

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY and	)	
Joseph Shuldiner, its Executive Director,	)	
	)	
Defendants.	)	

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO RECEIVER'S EMERGENCY MOTION**

The Receiver's Emergency Motion For Entry of Order Directing CHA to Comply with 1987 Receivership Order and 1998 HOPE VI Orders, filed July 30, 1998 (the "Motion") seeks an injunction against the CHA, as this Court recognized in its minute order of July 30, 1998, wherein it enjoined rather than temporarily restrained the CHA from proceeding before Judge Coar.

RESPONSE OF CHA'S COUNSEL IN HORNER AND CABRINI CASES

On telephone notice, the Receiver raced into this Court with an emergency motion charging the CHA with having "unilaterally" settled Cabrini-Green LAC v. CHA, 96 C 6949. The Receiver claims it was "kept in the dark about negotiations concerning redevelopment of almost a thousand units of public housing." (Motion, ¶ 6). Characterizing the CHA's actions as a surreptitious end run around the Court and its officer, the Receiver then seeks sweeping relief aimed at halting all of CHA's HOPE VI activities. The Receiver, however, has not accurately

represented the facts, of which the Receiver is well aware. The Receiver's allegations do not accurately describe or reflect the events that transpired in the Cabrini case.

In defending the Cabrini litigation and arriving at a proposed consent decree that is expressly subject to the approval by the Gautreaux Court, the CHA followed precisely the same course that it took back in 1995 when it defended and arrived at a proposed consent decree in the Henry Horner Mothers Guild v. CHA and HUD, 91 C 33316 litigation pending before Judge Zagel. Even though the same 1987 receivership Order was in place back in 1995, neither the Receiver nor counsel for the Gautreaux plaintiffs ever sought relief from this Court to restrain the CHA from following this course. Nor did they object in the hearings before this Court as to how the matter was handled. CHA therefore reasonably took precisely the same tack when confronted with the Cabrini litigation. Neither in Horner nor in Cabrini did the CHA make a "unilateral" deal and exclude the Receiver. The CHA was careful to explain to all parties in both cases, and to the Judges presiding over both cases, that any settlement would be submitted for review and approval by the Gautreaux court.

The Receiver says CHA should have brought it to the Cabrini table earlier but, in light of the Horner experience, how could CHA have known to do so? The Receiver and counsel for the Gautreaux plaintiffs knew all about the Cabrini litigation from its inception and never once did the receiver or Mr. Polikoff ever suggest (to CHA or this Court) that the Receiver should have joined the CHA in defending or seeking to resolve the case. In particular:

1. Newspapers covered the Cabrini litigation long before the proposed settlement was reached – there was substantial coverage of the filing of the complaint, the preliminary injunction hearing, and the settlement negotiations. At no time did the Receiver or plaintiffs'

counsel suggest to the CHA or to this Court that the Receiver should join the CHA in negotiating the resolution of the Cabrini case.

2. CHA counsel in the Cabrini litigation sent Mr. Polikoff a copy of the complaint and discussed with him CHA's initial position, expressed in CHA's brief supporting its motion to dismiss, that "*Because the risk of inconsistent ruling (in the Gautreaux and the Cabrini litigation) is exceedingly high . . . the Court should consider transferring the case to Judge Aspen or convening a conference between Judge Aspen, the tenants' lawyers in Gautreaux and the parties here, to discuss the relationship between the cases.*" (Emphasis added.) Judge Coar rejected this suggestion as well as all of CHA's efforts to dismiss or otherwise consolidate this matter with the Gautreaux litigation.

3. During the Cabrini litigation, the Receiver's representatives, Valerie Jarrett and Lee Reid, were both deposed and represented at their depositions by the Miller Shakman firm.

4. On November 6, 1997, the CHA met with counsel for the Gautreaux plaintiffs to discuss the need for a revitalizing order to cover the near north area in which the Cabrini redevelopment was to take place. CHA's HOPE VI plan for the Cabrini neighborhood, submitted and then already provisionally approved by HUD, was fully shared with Mr. Polikoff. And, in fact, this Court then entered a revitalizing order for part of the near north area. The order makes it clear that the Receiver and Mr. Polikoff were well aware of the CHA's efforts to resolve the Cabrini litigation.

5. Throughout this litigation, the Cabrini plaintiffs' counsel had continuing contact with the Receiver and Mr. Polikoff in which they apprized both of the ongoing efforts to resolve the case. See Affidavits of Richard Weelock and Brenda Grauer, separately filed.

Despite all of this, neither the Receiver nor counsel for the Gautreaux plaintiffs ever suggest to the CHA (or to this Court) that the CHA should respond to the Cabrini litigation in a manner differently than CHA had responded to the Horner litigation. Indeed, when it first became apparent that the Receiver was taking the position that it had sweeping authority over all HOPE VI programs, it was the CHA and not the Receiver that brought this issue to the attention of this Court in its 1997 Motion to Clarify the Injunction. While the Court found that the Injunction covered HOPE VI monies in February of 1998, even the Receiver seems to concede that the Court did not deal with the issue of the Receiver's role until May 19, 1998. The proposed Cabrini settlement was completed by that time. The settlement discussion began in earnest in September of 1997, under guidelines approved by Judge Coar, and the parties reported an agreement in principle to Magistrate Palmeyer on May 1, 1998. See Affidavit of Richard Wheelock.

There has been no intentional or knowing violation of any order of this Court. The CHA and its counsel fully believed that by negotiating the Cabrini consent decree in the identical manner as it negotiated the Horner consent decree, and by making the consent decree specifically subject to this Court's approval, that all Gautreaux orders had been followed.

ARGUMENT

I. The Motion Should Be Denied

A. Receiver Lacks Standing To Seek An Injunction

The Receiver is seeking a specific set of mandates from the Court to enforce against the CHA. However, the Receiver is not a party in this case and it is not entitled to seek injunctive relief against the CHA. "A receiver only has those rights and powers to sue as the

person or entity whose property is in receivership." (Moore's Fed. Prac. 3d § 66.08[1][c]) A receiver only has standing to bring a cause of action if the legal interests of the entity the receiver is representing were harmed. (*Id.*) Here, the entity represented by the Receiver is the CHA, which has not consented to be sued. The Receiver has not been appointed to sue the CHA.

