 below. The CHA's Stay Motions informed the Court, albeit in a misleading fashion, about the successful applications. The CHA failed to disclose to the Court its unsuccessful unilateral application of last year.

D. The Narrow Issues On Appeal.

The Stay Motions make this appeal seem more complicated than it actually is. Assuming this Court has jurisdiction,^{6/} the issues before the Court on the merits and on the Stay Motion are narrow, in large part because of the CHA's decisions not to file motions in the District Court to reduce the Receiver's responsibilities or modify the scope of prior remedial orders.

The first appeal, No. 98-1807, raises an issue of law. Does the 1969 Injunction Order entered in this case apply to the construction of new public housing funded pursuant to the HOPE VI statute? This required Chief Judge Aspen to interpret the statute and the Injunction Order, which he did not enter but which he has implemented for many years. Chief Judge Aspen's February 23 Order held that (i) the Injunction Order plainly covers construction of new dwelling units funded with HOPE VI funds,^{7/} (ii) there is no incompatibility between the HOPE VI statute and the Court's desegregation orders, and (iii) there is no reason to treat HOPE VI funds any differently than other HUD funds that have been used by the Receiver to build new housing and support desegregation

^{6/} We assume herein that the Court will consolidate the CHA's appeal of the February 23 Order, No. 98-1807, with its appeal of the May 19 Order, No. 98-____ (notice of appeal filed May 20, 1998). The first appeal is the subject of a fully briefed motion to dismiss for lack of appellate jurisdiction. No such motion has been filed with respect to the second appeal. Unlike the first appeal, the second appeal concerns an order compelling action by the CHA, to cooperate with the Receiver. If interpreted as an injunction, it would be appealable under 28 U.S.C. §1292(a). We note, however, that the District Court did not characterize its order that way: "We do not believe that this order may fairly be characterized as a new 'mandatory injunction,' CHA's Motion ¶13, since it does nothing more than reaffirm that the receivership order means what it already says." Ex. 5 (May 19 Order). Obviously, if the Court lacks jurisdiction over the appeals, the Stay Motions should be denied.

^{7/} The Injunction Order defined a "Dwelling Unit" as "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." Ex. 3, quoting, Gautreaux v. CHA, 304 F. Supp. 736, 737 (N.D. Ill. 1969).

efforts. While the Receiver believes that this issue is straightforward, and the District Court's ruling was clearly correct, we defer to the parties to address the merits.

The second notice of appeal, filed May 20, 1998, arises from Chief Judge Aspen's Order of May 19, 1998, granting a motion by the Receiver to compel the CHA to cooperate in the preparation of a HOPE VI application pursuant to the SuperNOFA. This ruling is grounded in his Order of August 14, 1987 appointing the Receiver ("1987 Receiver Order" or "Receiver Order"). The Receiver Order gave the Receiver broad powers with respect to "scattered-site housing," which was defined as "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." Ex. 1. There is no question that HOPE VI is a "non-elderly public housing development program . . . authorized by HUD." In addition, the Receiver Order states that "CHA . . . shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder." *Id.* at 6. Judge Aspen held in his May 19 Order:

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.^{8/}

Stay Motion I and Stay Motion II seek to stay each of these rulings, respectively. Apart from jurisdiction, all that is before the Court now is whether the CHA should obey Chief Judge Aspen's

^{8/} On May 22, 1998, in denying the CHA's motion to stay the May 19 Order, Judge Aspen described his May 19 Order as follows: "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 HOPE VI application, insofar as those matters fell within the Receiver's delegated duties." Ex. 9 (May 22 Order).

Order to cooperate with the Receiver or whether CHA should be permitted to exclude the Receiver and prepare and submit an application to HUD unilaterally. The Court should apply a deferential standard of review to this question. See pp.24-25 below.

All CHA has to do, if the Orders remain in effect, as we submit they should, is cooperate with the Receiver in preparing an application that is in harmony with the requirements of the Gautreaux Court. Contrary to the CHA's arguments, this is not hard or impossible. CHA did so in prior HOPE VI applications as recently as 1996 and received funding. This funding will support Phase II of redevelopment at Henry Horner. The Phase I homes now being built as replacement housing (with non-HOPE VI funds) for Henry Horner present tangible evidence of the successes achieved during less confrontational days. CHA claims such cooperation is impossible. See, e.g., Stay Motion II ¶6, Mem. in Support of Stay Motion I at 11. Several photographs of the award-winning new, low-rise public housing developed by the Receiver with CHA cooperation since 1996 can be found attached to Exhibit D.

What is not before the Court are several issues the CHA alludes to in its papers but about which it has chosen not to bring motions. The CHA has not moved either (i) to modify the Injunction Order to exclude HOPE VI; or (ii) to dissolve the 1987 Receiver Order or to modify it to carve HOPE VI from its terms. (Indeed, CHA's counsel stated at oral argument in the District Court that CHA did not want to modify the Injunctive Order and that "[t]he Gautreaux remedy should stay in place." Ex. 10 (2/10/98 Tr. at 36.))^{2/} Such motions, if made, would require CHA to put forward

^{2/} CHA's counsel stated:

We think that the evidentiary battle necessary to establish the grounds for
(continued...)

evidence and meet certain legal tests. Instead, the CHA chose to raise its issues in a motion to “clarify” an Injunction Order that was already clear, and then to appeal that “clarification.” Thus, the Injunction Order and Receiver Order remain in effect and are unchallenged, as Judge Aspen recognized in denying the CHA’s motion to stay the District Court’s May 19 Order:

[CHA] 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 evidence justifying such a motion, and a modification of the receivership order is not before the appellate court.

Ex. 9.

E. The Incorrect Story Upon Which The Stay Motions Are Based

Distilled to their essence, the CHA’s Stay Motions tell a story with the following key elements:

The District Court’s February 23 “clarification” that CHA’s construction of new dwelling units with HOPE VI funds are subject to the Injunction Order constitutes a dramatic expansion of District Court supervision over a federal program and an expansion of the Receivership. Before the District Court improperly expanded its orders to include CHA’s HOPE VI activities, the CHA had prepared successful HOPE VI applications between 1993 and the present, and had done so unilaterally, without including the Receiver or complying with the Gautreaux “Injunction Order.” The February 23 Order and May 19 Order threaten to disturb

²(...continued)

changing the injunction would be very divisive for the community. You know, is there segregation, who’s responsible for it, what impact does white flight have on it, what impact does any number of factors have to do with it. We don’t want that fight, Judge. We don’t want it for the community.

The Gautreaux remedy should stay in place.

Ex. 10 (2/10/98 Tr.) at 36.

that *status quo ante bellum* by requiring the Receiver to participate in the forthcoming HOPE VI grant application and by requiring the application to comply with Gautreaux, which would surely doom the application, since the elements of a good HOPE VI application are wholly incompatible with the requirements of the Gautreaux Court, and since the CHA has “lost confidence” in the Receiver. Thus, concludes the CHA, it is imperative that the Court stay the Orders below; otherwise this Court imperils up to \$35 million in funds to the detriment of public housing residents.

The CHA tells a compelling, but untrue, tale, and the District Court correctly rejected it. Instead, the record establishes the following:

- No dramatic or radical expansion of federal jurisdiction has occurred.