The Receiver has only those duties that are expressly identified in the order appointing the Receiver. The Receiver is an officer--an extension--of the Court, responsible solely to the Court. (Moore's Fed. Prac. 3d § 66.03[2]). The duties of a receiver can be expanded only by further court order. The CHA and the Receiver have different views regarding the nature and extent of the Receiver's duties and responsibilities. The Motion is seeking additional duties, but in an improper form. Instead of seeking an injunction against the CHA, the Receiver could and should ask the Court to clarify its duties and responsibilities so that neither the Receiver nor the CHA is required to interpret prior orders of the Court. The Receiver has no standing to seek a mandatory injunction. Accordingly, the Motion should be denied.

B. The Prerequisites For An Injunction Are Not Pled

The Receiver has failed to plead the basic prerequisites for an injunction: that the Receiver will suffer irreparable harm without the injunctive relief; that the balance of the harms is in its favor and against the CHA; and that there are adequate grounds that it is entitled to a permanent mandatory injunction against a local governmental unit.

C. The Balancing of Harms Favors the CHA

The relief sought by the Receiver is extraordinary. The Receiver wants the Court to order the CHA to turn over control of all HOPE VI non-elderly housing development to the Receiver, including operating and financial control. This means the receiver would control the

\$59 million recently awarded the CHA for the Cabrini-Green revitalization plans, the \$35 million for which the CHA recently applied in its 1998 HOPE VI ABLA Application, and all of the Horner funds.

The Receiver has a substantial financial interest in the relief it seeks. The Receiver likely will seek, as it has already sought in connection with the ABLA HOPE VI application, both an "administrative fee" and a "development fee."¹ Assuming a 7% total Receiver fee, the Receiver would seek more than \$6 million for just the Cabrini-Green and ALBA projects. The HOPE VI funds would be spent unnecessarily on administrative work performed by the Receiver that the CHA is fully competent and able to provide. The CHA and the plaintiffs are irreparably harmed to the extent that any HOPE VI funds are diverted to the Receiver. The Receiver's lack of experience in dealing with issues beyond the construction of housing, should the Receiver obtain any of the relief it seeks, presents potential harm to the CHA and the plaintiffs.

¹ Receiver's Motion, Ex. J. at p. 3, ¶ 3. As a result of the Receiver's fee proposals concerning ABLA, the CHA and the other parties to the ABLA HOPE VI application agreed to seek a 7% administrative fee, which is 3% higher than the fee initially proposed by the CHA when the CHA alone would be entitled to an administrative fee. Receiver's Motion, Ex. K at pp. 2-3. The Receiver originally proposed a 10% administrative fee. Id. The Receiver asserts that it would be entitled to a development fee to be determined by the Court. See Letter from Barry Miller to Nancy Eisenhower (June 23, 1998) at p.2 (attached hereto as Exhibit 1).

II. The CHA Is Entitled to an Evidentiary Hearing

A. The Receiver's Factual Allegations Have Never Been Proved

The Motion alleges that the "CHA has disobeyed the Receivership Order and has not accepted the Court's February 23 and May 19 Orders, and continues to act unilaterally with respect to HOPE VI housing development." Receiver's Motion, ¶ 56. These allegations, many of which are conclusory, are based on self-serving letters that contain the Receiver's view of certain facts, which the Motion asserts are true and correct. The Receiver repeats allegations made by the plaintiffs in their Motion for Further Relief (Receiver's Motion, Ex. D), and by the Receiver in its March 10, 1998, letter to the Court (Receiver's Motion, Ex. C) and its Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation filed May 18, 1998.² The Court has never considered the merits of any of those allegations. Yet they are repeated in the Motion as gospel.

The only opportunity the CHA has had to respond to these allegations was in its memorandum in opposition to the plaintiffs' Motion for Further Relief. That response made clear

² The Court granted the Receiver's Emergency Motion entirely based on its interpretation of the Receivership Order. The May 19th Order stated:

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.

The Court made no factual findings. Although the Court stated at oral argument on the Motion that "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," the Court made that statement based on disputed facts without an evidentiary hearing and without providing the CHA any opportunity to respond to the merits of the allegations, and the Court did not make such a finding in the May 19th Order.

that the CHA disputed the plaintiffs' allegations, which were largely based on the Receiver's March 10 letter to the Court. The CHA demanded an evidentiary hearing. However, the Motion for Further Relief was denied as moot without any resolution of the factual allegations. The CHA is entitled to expedited discovery and an evidentiary hearing on the merits of the Receiver's allegations and the Receiver's entitlement to an injunction.

III. The CHA's Duty of Cooperation Needs Clarification

A. The Duty of Cooperation Is Unclear

The CHA accepts the Court's orders, has always intended to comply with those orders, and believes that it is in compliance. However, there are legitimate disagreements between the Receiver and the CHA regarding CHA's duty to cooperate with the Receiver.

The duty to cooperate is derived from the Receivership Order and the May 19, 1998, order that granted the Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation. Paragraph 7 of the Receivership Order provides as follows:

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 and files relating to the scattered site program.

The Receiver's May 18, 1998, emergency motion sought an order from the Court that the CHA 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. The May 19th order granting the motion held:

1. The Receiver has "all powers of CHA" with regard to the HOPE VI public housing development programs necessary and incident to the development and administration of such programs.

2. The CHA is obligated to cooperate with the Receiver and to provide the Receiver with the information it needs.
3. The CHA is obligated to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

This order did not define the CHA's "duty of cooperation" beyond stating that it includes providing the Receiver with "the information it needs." Nor did it define how the CHA was to discharge its duty to "coordinate." The Order read:

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.