The recent orders do no more than interpret and implement the Injunction Order and Receiver Order, which remain as written in 1969 and 1987 and which the CHA has not challenged. Nothing has been expanded. Rather, the District Court held that those Orders apply to housing funded under the HOPE VI program just as they have applied to prior HUD-funded programs for years. The current controversy is largely the result of CHA’s unwillingness to comply with the Court’s efforts to implement a desegregation remedy, not “expansions” of federal court power. See pp. 22-30 below.

- The Receiver was very much a part of the CHA’s prior successful HOPE VI applications, as were the requirements of the Gautreaux case. The actual status quo, “the last actual, peaceable uncontested status which preceded the pending controversy.” LaRouche v. Kezer, 20 F.3d 68, 74 n.7 (2d Cir. 1994), was that CHA submitted applications telling HUD that the Receiver was going to develop the housing and that it would be done with the blessing of the Gautreaux Court. Neither

the Receiver nor Gautreaux requirements prevented a successful HOPE VI application. See pp. 30-36 below. The District Court agreed, expressly finding as follows in denying the CHA's stay motion on May 22, Ex. 9:

[W]e 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 [to stay], 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 [1998] 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.

- The greater risk lies in granting the stay and permitting the CHA to submit an application without cooperating with the Receiver or complying with the orders of the Gautreaux Court. The CHA tried just that with its 1997 application for the redevelopment of ABLA Homes and, as noted earlier, HUD rejected the application. HUD wants its money to be spent well. Therefore, when it evaluates applications it assigns major importance to the past performance and proven development capacity of the applicant. See SuperNOFA, 63 Fed. Reg. at 15580-81 (Ex. I). The Receiver, in combination with a cooperative CHA, has delivered award-winning homes. In contrast, in recent years when the CHA was granted exceptions from the Receivership and an opportunity to develop housing unilaterally, not one unit of housing was completed. See pp. 37-40 below.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Receiver will not set forth a complete history of this case. However, we wish to summarize certain facts that relate to the Receiver's duties and performance, and the CHA's recent efforts that have hindered the Receiver.

A. The Appointment of the Receiver and the Scope of Its Authority

Chief Judge Aspen appointed the Receiver by order dated August 14, 1987. Ex. 1. In entering the 1987 Receiver Order, the Court found that it had "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." Id. at 1. The Order defined the "scattered site program" as certain then-pending 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." CHA has never challenged or sought to modify this definition or any other part of the 1987 Receiver Order.

The Receiver was appointed "to develop and administer the scattered site program as effectively and expeditiously as possible in compliance with the orders of this Court." Id. ¶1. The scope of the Receiver's authority was defined broadly:

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.

Id. ¶2 (emphasis added).

With respect to CHA's duty to cooperate with the Receiver, the 1987 Receiver Order states:

CHA . . . 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.

Id. ¶7.

As noted above, CHA has not sought to modify the 1987 Order to excise HOPE VI from its broad mandate, and Judge Aspen found that CHA "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." Ex. 9.

From 1987 to the present, with the exception of recent events described below, the Receiver has operated successfully with the cooperation of CHA. In contrast to the years preceding 1987, in which no scattered site housing was built and no remedy of the CHA's prior unlawful segregation was being accomplished, in the years since 1987 the Receiver has developed and either turned over to CHA or has under construction over 2,200 new housing units. Ex. D (Hickman Aff't) ¶100. The majority of these are scattered throughout the City. A portion constitute replacement housing located at or near existing CHA sites, as well as housing developments that include both public housing and market-rate units.

The housing produced through Receiver-CHA cooperation has been nationally recognized. In January 1998, HUD Secretary Cuomo conferred the Secretary's Platinum Award on the Horner Homes Redevelopment Program. The Receiver is the developer for this \$50 million program, Phase II of which will be funded in part with HOPE VI money. Also, the Receiver's scattered site program

received the Urban Land Institute's Award of Excellence in 1996. See Ex. D (Hickman Aff't) ¶106 & Ex. attached thereto.

B. A Brief History of the Hope VI Disagreement
Between the Receiver and CHA.

The Hope VI program was created by Congress in 1992. In 1993, the CHA applied for the first of several grants. Over the five year period from 1993 to date the CHA has shifted from cooperating with the Receiver when requested, to opposition to any role for the Receiver or the Gautreaux court.

1. Cabrini Extension.

In 1993, the CHA, without informing the Receiver, applied for HOPE VI funds for the redevelopment of the Cabrini Extension, a part of the Cabrini-Green housing development on Chicago's near-north side. The CHA was awarded \$50 million, \$40 million of which was earmarked for the development of 303 replacement housing units. Upon learning of the award, the Receiver informally told the CHA that it was the Receiver's understanding that the development of the replacement units is within the Receiver's responsibility pursuant to the Receivership Order. Ex. B (Hickman Aff't) ¶¶18-19.

Because of breaches of CHA's contractual duties and undertakings to HUD, on May 1, 1995 HUD exercised its right to take over the CHA and appoint new managers for the agency. After the takeover of the CHA by HUD, to avoid conflict over the Receiver's and the CHA's respective roles, the parties agreed that the CHA would designate Habitat as the "development manager" for the construction of the replacement units. The Receiver did not care what label it was given, as long as it was able to perform the work that the Receiver understood to fall within its area of responsibility.

The role of development manager gave the Receiver development authority over housing built with HOPE VI funds. Ex. F (Levin Aff't) ¶¶18-19; Ex. B (Hickman Aff't) ¶¶21-27.

By letter dated November 14, 1995, Ex. 7 to Ex. B (Hickman Aff't), Edwin Eisendrath, the CHA's board chairman, confirmed this arrangement and linked the function of "development manager" to the Receiver's role under the Receivership Order:

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. [Emphasis added]

The parties proceeded to exchange several drafts of a Development Management Agreement. Ex. B (Hickman Aff't) ¶¶40-42. Similarly, the CHA's Executive Director, Mr. Shuldiner, wrote to HUD Secretary Cisneros on March 25, 1996, "[a]s you know, whether as receiver for our scattered site units, or as development manager for the replacement units at Cabrini, Horner, and the Lakefront, the Habitat Company administers our new construction efforts." Ex. 12 to Ex. B (Hickman Aff't).

Consistent with the parties' understanding that Habitat would develop the replacement units, The Habitat Company issued a Request for Proposals for the Cabrini project in August, 1995. However, after the parties had each proceeded for more than a year on the understanding that the Receiver would act as development manager -- with the Receiver in fact performing all of the functions of a development manager -- the CHA refused to sign the Development Management Agreement and instructed the Receiver to stop work. The CHA then began meeting with City of Chicago officials and neighborhood residents concerning site selection and other development issues that are the Receiver's responsibility under the Receiver Order. Ex. B (Hickman Aff't) ¶¶28-39, 44-46.

Due to the CHA's inability to comply with HUD's procedural requirements for HOPE VI funding, the CHA again turned to the Receiver. In mid-1997 CHA requested the use of funds allocated by HUD to the Receiver for the construction of 190 replacement units at Cabrini, a project called "Mohawk North." The CHA requested that a portion of these Receiver funds be used to fund long-term, 40-year leases of privately-developed housing units in the Cabrini-Green area. The Receiver agreed to work with the CHA to prevent the loss of these units, despite the fact the CHA did not involve the Receiver in the lease negotiations. The Receiver has prepared and submitted to HUD a development proposal to obtain final HUD approval. Ex. B (Hickman Aff't) ¶¶50-53.

2. ABLA I and Horner II.

In 1996, the CHA applied for and received HOPE VI funds for the ABLA ("ABLA I") and Horner ("Horner II") developments. Despite a disagreement with CHA over the Receiver's responsibility for development of new housing at these sites, the Receiver assisted the consultant retained by the CHA to prepare the HOPE VI application, preparing the financial and budget section of the application and editing other sections drafted by the consultant. Ex. B (Hickman Aff't) ¶¶54-57. The parties, following the model intended for Cabrini, entered into a Development Management Agreement dated April 21, 1997 (the "Agreement"), a copy of which was attached as Exhibit F to the Receiver's Statement Regarding the [CHA's] Emergency Motion to Clarify the Injunction and is filed herewith as Ex. N. The Agreement, which specifically states that it does not affect or alter in any way the responsibility of the Receiver under the Receivership Order, grants Habitat responsibility for "all aspects of the implementation phase" of the development of the 200 replacement units for ABLA and for 150 replacement units for Horner, subject to prior approval of

certain major decisions by the CHA. The Agreement also contemplated that the Receiver, “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.’” Ex. N (Agreement) at ¶1.A.

3. The CHA Misinformed the Receiver Concerning Its 1996 Application for HOPE VI Funding at Taylor.

In 1996 the CHA applied for HOPE VI funding for redevelopment of the Robert Taylor Homes project, one of the largest developments in the CHA inventory of housing. It did not inform the Receiver of its application. Ex. B (Hickman Aff’t) ¶58. After the Receiver learned from a separate source that the CHA had applied, the Receiver spoke with a top CHA official about the failure to include the Receiver in the application. The CHA stated that the Receiver did not have to be involved because none of the funding was sought for replacement housing (which is outside the scope of the 1987 Receiver Order). Id. ¶59. This was untrue, as the Receiver subsequently learned. In fact, the application sought funds for new housing development at Taylor. Id. ¶¶60-62. CHA refused to produce the application, and only produced copies for inspection pursuant to the District Court’s Order on May 20, 1998.

4. HUD Denied the CHA HOPE VI Funding for ABLA II in 1997 After the CHA Excluded the Receiver.

The CHA applied in July 1997 for HOPE VI funding relating to additional work at ABLA and Horner. On a number of occasions, the CHA refused to allow the Receiver to participate in this application. This application has been rejected by HUD. Ex. B (Hickman Aff’t) ¶98; Ex. K (Jarrett Aff’t) ¶¶14-18.

5. The CHA's Also Failed to Inform the Receiver Concerning Its Application For Approval to Build Replacement Housing At the Darrow Homes Project.

In 1997 the CHA, the Receiver and plaintiffs' counsel discussed the possibility that the parties would jointly request permission of the District Court for the CHA to construct 38 units of replacement housing for the Darrow development as an opportunity for the CHA to attempt to show its development capabilities. No agreement was reached, however. Ex. K (Jarrett Aff't) ¶5. Thereafter, in February 1998, without notifying the Receiver, the plaintiffs or the District Court, the CHA applied to the City of Chicago for zoning changes necessary to construct a 105-unit project at Darrow. The Receiver and the plaintiffs only learned of the proposal by chance. See Ex. A (Hickman Aff't) of March 18, 1998, ¶7, and attached submission to the Chicago Plan Commission of February 11, 1998; Ex. B (Hickman Aff't) ¶¶73-75; Ex. K (Jarrett Aff't) ¶¶5-8. This concentration of units clearly violated the desegregation locational requirements of the 1969 Injunction Order, as modified. On March 10, 1998 CHA Executive Director Shuldiner told the Receiver that he intended to proceed with the Darrow project and that the Receiver would have to go to Court to try to stop him. Ex. E (3/13/98 Levin Letter) at 8.

6. Efforts to resolve the disagreement.

In mid-1997 the Receiver filed a motion with the District Court arising from a series of disagreements with the CHA over the development of Horner replacement housing. As a result, an in-chambers meeting was held with Judge Aspen and was attended by the CHA, the plaintiffs and the Receiver on July 2, 1997. At that meeting the Receiver explained the disagreement over the Receiver's role in HOPE VI-funded new housing. Chief Judge Aspen asked the parties to meet to attempt to work out their differences and offered to resolve the matter if they could not. Ex. F (Levin

Aff't) ¶¶26-28; Ex. G (Miller Aff't) ¶¶7-8. The CHA initially refused even to discuss the HOPE VI issue, then engaged in discussions, id. ¶¶29-35, and in September 1997 filed its motion for a determination that new housing development funded by HOPE VI was outside the scope of the Gautreaux Injunctive Order. That motion was denied by the District Court's ruling of February 23, 1998. Ex. 3.

7. Efforts to Obtain Cooperation After
 The District Court Entered Its February 23, 1998 Order.

After the February 23 Order was received, the Receiver convened a meeting with HUD and the CHA to attempt to work out procedures for implementing the Order. The meeting, which took place on March 10, 1998, is described in detail in Mr. Levin's letter to Judge Aspen of March 13, 1998, a copy of which was attached by the plaintiffs to their motion of March 18, 1998 for further relief and is found at Ex. E. In that letter Mr. Levin (who subsequently verified the letter by affidavit, Ex. E; see also Ex. K (Jarrett Aff't ¶4)) summarized a number of statements made by Mr. Shuldiner, the CHA's Executive Director:

... Mr Shuldiner stated that he did not agree with your February 23 Order, that he opposed the Receivership, that he disagreed with the requirements of various Court Orders mandating housing to be located so as to further desegregation goals. He also stated that the CHA intended to proceed with its own programs for development of new housing without the Receiver, and invited us to "try to stop him." He made it clear that no cooperation would be forthcoming, and that if the Receiver opposed him, he would join tenants in pressing claims against us.

Ex. E (3/13 Letter) at 1. Mr. Levin also described these statements by the CHA's Executive Director:

Mr. Shuldiner also said that the CHA intended to proceed to build new family housing at the Darrow Homes (in a limited area surrounded by other public housing), and anywhere else the CHA felt was appropriate. ... He said that the CHA should be able to house people wherever it can house them.

Id. at. 4.

Mr. Levin also reported his own statements at the meeting, including the following:

I told Mr. Shuldiner that I was proposing to make a cooperative arrangement with the CHA, but the CHA must acknowledge that the Court's February 23 Order has some meaning, and that the CHA must acknowledge its obligation to plan and consult with the Receiver. I said at least five times that I was willing to work with him to solve problems. I emphasized that I was not seeking to sit in his chair, and was not trying to make all the decisions.

Near the end of the meeting, Mr. Shuldiner told me that he had offered to residents at Cabrini-Green a development partnership interest. He will build replacement housing with them, and without the Receiver. He made it clear that he is going to continue to make plans with the residents at Cabrini-Green, and that we could only "try to stop him."