(Receiver's Motion, Ex. F)

The CHA moved to stay that order, in part because it was over broad and vague. The Court's first response to the Motion to Stay was in its May 21, 1998 Order denying plaintiffs' motion for further relief as moot:

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.

(May 21, 1998, order attached as Exhibit 2) The Court denied the Motion to Stay in its order of May 22, 1998. (May 22, 1998 order attached as Exhibit 3) The Court explained that the May 19th order "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 1998 HOPE VI application. The nature and

extent of the Receiver's and the CHA's involvement was not described. There has been no other articulation of what is required of the CHA.³

The lack of clarity of the Court's orders is seen in the Receiver's and the CHA's perception of whether the duty of cooperation was satisfied in connection with the 1998 HOPE VI application. Based on the Court's orders, the CHA, the City of Chicago and the Receiver had at least 10 meetings concerning the 1998 HOPE VI application and eventually agreed on the content of that application. The CHA believed, and so informed the Receiver's counsel, that it had fulfilled its duty of cooperation. (Receiver's Motion, Ex. K) However, after signing off on the application, on July 10, 1998 the Receiver wrote to the Court and complained that the CHA did not fulfill its duty of cooperation and coordination. (Receiver's Motion, Ex. H) The correspondence between counsel for the CHA and the Receiver shows the extent and source of the disagreements. (Receiver's Motion, Exs. J and K) There are vast differences in the parties' perceptions of what the duty of cooperation requires of the CHA, notwithstanding the Court's May 19, May 21 and May 22 orders.

When the Receiver had all of the CHA's powers regarding housing development in developing scattered site housing, the duty to cooperate needed less definition. When the housing development is a part of a HOPE VI plan, both the Receiver and the CHA have duties. The development of new housing is just one of many elements of the plan. It is not possible to isolate any element of a HOPE VI plan and given authority for the single element to a third party.

³ The plaintiffs and the CHA have both sought clarification of the CHA's duty to cooperate with the Receiver. The plaintiffs Motion for Further Relief sought six specific mandates against the CHA to define its duty of cooperation. (Receiver's Motion, Ex. D)

Everything has to be negotiated with the City of Chicago and the Local Advisory Councils. Two people with different views representing the CHA cannot effectively negotiate a HOPE VI plan or the consent decree in the Cabrini case.

B. The CHA's Duty of Cooperation Is Not Judicially Enforceable

The often stated applicable legal principle is set forth in Clark v. Coye, 60 F.3d 600, 604 (9th Cir. 1995):

When the Department is expected to conform its behavior to the injunction or face a contempt sanction, that injunction must be clear enough on its face to give the Department notice that the behavior is forbidden. The class plaintiffs, in seeking to enforce the injunction, must show that the injunction clearly forbids a certain type of conduct. That is why Federal Rule of Civil Procedure 65(d) "requires the language of injunctions to be reasonably clear so that ordinary persons will know *precisely what action is proscribed*," and why "all ambiguities are resolved in favor of the person subject to the injunction."

(Emphasis in original; citations omitted)

What constitutes "cooperation" depends on the eye of the beholder. The duty to cooperate is capable of many different interpretations and different people will have different ideas as to what conduct is adequate to satisfy such a duty. Without standards that define for the CHA what is required or prohibited, the duty of cooperation is not enforceable through the Court's power of contempt. Original Great American Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd., 970 F.2d 273, 276 (7th Cir. 1992).

IV. There Are No Clear Orders Defining the Receiver's Authority Regarding HOPE VI Programs That Inform the CHA Of Its Obligations

The Motion also makes clear that there is a disagreement as to the Receiver's responsibilities in connection with the Cabrini-Green consent decree. As a result, the Receiver

believes that the CHA has disobeyed the Court's orders. The CHA believes that it is in compliance with the Court's orders.⁴ The Receiver's responsibilities need clarification.

A. The February 23, 1998 Order

The February 23, 1998, ruling was: "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." In reaching this conclusion, the Court conducted an analysis of whether there were locational requirements in HOPE VI that were in conflict with the locational requirements of the Injunction. The Court concluded: "We see no incompatibility between the HOPE VI program and the judgment order." The Court's focus was on the locational requirements of the Injunction. Based on the order, the Receiver is to enforce the locational requirements of the Injunction. No other requirements have been described.

B. The Receivership Order

⁴ The CHA had committed to provide the Receiver with information regarding proposals for agreements between the CHA and any tenants' organization. (Motion at ¶ 31, citing Exhibit K) Information about the various consent decree drafts was not provided to the Receiver. However, the Receiver was aware of the negotiations. (See Affidavit of Richard Wheelock, plaintiff's counsel in the Cabrini case, attached hereto) Further, on May 1, 1998, the parties reached an agreement in principle to settle the case, subject to drafting an agreement and seeking necessary court approval. See Judge Palmayer's May 1, 1998, minute order, a copy of which is attached to the Affidavit of Richard Wheelock as Exhibit B). The negotiations were treated as confidential by the parties in the Cabrini case because the consent of the LAC must be obtained before public disclosure of an agreement in principle. Nevertheless, the CHA did not fulfill its commitment to provide information to the Receiver about the consent decree negotiations.

The Receivership Order provides that 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 the following:

1. submit to HUD applications for funding, development programs and other documents;
2. select the sites and acquire the sites for the scattered site program, including setting policies respecting the location of sites and buildings to be acquired;
3. relocate occupants, when necessary;
4. construct and rehabilitate dwelling units;
5. design and provide specifications for the construction and rehabilitation of dwelling units; and
6. negotiate and execute any contracts or other documents necessary or appropriate to implement the scattered site program.

These duties were straightforward when dealing with the scattered site program that was in existence at the time of the Receivership Order. The Receiver could identify a site in the General Area on which it could build the maximum number of units permitted under the Injunction. It could design and provide specifications for the construction of those units. It could relocate occupants of buildings it acquired, but there would be no need to relocate existing public housing residents when the Receiver was making new units available for the first time. It could seek and obtain funding from HUD. This formidable task was made easy by virtue of the HUD consent decree that obligated HUD to provide funds for 7100 units of housing. The Receiver was not required to make policies regarding site location and buildings to be acquired. The policies, for example, had already been clearly set out in the Injunction, such as location and density.