Id. at 5. Mr. Shuldiner has not filed an affidavit or otherwise denied the accuracy of Mr. Levin's and Ms. Jarrett's report of the meeting.

On March 18, 1998, in response to the problems described in the Receiver's March 13 letter, the plaintiffs filed a motion for further relief. While that motion was pending, HUD announced the availability of up to \$35 million for Chicago public housing in its SuperNOFA of March 31, 1998. After the CHA ignored several letters from the Receiver and his attorney seeking cooperation in applying for funds were ignored by the CHA, on May 18 the Receiver filed an emergency motion seeking directions to the CHA to cooperate with the Receiver in preparation of the SuperNOFA application and to provide necessary information. See Ex. M (Receiver's Emergency Motion) ¶¶5-10 and exhibits thereto. On May 19 the District Court granted the motion and on May 22 the District Court denied the CHA's motion to stay the May 19 Order pending appeal. Exs.5 and 9.

Following the May 19 Order, the CHA refused to turn over to the plaintiffs and the Receiver its prior applications to HUD for HOPE VI funds, even though its Stay Motions filed in this Court

referred repeatedly to those applications. On May 20, the Court granted the plaintiffs' emergency oral motion to compel CHA to produce the documents. The applications (which are discussed below) relied heavily upon the Receiver's involvement and qualifications.^{10/}

8. The CHA's Cooperation Since The May 19 Order.

After entry of Judge Aspen's cooperation order of May 19, 1998, two meetings were convened by Julia Stasch, the Commissioner of the City of Chicago's Department of Housing, on May 22 and 26, 1998, to discuss the joint preparation of a HOPE VI application. The meetings were convened after the Receiver informed Ms. Stasch of its desire to work collaboratively with the City and CHA to prepare a competitive application. Representatives of CHA (including Mr. Shuldiner), the Receiver and the City attended both meetings. At the May 22 meeting Mr. Shuldiner stated his willingness to participate in a collaborative process to produce a timely application. No one from CHA suggested that doing so would be difficult or impossible. Additional meetings have been scheduled for May 28 and June 1, 1998. Ex. K (Jarrett Aff't) ¶¶22-26.^{11/}

^{10/} In addition, on May 21 Judge Aspen denied Plaintiff's Motion for Further Relief as "moot," since he concluded that his May 19 Order to CHA to cooperate with the HOPE VI application already resolved a substantial portion of the Plaintiffs' motion. With respect to other issues raised in the Plaintiffs' Motion, Judge Aspen invited the Receiver to seek additional relief if necessary. Ex. 8.

^{11/} These meetings rebut the false implication created by CHA that Judge Aspen's May 19 Order somehow caused a meeting between CHA and the City to end. See Stay Motion II ¶2. In fact, Mr. Shuldiner unilaterally terminated the meeting. See Ex. 12 (5/20/98 Tr.) at 4-5. The Receiver had requested to be part of that meeting, but the CHA refused to permit the Receiver's participation. See Ex. D (Hickman Aff't) ¶109; Ex. 12 (5/20/98 Tr.) at 4-5. Nothing in the May 19 Order or in prior Court orders required the CHA to terminate the May 19 meeting. Rather, the orders compel the CHA to cooperate with the Receiver. The proper action would have been to include the Receiver as the Receiver requested. Fortunately, this now appears to be happening.

III. THERE HAS BEEN NO EXPANSION OF THE RECEIVER'S POWERS.
THIS COURT SHOULD ACCORD DEFERENCE TO
CHIEF JUDGE ASPEN'S INTERPRETATION AND IMPLEMENTATION
OF REMEDIAL ORDERS THAT HAVE NEVER BEEN APPEALED OR CHALLENGED

The CHA portrays the May 19 Order and the February 23 Order as “expansion[s] of the proscriptions of the Injunction” without considering evidence or making findings. Stay Motion II ¶43; Mem. In Support of Stay Motion I at 32. It is wrong. All Judge Aspen did was apply the to the HOPE VI statute the plain and unequivocal language of the 1969 Injunction Order and the 1987 Receiver Order, which the CHA has deliberately never appealed or sought to modify. Both Orders were already broad in scope (the latter by consent) and have applied for years to previous HUD funding statutes. HOPE VI is no different. This appeal is not about “expansion” of power. Rather, it is about an agency that has been acting recently to defy the Court’s long-standing orders without seeking to modify them, and that has been interfering with the efforts of the District Court’s Receiver to implement the Court’s orders.

If the CHA believes that grounds exist for removing HOPE VI from the scope of these Orders, it is incumbent upon it to file the appropriate motion and produce the evidence that would be required for it to prevail. But as Judge Aspen noted, no such motion has been filed and CHA has produced no evidence yet warranting such relief. Ex. 9.

A. The District Court’s Interpretation Of Its Unambiguous Orders Was Correct and Is Entitled To Deference.

The District Court confirmed that its recent orders were working no radical change or expansion. Judge Aspen stated that his May 19 Order that CHA cooperate in the preparation of the

HOPE VI application did not break new ground, but rather merely implemented his clear 1987

Receiver Order:

We do not believe that [the May 19] 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.

Ex. 9. Judge Aspen has made other similar statements. The May 19 Order itself, quoting the plain language of the 1987 Receiver Order, states “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.” Ex. 5. Thus:

Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with 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.

Id.

These statements of the District Court interpreting its own orders (both the 1987 Receiver Order and the May 19 Order) are entitled to substantial deference and should not be disturbed absent an abuse of discretion. *See, e.g., Hastert v. Ill. State Bd. of Elec. Comm’rs*, 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); *Schering Corp. v. Ill. Antibiotics Co.*, 62 F.3d 903, 908 (7th Cir. 1995) (“particularly heavy weight” should be given to district court’s interpretation of its own injunction). This is especially so where the District Court has overseen the litigation generated by

its remedial orders for many years. See 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); South v. Rowe, 759 F.2d 610, 613 n.4 (7th Cir. 1985).^{12/} For similar reasons, Judge Aspen's interpretation of the 1969 Injunction Order, which he did not enter but over which he has presided for over fifteen years, is entitled to deference. See Goluba v. Sch. Dist. of Ripon, 45 F.3d 1035, 1038 n.5 (7th Cir. 1995) (citing Ferrell, supra) (deferential standard applies where "the judge oversaw the consent decree for an extended period of time and the decree is particularly complex or intricate").

The CHA's argument that Judge Aspen ordered a revolution, dramatically expanded his or the Receiver's powers or otherwise disturbed the *status quo* that has existed for over ten years, is also rebutted by Mr. Shuldiner's own February 27, 1998 e-mail, attached to the April 7 Hickman

^{12/} As Justice O'Connor noted in her concurrence in Rufo v. Inmates of Suffolk Jail, 502 U.S.367, 394 (1992):

Our deference to the District Court's exercise of its discretion is heightened where, as in this litigation, the District Court has effectively been overseeing a large public institution over a long period of time. Judge Keeton has been supervising the implementation of this decree since 1979; he has developed an understanding of the difficulties involved in constructing and managing a jail that an appellate court, even with the best possible briefing, could never hope to match. 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).

Similarly, Judge Aspen has been overseeing the Injunction Order since 1981 and the Receiver Order since he entered it in 1987.

Aff't. Ex. C.^{13/} There, speaking to HUD informally rather than to the Court, Mr. Shuldiner referred to Judge Aspen's February 23 Order and wrote:

All Judge Aspen said is that locational restrictions apply as we have assumed that they do throughout. We asked that they not, and he said no, they do. Judge Aspen did not break new ground, he maintained the status quo. [Emphasis added.]

Equally untenable is the CHA's repeated claim that the Receiver is trying to exceed its authority or exclude the CHA from the HOPE VI process, or that Judge Aspen has turned over all of CHA's powers to the Receiver. See, e.g., Stay Motion II ¶46. The Receiver has always wanted to proceed jointly and cooperatively, as was done on prior successful HOPE VI applications. Judge Aspen found that "Mr. Levin has never done anything in the past, nor have I found any of his actions in the recent brouhaha to indicate that he wants to usurp any of Mr. Shuldiner's authorities." Ex. 11 (5/19/98 Tr.) at 11. It is the CHA that is trying to exclude the Receiver, not the other way around.^{14/}

In any event, Judge Aspen has made it clear that he does not want the Receiver to exclude the CHA. The May 19 Order emphasizes the Receiver's "open-minded and enthusiastic offer of cooperation," and ordered the CHA to "coordinate its 1998 HOPE VI application with the Receiver." The May 21 Order concerning Plaintiffs' Motion for Further Relief confirms that:

^{13/} The CHA complains that the e-mail is hearsay, see Mem. In Support of Stay Motion I at 21-22, but the argument is wrong and irrelevant. Mr. Shuldiner's statement is an admission under Fed. R. Evid. 801. Mr. Shuldiner, despite submitting a lengthy affidavit, has not denied the authenticity of the e-mail.

^{14/} Contrary to the CHA's suggestions, the Receiver is not attempting and has no desire to usurp functions that go beyond its authority. In particular, it will not apply for HOPE VI social service funds and it is not trying to do rehabilitation of existing structures. Rather, it has requested that CHA coordinate a social service fund application with the joint application for HOPE VI housing development funds. See Att. A to Ex. M (Levin's 5/5/98 Letter).

We do not wish to be misunderstood; our [May 19] 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. [Cite to CHA Stay Motion omitted.]

Ex. 8 (May 21 Order). Similarly, in his May 22 Order denying the CHA's motion to stay, Judge Aspen stated:

[T]he CHA's motion [to stay] 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.

Ex. 9 (May 22 Order).

B. Judge Aspen's Recent Orders Are Designed Simply
To Make The CHA Comply With Remedial Orders The
CHA Has Not Challenged Or Sought To Modify.

Judge Aspen's rulings are also entitled to deference because of the remedial ends he is trying to achieve and the CHA is now trying to thwart. The 1969 Injunction Order was entered because the CHA engaged in massive intentional discrimination in violation of the Fourteenth Amendment by packing African-American public housing tenants into concentrated, segregated high-rises. The 1987 Receiver Order was entered because after eighteen years the CHA had done nothing to remedy the constitutional violation. Since then, the Receiver has worked to accomplish the Court's remedy (until recently with CHA cooperation) through the new housing it has developed, including the development of the less-concentrated public housing on or near existing sites like Henry Horner. But the remedy is incomplete. Massive public housing developments that were built over a period

of decades and intentionally located to segregate their occupants cannot be remedied in a day. They can only be replaced when funding is available.

The constitutional violation remains in the form of the same large, concentrated, segregated, dilapidated public housing projects that were found constitutionally deficient in 1969. HOPE VI funds can be used, as they were before, see below at 30-36, to further implement the Court's remedy, while achieving the ends of replacing dilapidated and disgraceful housing and revitalizing existing neighborhoods. Cooperation by the CHA would bring a speedier end to judicial involvement. Unfortunately, its recent conduct has been uncooperative, and Judge Aspen's recent orders sought to correct that problem.

Despite the fact that its constitutional violation remains unremedied, the CHA wants to avoid the court-imposed remedy. The statements of Mr. Shuldiner to the Receiver on March 10, see Ex. E, evince the CHA's desire to disregard the Court's orders and interfere with its Receiver. As the District Court found, "Mr. Shuldiner has thus far indicated that he would rather contest every aspect of the relationship between the Receiver rather than attempt to cooperate." Ex. 11 (5/19/98 Tr.) at 11. This finding is no mere "personality issue." Stay Motion II ¶5. The CHA has stated both to the Receiver and in its Stay Motions that it wants to use HOPE VI funds without regard to the desegregation objectives of Gautreaux. See Ex. E (3/13 Letter); Stay Motion I ¶15; Stay Motion II ¶¶56, 59. In addition to these open declarations of defiance, the District Court had before it evidence that: (i) CHA has previously filed HOPE VI applications without telling the Receiver (Cabrini in 1993, Taylor in 1996, and ABLA in 1997), see Exs. B & D (Hickman Aff'ts) ¶¶18, 58, 104; (ii) CHA has falsely told the Receiver that an application (regarding Taylor) called exclusively for rehabilitation, rather than new construction, and therefore did not concern the Receiver, see Ex. B

(Hickman Aff't) ¶¶58-62; and CHA had filed an applications in 1998 for zoning approval with the City of Chicago – without even informing the Receiver – to rebuild on-site approximately 105 units of the Darrow Homes development in one of the most concentrated public housing areas in the City -- in violation of the Injunction Order. See above at 17-19.

It was on the basis of evidence such as this that the District Court made the above finding and ordered CHA to comply with the Court's prior, clear orders. A district court has wide discretion to fashion remedies both to correct unlawful intentional racial discrimination and to enforce compliance with its own orders. See Milliken v. Bradley, 433 U.S. 267, 280-81 (1977); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15-16 (1971). Its remedies should not be disturbed absent an abuse of that discretion. See, e.g., Keyes v. Sch. Dist. No. 1, 895 F.2d 659, 665 (10th Cir. 1990).^{15/} That is especially true here, where CHA has not even challenged the underlying remedial orders themselves.

The CHA has specifically chosen not to move to vacate the Injunctive Order. Ex. 10 (2/10/98 Tr.) at 36. The failure of the CHA to seek modification of the 1969 Injunction Order or of the 1987 Receiver Order is important. Until it makes such a motion it must comply with those orders. See, e.g., GTE Sylvania, Inc. v. Consumers Union of the United States, Inc., 445 U.S. 375, 386 (1980) ("persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order"); Alexander v. Chicago Park District, 927 F.2d 1014, 1025 (7th Cir. 1991) ("[p]arties must obey court orders regardless of their validity, unless the orders are stayed pending appeal").

^{15/} This is a school desegregation case, but there is no reason the principle should not apply to housing desegregation.

Were CHA to make such a motion, it would carry the burden of showing, among other things, that it “had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable.” Bd. of Educ. of Okla. City v. Dowell, 498 U.S. 237, 249-50 (1991). Its failure to file a motion that even tries to meet this standard is telling. It is unlikely that it could prove that the “vestiges of past discrimination” have been eliminated “to the extent practicable,” and its recent conduct, described at length in the various Affidavits the Receiver submitted to the District Court, see Exs. A-H, K-L, has fallen far short of good faith compliance. In the absence of such a motion or such a showing, all that is left is the District Court’s straightforward application of clear orders to a new funding statute, and the CHA’s defiance of those orders.