C. The Receivership Order In Part Conflicts With HOPE VI

There has never been an analysis of whether the duties assigned to the Receiver in the Receivership Order conflict with the statutory requirements of HOPE V, probably because the applicability of the Receivership Order to HOPE VI was determined in the May 19, 1998 order granting the Receiver's May 18, 1998, Emergency Motion without permitting the CHA an opportunity to respond in writing. Literally, the issues have never been considered by the Court.

When the Receiver's duties set forth in the Receivership Order are examined in light of the requirements of the HOPE VI statute, they are much less clear. Again, that is because new housing is one element of a complex plan that must be negotiated with the City and the Local Advisory Council. At least one important duty cannot be performed by the Receiver because of the requirements of the HOPE VI statute. Others are ambiguous and it is not determinable from the Receivership Order whether they apply to a HOPE VI program.

Most importantly, the Receiver will not be the developer of the project that will design, provide specifications for and construct new public housing built with HOPE VI funds. The Receiver's powers cannot be greater than the CHA's powers. Since the CHA is not the developer, the Receiver cannot be the developer.⁵ Therefore, the CHA should have no duty to cooperate with the Receiver in its exercise of its duty to design, provide specifications for, and construct new public housing. If the Receiver is not the developer, a serious question arises. All

⁵ There is a role for a "development manager," but that role is also not performed by the CHA. Moreover, the parties agreed to use McCormack Baron, a highly regarded national developer of low income housing projects, as the development manager. Again, the CHA intended to present a motion to this Court seeking both to waive the Injunction's locational restrictions and to modify the Receivership Order after receiving approval from Judge Coar.

of the Receiver's duties are incident to its being the developer of public housing. Do these duties have any meaning when the Receiver is not the developer?

Other duties of the Receiver under the Receivership Order are ambiguous on their face when applied to HOPE VI plans. For example, the Receiver is obligated to "relocate occupants, when necessary." This may mean that the Receiver is obligated to relocate public housing residents who are displaced due to the demolition of high-rise housing projects. It is likely, however, that the Receiver's duty to relocate occupants is related to the Receiver's duty to decide which buildings to acquire. It is highly doubtful that the Receiver has the CHA's powers and responsibilities to relocate the large number of public housing residents who have been or will be displaced by the demolition activities of the CHA. The Receiver has no qualifications or experience to undertake such a massive task. It would appear, but not certain, that this duty of the Receiver is not applicable to a HOPE VI project.

D. Orders of May 19, 21 and 22 Did Not Clarify Receiver's Duties

In the Court's order of May 19, 1998, the Court stated:

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 see no reason to treat HOPE VI funds differently for purposes of the order appointing the Receiver. . . 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.

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.

The Court also stated that

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. . . .

(Receiver's Motion, Ex. F). The Court did not identify the requirements of the Gautreaux Injunction according to which the Receiver should measure the CHA's HOPE VI proposal meets. The only requirement specifically referred to by the Court was in the February 23 order, which held that the locational requirements of the Injunction must be met. Nowhere did the Court state what decisions or activities in a HOPE VI plan are ultimately the Receiver's responsibility.

In the May 21, 1998, order the Court clarified that the May 19th Order did not give "sole authority to the Receiver for HOPE VI in Chicago" or "sole authority to prepare Chicago's 1998 HOPE VI application." In the May 22, 1998, order the Court stated that the

[May 19th] order did not "turn over all of the CHA's powers and responsibility for the 1998 HOPE VI application to the Receiver." . . . 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. . . . (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.)

These orders clarified that only those powers of the CHA that are incident to the development and administration of the new public housing in a HOPE VI program have been transferred to the Receiver.

The CHA's duty to cooperate with the Receiver was quite different when the Receiver had all of the CHA's powers incident to build public housing. There were no divisions of responsibility. Now there is a sharing of responsibility. The orders did not clarify what is required of the CHA when the CHA and the Receiver share responsibility for various aspects of a HOPE VI project. The May orders did not clarify which, if any, of the responsibilities specifi-

cally identified in the Receivership Order remained the responsibilities of the Receiver in a HOPE VI project in which the Receiver is not the developer. The orders did not clarify the Receiver's responsibilities with regard to existing HOPE VI projects such as Cabrini-Green.

The Court did state in the May 19, 1998, order that "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." This indicates that the Court believes that the Receiver has some duty to make sure that the HOPE VI application does not violate Gautreaux requirements. However, those requirements are not identified. Presumably the reference is to the locational requirements of the Injunction since no other requirement had been identified by the Court. Certainly, there is no order appointing the Receiver to assure that the HOPE VI application in whole or in part complies with any other Gautreaux requirement, such as Article VIII.

V. The Receiver Cannot Enforce the CHA's Duty To Pursue Desegregation

The Injunction states generally that the CHA has a duty to further the desegregation goals of the Injunction. However, the Receiver has not been appointed to enforce the CHA's compliance with that duty and the duty is not judicially enforceable.

A. The Receiver Is Relying On CHA's Duty to Pursue Desegregation

The Receiver asserts that it will: (1) make sure that "any agreement negotiated by the CHA" gives "adequate weight to the CHA's desegregation obligations under this Court's Order," and makes no "compromises that limit desegregation opportunities that would otherwise be available;" (2) "implement the Court's important desegregation remedies;" and (3) assure that

Cabrini-Green is developed "in a manner that effectuates the desegregation remedy in this case."⁶ (Paragraphs 45, 46 and 58 of the Motion, respectively) The Receiver clearly believes it is entitled to assure that the totality of the plan, which goes far beyond building new public housing units, meets with its approval. There is no order that provides this duty to the Receiver.