Judge Aspen’s orders may at last be achieving the end he desired. As discussed above at 21-22, CHA representatives attended constructive meetings with the City and Receiver on May 22 and 26 and appear to be making an effort to work cooperatively on a HOPE VI application.

IV. THE STATUS QUO WAS THAT CHA SUBMITTED HOPE VI APPLICATIONS THAT INCLUDED THE RECEIVER, COMPLIED WITH GAUTREAU REQUIREMENTS, AND WERE FUNDED BY HUD.

A key element of the CHA’s Stay Motions, repeated throughout, is that the May 19 Order disturbs the status quo, and in doing so, threatens to doom its 1998 HOPE VI application. Its argument rests on related legal and factual premises. The legal premise is that the HOPE VI statute is, as a matter of law, incompatible with the requirements of Gautreaux orders. Judge Aspen’s February 23 Order held otherwise, and we leave it to the plaintiffs and CHA to brief this legal point.

The related factual premise is that HUD, which is charged to implement HOPE VI, shares CHA's view and therefore will deny funding to an application that seeks to comply with Gautreaux requirements. In so arguing, CHA portrays the status quo, the period from 1993-96, as a time when it was free to, and did, submit HOPE VI applications without the participation of the Receiver and without regard to the Gautreaux case; it raises the spectre that if the Court tries to change that supposed status quo, HUD will deny the application. See, e.g., Stay Motion I ¶15; Stay Motion II ¶56.

Reality, however, was quite different. The impression that the CHA tries to create -- that HOPE VI and Gautreaux embody conflicting policy objectives that cannot be married in one successful application -- is false, as the District Court found in its February 23 Order, Ex. 3, and in its May 22 Order denying a stay: "The Receiver and the plaintiffs . . . 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." Ex. 9. The District Court was correct.^{16/} That evidence is described below. It demonstrates that the status quo was that HUD awarded HOPE VI funds pursuant to applications that included the elements the CHA now contends would be fatal.

^{16/} An abuse of discretion standard applies to review of Judge Aspen's denial of the CHA's stay motions. See Lightfoot v. Walker, 797 F.2d 505, 507 (7th Cir. 1986) (reviewing denial of stay of judgment pending appeal).

A. The Receiver Was Involved In Prior,
 Successful HOPE VI Applications.

As summarized above at 14-17, despite the CHA's efforts to exclude the Receiver from prior HOPE VI applications, the CHA and Receiver reached a *rapprochement* that permitted the Receiver to comply with its obligations under the 1987 Receiver Order without requiring judicial intervention. Under this arrangement, the Receiver acted under the label "development manager," assisted in the preparation of some of the applications, and performed development tasks at Cabrini-Green and Horner. The CHA's chair in November 1995 confirmed this arrangement in a letter, Ex. 7 attached to Ex. B (Hickman Aff't), and its Executive Director confirmed to the Secretary of HUD in 1996 that the Receiver "administers our new construction efforts." *Id.* Ex. 12 attached thereto.

The CHA chose to alter the *status quo*. The CHA "fired" the Receiver from Cabrini in late 1996 and thereafter has tried to exclude the Receiver from development work at Taylor, ABLA and Darrow, which precipitated the latest round of litigation in 1997, in which the Receiver informed the Court and asked for assistance. *See* pp. 17-21 above. However, for present purposes the pertinent point is this: contrary to the suggestions of CHA, the Receiver was involved in prior HOPE VI application and development tasks and that involvement did not prejudice the CHA in the eyes of HUD. To the contrary, as described below, CHA highlighted the Receiver's involvement in order to persuade HUD to grant HOPE VI funding.

B. The CHA's Prior, Successful Applications Emphasized
 The Receiver's Participation And Praised The Receiver.

Several of the CHA's successful HOPE VI applications were premised upon the fact that the Receiver was going to perform the development work. Indeed, CHA lauded the accomplishments

of the Receiver in order to strengthen its prior applications in HUD's eyes. For example, excerpts from the 1996 Horner application, which CHA had refused to produce without Court order,^{17/} stated:

From Page 47:

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.

From Page 48:

In 1987, The Habitat Company was appointed by the Federal 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 the "Demonstration Program." Habitat is responsible for the acquisition of land, planning, development, construction management and all related accounting functions.

From Page 68:

a. The CHA will contract with The Habitat Company as development manager for the implementation of the HOPE VI program (Horner 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.

^{17/} After being served with the CHA's stay motions in this Court and the District Court on May 19 and 20, plaintiffs' counsel asked the CHA for copies of the prior HOPE VI applications, since the Stay Motions refer repeatedly to and characterize those applications. The CHA refused. Plaintiffs made an emergency oral motion to compel, which the District Court granted, ordering CHA to make the documents available for inspection "forthwith." Ex. 12 (5/20/98 Tr. at 13-14). Because plaintiffs and the Receiver had only a few hours to review these lengthy applications, only excerpts were obtained and copied. We have not received full copies from the CHA.

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 466 Replacement Units at Horner and will provide continuity between the existing Replacement Program and the Gautreaux HOPE VI Program.

Ex. J (application excerpts) (emphasis added). Thus, the CHA's suggestions that an application involving the Receiver as developer would be frowned upon by HUD is flatly wrong. Indeed, it is from these very HOPE VI funds awarded by HUD that the Developer is building the award-winning homes referred to earlier.

C. The CHA's Prior Successful HOPE VI Applications Stated That CHA Would Comply With Orders Of The Gautreaux Court.

The Stay Motions and Shuldiner Affidavit create the false and misleading impression that the prior HOPE VI applications did not comply with Gautreaux requirements and that the goals of the HOPE VI Program cannot be reconciled with Gautreaux. CHA thereby suggests that telling HUD that HOPE VI funds would be applied to housing sited in compliance with Gautreaux would doom an application. See, e.g., Stay Motion I ¶15; Stay Motion II ¶56; Shuldiner Affidavit ¶¶12-14.

The applications themselves, which CHA failed to file with the Court and refused to produce to plaintiffs and the Receiver without court order, see above at 32 n.18, belie CHA's argument. They establish that in prior HOPE VI applications, the CHA repeatedly referred to the Gautreaux case requirements and to the use of the Revitalizing Area designation to comply with those requirements. The excerpts demonstrate that there is no incompatibility between the HOPE VI program and Judge Aspen's orders. Indeed, at one point CHA melds the two, referring to the "Gautreaux HOPE VI Program." Here are some illustrative quotations, Ex. J (emphasis added):

- From the 1996 Horner HOPE VI Application at 13:

Two hundred of the units are being built back on site of the demolished units (lessening the density by about 60%) and 266 units are being provided by new construction on scattered vacant, in-fill sites or acquisition and rehabilitation of vacant and existing properties in the surrounding communities. These sites were the subject of a court approved waiver under the Gautreaux Desegregation case and have been determined to be "Revitalizing Areas" under the provisions of that case. As a condition of the waiver, the replacement housing units are to be for "mixed" income occupancy (50% of the residents must earn 50% or less of median income and 50% of the residents must earn 51% to 80% of the median income).