The Receiver must be relying on, and seeking to enforce, the CHA's duty to pursue desegregation under Article VIII of the 1969 Injunction, which provides as follows:

VIII. CHA shall affirmatively administer its public housing system in every respect (whether or not covered by specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures.

The Court relied on Article VIII of the Injunction to support the Court's statement in its February 25, 1998, order that "the CHA is duty-bound to vigorously pursue desegregation opportunities."

The Receiver's reliance on Article VIII expands its duties well beyond those to which it was appointed. This is clear from the letter dated July 23, 1998, from Michael Shakman to Carole Wilson, Associate General Counsel of HUD (attached as Exhibit 4), in which it was asserted that the Receiver has a substantial role in numerous aspects of a proposed Memorandum

⁶ The Receiver clearly is not focusing on the specific desegregation remedy in this case, which is the requirement that the CHA build one unit of public housing in the General Area for each unit of public housing that it builds in the Limited Area. It has been known from the beginning of the Cabrini-Green planning that compliance with the locational requirements of the Injunction was impossible. The Cabrini-Green revitalization plans call for all new construction to be sited within the HOPE VI Planning Area (the geographical area bounded by Chicago Avenue on the south, Wells Street on the east, North Avenue on the north and the Chicago River on the west). The revitalization plans do not effectuate the specific desegregation remedy in this case. In fact, the plan is diametrically opposed to the locational requirements of the Injunction.

of Agreement Among The Illinois State Historic Preservation Officer, U.S. Department of Housing and Urban Development, The City of Chicago, Illinois and The Advisory Council on Historic Preservation for The ABLA Redevelopment Project (the "Agreement"). The Receiver asserted as a reason for its role in the Agreement that the "selection criteria for the proposal ultimately will have to include maximizing the potential for remedial benefits to the plaintiff class in the Gautreaux litigation," that the CHA is obligated in its rehabilitation activities "to be sensitive to and to further the desegregation goals of the Gautreaux orders;" and that

the Receiver is entitled to be consulted by the CHA regarding decisions related to rehabilitation of any historic property in the Project Area so that the Receiver may evaluate the impact of rehabilitation (its location, timing, type of housing resulting, etc.) on the overall realization of desegregation objectives in implementation of the Project.⁷

(Emphasis added).

The Receiver has no responsibility under any order entered in this case to exercise authority over any activity of the CHA based on the Receiver's interpretation of whether the activity furthers the desegregation objectives of Gautreaux. The Receiver has not been appointed by the Court to enforce the CHA's compliance with such a duty or to judge whether HOPE VI funded projects, which are governed by federal statute and regulation, violate a duty to vigorously pursue desegregation.

⁷ The Receiver has no duties regarding the CHA's rehabilitation activities. Moreover, the Receiver was not appointed, and has no duty, to maximize remedial benefits to the Gautreaux class of plaintiffs, to assure that the CHA's rehabilitation activities comply with its obligations to further the desegregation goals of the Injunction, or to evaluate the impact on the overall realization of desegregation objectives, of the CHA's rehabilitation activities, or any other activity, in implementing a HOPE VI project.

B. The Duty To Pursue Desegregation Is Not Judicially Enforceable

The CHA agrees that it is duty-bound to pursue desegregation. The CHA believes that it fulfills this duty and that its activities in implementing HOPE VI programs is consistent with that duty.⁸ However, the duty is not judicially enforceable. Article VIII is vague and does not sufficiently inform the CHA of what actions are enjoined or required to be performed in order to comply with the duty to pursue desegregation. It is a particularly vague command in connection with HOPE VI programs and is not enforceable by the power of contempt.

Desegregation is only one of HOPE VI's congressional goals. Other goals include the restoration of neighborhoods that contain some of the worst public housing in the country, ending the social and economic isolation of such neighborhoods, creation of mixed-income replacement housing, and a true partnership between the public housing authority, its residents and the local government in trying to achieve these goals.

Article VIII provides no standards for determining whether in a program such as HOPE VI the CHA is satisfying its duty to desegregate. The Receiver's opinion that a HOPE VI plan does not adequately pursue desegregation may, and likely would, be different from the CHA's view of whether desegregation, one among many goals that the plan seeks to accomplish,

⁸ So long as the CHA complies with the statutory requirements of HOPE VI, there can be no doubt that the CHA is complying with the Fair Housing Act and the Civil Rights Act. As this Court recognized in its February 23, 1998, order, "Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing...." (February Order at 4) Under these circumstances, it would be totally unnecessary to appoint a Receiver to judge whether the CHA's HOPE VI activities fulfill its duty to seek desegregation.

has been adequately pursued. The Receiver can only enforce orders of the Court that are judicially enforceable.

VI. The CHA's Powers and Authority to Negotiate And Execute The Consent Decree Have Not Been Transferred to the Receiver

The Receiver takes the position that only it had the authority to negotiate and execute the consent decree in the Cabrini-Green litigation because the Receivership Order transferred all powers of the CHA necessary and incident to the development and administration of the Cabrini-Green housing project, specifically including negotiating and executing any contract necessary or appropriate to implement the program, and the consent decree is such a contract.

The CHA's position is that it could negotiate and enter into the consent decree without consulting or seeking the approval of the Receiver because the CHA's power and authority to defend and resolve pending litigation, and its power and authority to decide to seek a waiver of the requirements of the Injunction in order to resolve litigation, have not been transferred to the Receiver under any order of this Court. Nor does the Receiver have the authority to negotiate an agreement that involves aspects of the Cabrini revitalization plan that are not within the Receiver's responsibilities.

A. Power to Defend Litigation Has Not Been Transferred

The Cabrini-Green litigation involves the design and implementation of the Near North Redevelopment Initiative ("NNRI") as well as the HOPE VI revitalization plans for Cabrini-Green. The plaintiff is the Cabrini-Green Local Advisory Council ("LAC"), the duly elected representatives of residents of the Cabrini-Green public housing project. The LAC

alleged that the NNRI, including the CHA's HOPE VI plan, displaced Cabrini-Green residents and reduced the supply of affordable housing units at Cabrini, thereby resulting in a discriminatory impact upon African Americans, women and children. The LAC asserted that the CHA had violated the Fair Housing Act, Title VI of the Civil Rights Act, the HOPE VI statute, the City's consolidated Plan required under the HOPE VI statute, and the Memorandum of Agreement between the CHA and the LAC.