- From the 1996 Horner HOPE VI Application at 14

The proposed on site replacement units for the to be demolished public housing units would be provided as follows:

* * * * *

The units will avoid or lessen concentrations of very low-income families by requesting a Gautreaux Revitalizing Waiver to permit 50% of the units to be provided to very low income families and 50% to families earning 51 to 80% of area median income.

- From the 1996 Horner HOPE VI Application at 68

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.

- From the 1993 Cabrini-Green Application

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 Gautreaux litigation.

HUD awarded grants pursuant to these applications.

Finally, it is telling that CHA produces no evidence whatsoever from HUD that compliance with Gautreaux would be poisonous to the 1998 HOPE VI application, when it was so plainly not

so in prior applications. None exists. As Judge Aspen correctly noted, HUD informed the Court that the matter was a “non-issue.” Ex. 10 (2/10/98 Tr. at 28).^{18/}

D. CHA’s Contention That The Receiver Would Preclude Tenant Involvement Or Choice Is Unfounded And False.

CHA argues that the Receiver’s participation would hurt the application because it would exclude tenant participation and constrict tenant choice. Stay Motion II ¶¶7, 14; Shuldiner Aff’t ¶15. This assertion, which is plainly speculative and lacks foundation, is wrong. In combination with scattered site units and Section 8 vouchers, choices available to residents who live in the developments that the June 29 application will propose to replace, will be as broad as broad as the choices that were available to residents, and approved by Judge Aspen, for the Horner and North Kenwood Areas. See Ex. D (Hickman Aff’t) ¶95. The Receiver fully intends, with the assistance of CHA, to solicit the participation and input of those residents as required by the HOPE VI program. Mr. Shuldiner’s implication that the Receiver is seeking to constrict tenant choice or involvement is untrue. Ex. D (Hickman Aff’t) ¶¶95, 99.

E. CHA’s Statement That HUD Will Not Disburse HOPE VI Funds Until This Appeal Is Decided Is Unsupported and Incorrect.

Attempting to show that a stay will work no harm to plaintiffs or the public, CHA implies that HUD has frozen HOPE VI funds pending this appeal:

^{18/} Attempting to bolster an argument that compliance with Gautreaux requirements would be impossible, Paragraph 21 of the Shuldiner Affidavit states that “the receiver has told the CHA that it is not feasible to build additional public housing units in the General Area.” That is untrue. See Ex. D (Hickman Aff’t) ¶108. In fact, the Receiver has acquired units within the last 90 days in the General Area and has other units currently in the pipeline. Id.

The district court ignored the fact that the CHA presently is not now permitted to use any HOPE VI funds (other than plaintiffs' set-aside at Horner and ABLA, see note 12, supra) to build replacement housing. Instead, HOPE VI funds will not be released by HUD for the construction of replacement units until the issue of the applicability of the Injunction is resolved on this appeal. With or without the stay, HOPE VI units will not be built pending appeal.

Mem. In Support of Stay Motion I at 22. See also Stay Motion II ¶18. CHA cites no authority, no statement by HUD in support of this statement, and we are aware of none.

It is not true that HOPE VI units will not be built "with or without the stay." The reality is that HUD could release funds to the Receiver pursuant to a successful HOPE VI application, as has been done in the past, and HUD has never suggested otherwise. What HUD is not likely to do is release funds directly to the CHA for the CHA to develop housing without the Receiver, since that would violate the 1987 Receiver Order. See Ex. 10 (2/10/98 Tr.) at 28 (statement by HUD counsel that HUD "had very definite opinions . . . that indeed the Receiver has all responsibility connected with the development, whether HOPE VI or otherwise"). Thus, contrary to the CHA's argument, a stay would alter the status quo and potentially harm plaintiffs, since it would effectively freeze grant funds (if awarded) that could otherwise be released in the ordinary course of business.

* * * * *

In sum, the linchpin of the Stay Motions -- that HUD will deny the 1998 HOPE VI application if it complies with Gautreaux and if the Receiver participates in the application -- is false, as the District Court correctly held.

V. AN APPLICATION PREPARED PURSUANT TO THE COOPERATION
ORDERED BY THE DISTRICT COURT IS MORE LIKELY TO BE FUNDED
THAN THE UNILATERAL ONE THE CHA WANTS TO SUBMIT.

With respect to the “balance of harms” and “public interest” factors, CHA makes several statements questioning the Receiver’s “attributes” and qualifications to prepare a successful HOPE VI application, and suggesting that it is better qualified to submit one by itself than in cooperation with the Receiver. See, e.g., Stay Motion II ¶¶15, 48, 63. Of course, this Court does not regularly engage in fact-finding, particularly about what process might produce a stronger application -- one produced unilaterally by CHA or one produced jointly. The District Court’s conclusion that a joint application is required by its previous orders and is preferable should not be disturbed, and it is borne out by history: HUD has funded applications when the Receiver was involved in the process and has declined funding when the Receiver was excluded.

In any event, the CHA is wrong. First, the “attributes” of the Receiver are substantial. Apart from the Receiver’s substantial experience in private, market-rate housing development, the Receiver has prepared over 80 development proposals that HUD has approved during the Receivership, has participated in two of the CHA’s past HOPE VI applications, and is familiar with the HOPE VI process. Indeed, the Receiver has developed 2,200 units of public housing since the beginning of the Receivership. Ex. D (Hickman Aff’t) ¶¶100-01; Ex. F (Levin Aff’t) ¶¶11-15.

Second, the CHA exaggerates its successes in its prior HOPE VI applications and omits an important fact. Two of the approved applications were submitted with the input and assistance of the Receiver (and, as described earlier, the CHA expressly relied upon the Receiver’s capabilities and accomplishments to HUD, as evidence of the strength of its applications). The CHA fails to

mention, however, that in 1997 the CHA unilaterally submitted a HOPE VI application to HUD without including the Receiver. HUD rejected the application. Ex. D (Hickman Afft) ¶104; Ex. K (Jarrett Afft) ¶¶14-17.

Third, CHA's unilateral actions may hurt its chances. HUD's decisions concerning funding applications are expressly judged on factors that include its view of the capabilities and prior successful development experience of the applicant. See Ex. I (SuperNOFA, 63 F.R. 15579). In two prior successful HOPE VI awards, HUD was informed that the Receiver would be functioning as development manager. In the application rejected last year, CHA sought funds without the Receiver. The CHA has not demonstrated any capacity to develop new units. In the past, the CHA has been given two demonstration projects to try to develop scattered site housing without the Receiver, but has not successfully completed its work. Indeed, much of that work was then reassigned to the Receiver. Ex. B (Hickman Afft) ¶¶76-80. The CHA has not yet built any housing units from the funding it received from HOPE VI applications from which it excluded the Receiver. Ex. D (Hickman Afft) ¶¶102-04. In contrast, the Receiver has a proven track record of development and has just this year received a major national award from HUD.

In sum, the most competitive application would be one prepared with the full cooperation and constructive involvement of the CHA, the Receiver and the City, not one prepared unilaterally by the CHA without regard to the requirements of this Court. Ex. D (Hickman Affidavit) ¶91.

VI. THE CHA'S PURPORTED LACK OF
"CONFIDENCE" IN THE RECEIVER IS IRRELEVANT.

The CHA claims that it has "lost confidence in the receiver." Shuldiner Affidavit ¶21. It alludes without evidentiary support to "basic factors as the design and suitability of the units that have been and are being developed by the receiver, and the cost of those units." Id. Accordingly, the CHA claims that if it loses its appeal, it will file a motion in the District Court to terminate the Receivership or to modify the Receivership order of 1987 to carve out HOPE VI. Id. ¶22. This puts the Receiver in the awkward position of responding to a vague and unsupported accusation of malfeasance that might be asserted in a motion that has not yet been filed. However, a brief response is warranted.

If the CHA had moved to dissolve or modify the Receivership, it would have been required to prove its assertions and to demonstrate its own ability to develop and build housing. As noted above, Judge Aspen ruled that CHA "has not presented any evidence justifying such a motion." Ex. 9. Unsubstantiated accusations in a motion that has not been made are not entitled to any weight and do not provide grounds to disobey the court orders.^{19/}

Equally without merit is the CHA's complaint that the District Court entered the May 19 Order without giving the CHA a chance to "contest the applicability of the Receiver Order to HOPE VI programs" and without giving it "a hearing on the qualifications of the Receiver to prepare a HOPE VI application or to make any decisions regarding the location of replacement housing." Stay

^{19/} The fact that a party threatens to make a motion if an appeal is unsuccessful, i.e., if the District Court's orders are right, can hardly be a basis for a stay, which requires the moving party to demonstrate, inter alia, a likelihood that it will be successful on appeal.

Motion II ¶48-49. This is incorrect and backwards, as Judge Aspen ruled on May 22. Ex. 9. The parties have extensively briefed the applicability of the Receiver Order to HOPE VI programs, a matter that is quite clear from the Order in any event. (Also, the Receiver and the plaintiffs submitted extensive factual materials (included in the Appendices to this Statement) showing that the CHA's refusal to comply with the 1969 Injunction Order, the 1987 Receiver Order and the February 1998 HOPE VI ruling -- all of which were unrebutted.) No hearing on the Receiver's "qualifications" is required, since the August 14, 1987 Order clearly applies to the HOPE VI program. The place to challenge the Receiver's "qualification" is in a motion to modify or terminate the receivership, a motion CHA has avoided making.

Moreover, the CHA's "lost confidence" is belied by what it told HUD as recently as 1996 when it was applying for HOPE VI funds for Horner. There the CHA lauded the Receiver's performance and abilities, citing them as reasons why HUD should award the funds. See above at 32-33.

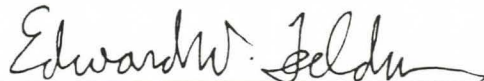
Finally, the CHA suggested to the District Court, and may seek to argue to this Court, that the May 19 Order directing the CHA to "cooperate" with the Receiver is too vague to be enforced. That argument is undercut by the fact that the cooperation requirement and language has been a part of the Receiver Order since 1987, but the CHA has never before found any difficulty in understanding the requirements of the language and it has cooperated extensively in the past. In addition, if a problem arises in a specific context, the CHA can apply to the District Court for modification or clarification in the context of that context. CHA's cooperation on May 22 and May 26, see above at 21-22, also confirm that it is not as difficult or impossible as CHA suggests.

VII. CONCLUSION

In sum, the Receiver suggests that this Court should deny the Stay Motions. Judge Aspen's February 23 and May 19 Orders simply apply the clear language of the 1969 Injunction Order and 1987 Receiver Order, which have never been challenged, to the HOPE VI statute. Thus, CHA has no likelihood of success on the merits.

In addition, a stay would alter the *status quo*, under which the CHA cooperated with the Receiver in preparing successful HOPE VI applications. A stay would also harm plaintiffs and frustrate the public interest because (i) it would permit CHA to submit a HOPE VI application that would not seek to implement the desegregation remedy with which it has been ordered to comply; (ii) it would reward the CHA's defiance of Judge Aspen's Orders; and (iii) it would yield a less competitive application and decrease the likelihood that \$35 million of replacement housing will be developed for CHA residents.

Respectfully submitted;



One of the Counsel for Daniel E. Levin and
The Habitat Company, as Receiver Pursuant
to the Court's Order of August 14, 1987

Date: May 27, 1998

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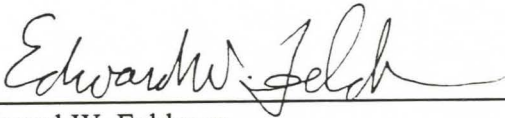
CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on May 27, 1998 he served a copy of the ***Receiver's Statement in Response to the CHA's Stay Motions*** on the parties listed below by causing a true and correct copy to be delivered to them via messenger delivery at their respective addresses as indicated below:

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Dated: May 27, 1998



Edward W. Feldman

**INDEX OF EXHIBITS SUBMITTED IN SUPPORT
OF RECEIVER'S STATEMENT IN RESPONSE
TO THE CHA' STAY MOTIONS**

EXHIBIT

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Order of August 14, 1987	1
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Exhibits Separately Bound

Volume I

Affidavit of Phillip Hickman dated 3/18/98
(with attached Exhibits)

A

EXHIBIT

TAB

Affidavit of Phillip Hickman dated 3/30/98
(with Exhibits 1-14, 16-24 and 26-29 attached and
Exhibits 15 and 25 bound
separately in Volumes III - VII)

B

Affidavit of Phillip Hickman dated 4/7/98
(with attached Exhibits)

C

Affidavit of Phillip Hickman dated 5/21/98
(with attached Exhibits)

D

Volume II

Declaration of Daniel Levin dated 3/17/98
(with attached Exhibits)

E

Affidavit of Daniel Levin dated 3/30/98
(with attached Exhibits)

F

Affidavit of Barry Miller dated 3/31/98
(with attached Exhibits)

G

Affidavit of Michael Shakman dated 4/15/98
(with attached Exhibits)

H

63 Fed. Reg. Pp.15577-15584
(SuperNOFA)

I

Excerpts from prior HOPE VI Applications
produced by CHA on 5/20/98

J

Affidavit of Valerie Jarrett dated 3/31/98
(with attached Exhibits)

K

Affidavit of Valerie Jarrett dated 5/27/98
(with attached Exhibits)

L

Receiver's Emergency Motion for Entry of Order Implementing
CHA's Duty of Cooperation dated May 18, 1998

M

EXHIBIT

TAB

Horner HOPE VI and ABLA/Brooks Extension HOPE VI
Development Management Agreement
(with April 30, 1997 cover letter)

N

Volume III

Exhibit 15 to Affidavit of Phillip Hickman dated 3/30/98

Volume IV

Exhibit 25 to Affidavit of Phillip Hickman dated 3/30/98 (1 of 4)

Volume V

Exhibit 25 to Affidavit of Phillip Hickman dated 3/30/98 (2 of 4)

Volume VI

Exhibit 25 to Affidavit of Phillip Hickman dated 3/30/98 (3 of 4)

Volume VII

Exhibit 25 to Affidavit of Phillip Hickman dated 3/30/98 (4 of 4)