The parties to the Cabrini-Green litigation have treated the litigation as separate and distance from Gautreaux, and Judge Coar has considered the litigation unrelated to Gautreaux, but always on the understanding that any final order entered in the case would be subject to the approval of the Gautreaux Court. From the outset of the litigation, it was understood that the claims and goals of the Cabrini LAC conflicted with the Gautreaux desegregation remedy. The Cabrini-Green public housing residents were demanding their right to remain in their neighborhood. The goal of the litigation was to have sufficient replacements housing for displaced residents constructed in the Cabrini Planning Area.

The Receiver is not a party to the Cabrini litigation, has never sought to become a party, and had not previously asserted any responsibility for the defense of that litigation. Nor had the Receiver previously asserted that the CHA has no power or authority to defend or resolve that litigation. However, the Receiver has been aware of the Cabrini litigation and at one time the Receiver attributed its lack of activity at Cabrini on the fact that there was litigation that was holding up the project. See Affidavit of Daniel E. Levin, filed with this Court on March 31, 1998 ¶ 21. In fact, the Receiver has also been aware of the negotiations among the City, the

CHA and the LAC to resolve the Cabrini litigation. See Affidavit of Wheelock; Affidavit of Grauer, filed separately.

The consent decree balances the CHA's obligation to demolish public housing and provide replacement housing (on site, off site, Section 8 certificates or existing scattered housing) and the right of the displaced residents to remain in their community. Demolition, the location and number of replacement housing units, and the criteria for the selection of residents to live in the replacement units, were entwined in the dispute that was the subject of the litigation. One issue could not be negotiated without the others. All had to be resolved through the same solution.

Given the broad claims alleged against the CHA, the scope of the consent decree (it would resolve the CHA's liability under the NRRI and its Memorandum of Agreement with the LAC), the integrated issues being negotiated, and the Receiver's limited authority to negotiate contracts regarding new public housing (and not demolition or tenant eligibility), the CHA had full power and authority to settle the litigation. If that were not the case, then the CHA's exposure under the LAC's claims would be controlled by the Receiver.

Moreover, if the Receiver was empowered to negotiate the consent decree, the Receiver would be dictating the demolition policies and other activities that are covered by the consent decree that are clearly outside the Receiver's jurisdiction. There is no order transferring to the Receiver the CHA's power and authority regarding demolition and tenant selection to resolve litigation such as the Cabrini-Green case.

B. The CHA's Power And Authority To Seek A Waiver Of The Injunction Has Not Been Transferred to the Receiver

The CHA is bound by the Injunction and other court orders, but like any litigant it is entitled to seek a waiver of the requirements of the Injunction, and a modification of the Receivership Order. The CHA decided to settle the Cabrini litigation by agreeing to a plan that would not be effective unless and until the Gautreaux Court waived the requirements of the Injunction. That was the decision made by the CHA—to seek a waiver of the Injunction and to make receipt of that waiver a condition subsequent to the consent decree.

The CHA was entitled to decide that the litigation should be resolved by agreeing to a plan that provided for no units to be built in the General Area and to seek a waiver of the requirements of the Injunction. The LAC's constitutional and federal claims against the CHA are based on the claim that the Cabrini-Green residents are entitled to remain in their community in replacement housing. These claims and the LAC's goal directly conflict with the locational requirements of the Gautreaux Injunction. The CHA was not required to negotiate an agreement that achieved the maximum number of units that would be built in the General Area, or that maximized the benefits to the Gautreaux class of plaintiffs, or that vigorously pursued desegregation, as a condition to applying for a waiver of the Injunction.

1. There Is No Order Compelling the CHA to Seek a Waiver Before Finalizing Plan For Which the Waiver Is Sought

The Receiver wants to negotiate the plan for which the waiver will be sought. The plaintiffs want to approve the plan before it is finally agreed to by all of the parties whose agreement is necessary (the LAC and the City of Chicago) and well before it is presented to the Court for a waiver. There is no order of the Court that defines the CHA's responsibilities when

seeking a waiver. No order holds that the CHA must propose a waiver of the Injunction before preparing the plan for which the waiver will be sought. The CHA is entitled to first develop the plan and obtain the necessary agreement of the LAC and the City for the plan for which the waiver will be sought.⁹ A court order would be necessary to entitle plaintiffs (1) to compel the CHA to seek a waiver before agreeing to a plan that is subject to obtaining a waiver, and (2) to negotiate the terms and contours of the plan before the plan is submitted to the Court for a waiver of the Injunction.

2. The Receiver Has No Authority To Negotiate A Plan for which a Waiver Will Be Sought

The Receiver's authority is to build new public housing in compliance with the locational requirements of the Injunction. The Court has never addressed the issue of the responsibilities of the Receiver (or the plaintiffs) when a waiver of the requirements of the Injunction is sought by the CHA, or what the Receiver's or the plaintiffs' role is in the waiver process. Clearly, the Receiver was not appointed to make recommendations to the Court in the event the CHA seeks a waiver. The Receiver has not been appointed to examine, approve or evaluate a public housing plan for which a waiver of the Injunction will be sought. The Receiver has not been appointed to negotiate the terms of a waiver of the locational requirements of the Injunction.

⁹ In the past, waivers have been negotiated with the plaintiffs before the plan for which a waiver is sought is presented to the Court. The CHA used this approach when public housing was being built with HUD funds that had been dedicated to satisfying HUD's consent decree obligation in Gautreaux and the plaintiffs agreed that those funds could be used in "revitalizing areas," which was specifically allowed by the HUD consent decree. There is no court order binding the CHA to this process.

If the Receiver had the responsibility for negotiating the consent decree, the Receiver would not begin, as the CHA began, on the premise that the CHA would seek a waiver of the requirements of the Injunction. The Receiver, by the nature of its appointment, would seek to enforce the locational requirements of the Injunction, and, when that proved impossible, to maximize the number of units that will be built in the General Area, and, when that proved impossible, to negotiate a plan that meets the Receiver's concept of an acceptable substitute for building in the General Area. The Receiver necessarily would be exercising its judgment, without any defining standards, as to what compromise "maximizes the desegregation goal" of the Injunction. Receiver's Motion at ¶¶ 45, 46, 58. The Receiver has not been appointed to exercise such judgment or to negotiate a plan that compromises the requirements of the Injunction.

C. The Receiver Has No Exclusive Right To Negotiate And Execute The Consent Decree

The consent decree is not a contract which the Receiver has exclusive authority to negotiate and execute. The consent decree deals with matters over which the Receiver has no authority, specifically demolition of high-rise projects and the criteria for residents who will reside in replacement housing. There has been no transfer of the CHA's power and authority to negotiate and execute contracts that necessarily deal with subjects in which both the CHA and the Receiver have varied responsibilities. The Receiver has no power and authority to negotiate and execute a contract that involves the CHA's exercise of its power and authority, regardless of

the fact that the contract is incident to the development of public housing. That is a subject that must be addressed in the order appointing the Receiver.

The Receiver's authority to negotiate and execute contracts incident to the development of public housing made sense when the Receiver had all of the CHA's powers and responsibilities for the development of public housing. The Receivership Order did not contemplate the situation where the CHA has substantial power and authority over an entire development project except for the one component of that project that involves new public housing. There was no consideration in the order appointing the Receiver regarding the respective rights and obligations of the CHA and the Receiver.

CONCLUSION

For the reasons stated above, the Motion should be denied for lack of standing and for lack of merit. If the Motion goes forward the CHA is entitled to an evidentiary hearing.

Date: August 6, 1998
Chicago, Illinois

Jerome M. Butler
General Counsel
Chicago Housing Authority

Respectfully submitted,



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June 23, 1998

VIA FACSIMILE & U.S. MAIL

Ms. Nancy Eisenhower
Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Drive
Chicago, IL 60606-1285

Re: Gautreaux v. CHA

Dear Nancy:

This letter responds in part to your letter of June 16, 1998 concerning my letter of June 12. We were disappointed both by the inaccuracies in your letter and by the letter's tone. Because of the importance of completing a strong HOPE VI application by June 29, we will not take my client's time by preparing a response to every one of your points now. Suffice it to say that the Receiver disagrees with several of the points you raise, but sees little purpose in starting what would become a protracted exchange of letters. The Receiver prefers to focus at present on producing a competitive HOPE VI application and complying with its duties to the Gautreaux Court. The Receiver hopes to be able to support the application, but its doing so should not be taken as agreement with all of the provisions in the application, as there are several with which the Receiver disagrees.

A few of the points you made require a response now. The second paragraph of your letter incorrectly states that the parties, including the Gautreaux plaintiffs and the Receiver have "agreed to the 'terms' of the 1998 HOPE VI application." This factual error echoes throughout the letter. Over the past several weeks, there have been numerous meetings among CHA, Habitat and the City, which have focused primarily on the income mix, which is one of several important components of this application. There have also been separate working group meetings discussing financing structure and social service delivery. While agreement was reached on the critical issue of the proposed income mix, as confirmed by Shannon DeWith's Memo of June 12, 1998, it is not correct that overall agreement was reached as to the "terms" or the "substance" of the HOPE VI application. Nor could such an agreement have been reached, since the draft application was not shared with the Receiver until early last week, after the phone call confirmed by Ms. DeWith's memo.

Ms. Nancy Eisenhower

June 23, 1998

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In addition, it is not correct that agreement was reached as to the administrative fee to be shown in the application (whether paid to CHA or to the Receiver). Habitat's fee is ultimately controlled by the Court. I spoke today with Jerome Butler, and we agreed that the application will so reflect.

The draft application provided last week underscores part of the problem, which is foreshadowed by your letter's reference to an RFP process for the selection of a developer. That RFP process does not and should not replace Habitat's role as Receiver and its duties concerning the development of new, non-elderly construction. If an RFP process is used, both the City and the Receiver would be involved.

The draft application omits any reference to the role of the Receiver in the development of new CHA non-elderly construction. We hope that omission, combined with your letter, does not imply that the CHA intends to disregard the terms of the 1987 Receivership Order and the recent orders of Judge Aspen as well. We received yesterday proposed language from Jerome Butler concerning this concept. I have discussed with him modifying the language to make it consistent with the terms of the Receivership Order and he asked us to send him alternative language later today.

Phil Hickman and Valerie Jarrett are continuing to try to resolve outstanding issues with appropriate CHA personnel. We remain optimistic that agreement can be reached ultimately on specifics for the ABLA redevelopment. However, as noted above, the mere fact that an application is submitted should not be deemed to be a statement that the Receiver agrees with every provision in the application (which the CHA has prepared virtually unilaterally) or with the less than fully cooperative process the CHA has followed during the time-pressured weeks leading up to the June 29 due date. The Receiver's overriding objective is to get a competitive application submitted. Since the application is a broad conceptual work, many of the details can be resolved later if the grant is awarded.

With respect to your points concerning the production of documents requested by the Receiver, we will not in this letter debate the merits of your arguments, with which we disagree. We appreciate that Jerome Butler has made documents available for inspection yesterday. (We note, however, that certain documents concerning the Brooks Extension were not present in the CHA offices, and we will need to follow up with Jerome.) To the extent, if any, that you have withheld a document we have requested based upon your belief that it falls outside of CHA's "cooperation" duties as set forth in Judge Aspen's Orders, please consider each such request to have been made pursuant to FOIA and please produce each such document as soon as practicable. That we have to make such a request, however, is disappointing to say the least. It was also disappointing and inappropriate that the CHA has refused Habitat's request for a floppy disk with the text of the draft application. Governmental agencies are typically more cooperative even with strangers. Especially

MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE

Ms. Nancy Eisenhower

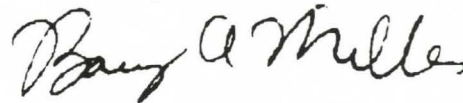
June 23, 1998

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given Judge Aspen's Orders, the Receiver should not have to resort to FOIA and the CHA should be producing the requested documents without the fuss you are raising.

Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barry A. Miller".

Barry A. Miller

cc: Jerome Butler
Alexander Polikoff
Daniel E. Levin/Valerie Jarrett/Philip C. Hickman

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 "JMS", is written in the center of the page.

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.



MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE

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July 23, 1998

By Fax

Carole Wilson
Associate General Counsel
U.S. Department of Housing and Urban Development
Washington D.C., 20410-0500

Dear Carole:

I'm writing to respond to your call yesterday asking for the Receiver's comments concerning the proposed Memorandum of Agreement Among The Illinois State Historic Preservation Officer, U.S. Department of Housing and Urban Development, The City of Chicago, Illinois and The Advisory Council on Historic Preservation for The ABLA Redevelopment Project ("Agreement"), which you faxed to me yesterday. Here are our comments:

1. The "Project" is defined as the ABLA Redevelopment Project. Agreement at 1. Marketing of the Project is described starting at page 4 in a manner that makes no mention of the Receiver's role and is not, therefore, accurate. All references in paragraph II to preparation of a RFP, developing a distribution list, an advertising plan, implementing the RFP process, and selection of a development proposal need to include reference to the Receiver as a participant with the CHA and the City of Chicago. In addition, selection criteria for the proposal ultimately accepted will have to include maximizing the potential for remedial benefits to the plaintiff class in the Gautreaux litigation.

2. Rehabilitation of existing portions of the Project Area is discussed in Section III on page 5 of the Agreement. Rehabilitation is not a Receiver responsibility under the Receivership Order in Gautreaux, but the CHA is obligated in all its activities, including rehabilitation, to be sensitive to and to further the desegregation goals of the Gautreaux orders. Accordingly, the Receiver is entitled to be consulted by CHA regarding decisions related to rehabilitation of any historic property in the Area of the Project Area so that the Receiver may evaluate the impact of rehabilitation (its location, timing, type of housing resulting, etc.) on the overall realization of desegregation objectives in implementation of the Project. The Agreement should recognize that such consultation will occur.

3. On-site new construction, discussed on pages 5-6 of the Agreement, clearly involves areas of Receiver responsibility. The Receiver should be listed as a party to the process

Letter of July 23, 1998 -- page 2.

described there, since the Agreement purports to impose obligations to make new construction adjacent to retained historic buildings "compatible" with the historic buildings. The same comments apply to Section V of the Agreement, at 6-7, dealing with Off-Site and Scattered Site Replacement Housing.

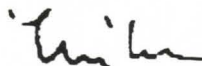
4. The final paragraph of Section V seems to go further than necessary for the purposes of an agreement dealing with historic preservation by requiring that replacement housing be located in the Near West side neighborhood "to the extent feasible and consistent with the Gautreaux" case. While it is likely that this will be the outcome, we see no reason to include such a provision in the Agreement, or to create a preference for such a locational approach when wider distribution of replacement housing may more effectively further desegregation objectives of Gautreaux.

5. Section XII provides a dispute resolution procedure involving HUD. To the extent the Receiver's responsibilities are implicated in any future disputes, the Agreement should reflect that the Receiver should be consulted and afforded an opportunity to express its views. The same comment applies to Section XIV dealing with "Coordination of Reviews".

The Receiver has asked me to emphasize that it does not anticipate that the changes in the Agreement proposed above will significantly change the overall handling of any historic preservation issues presented by the ABLA Project. But the Receiver believes it is important that the Agreement accurately reflect the Receiver's role and insure, by doing so, that when the Receiver's responsibilities are implicated, it is consulted in advance and afforded an opportunity to comment and have its comments considered, or in any area where its decisions control as a matter of law, to have that right recognized.

Please feel free to call if you have any questions.

Sincerely,



Michael L. Shakman

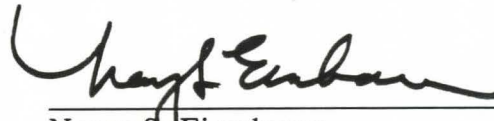
cc: Daniel E. Levin
Valeie B. Jarrett
Jerome M. Butler
Commissioner David Doig
Alexander Polikoff

CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Thursday, August 6, 1998, I caused a copy of the foregoing DEFENDANTS' MEMORANDUM IN OPPOSITION TO RECEIVER'S EMERGENCY MOTION to be served by hand delivery and facsimile (without exhibits) on counsel listed below:

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KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604



Nancy S. Eisenhower

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

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

NOTICE OF FILING

TO: Alexander Polikoff, Esq. BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST 17 E. Monroe Street, Suite 212 Chicago, Illinois 60603	Michael L. Shakman, Esq. Barry A. Miller, Esq. MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE 208 South LaSalle Street, Suite 1100 Chicago, Illinois 60604
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PLEASE TAKE NOTICE that on Thursday, August 6, 1998, we filed with the clerk of the District Court for the Northern District of Illinois, DEFENDANT'S MEMORANDUM IN OPPOSITION TO RECEIVER'S EMERGENCY MOTION, a copy of which are attached hereto and served upon you.

Dated: August 6, 1998
Chicago, Illinois



Nancy Eisenhower
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
(312) 407-0700
Counsel for Defendants
CHICAGO HOUSING AUTHORITY

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

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

NOTICE OF FILING

TO: Alexander Polikoff, Esq. BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST 17 E. Monroe Street, Suite 212 Chicago, Illinois 60603	Michael L. Shakman, Esq. Barry A. Miller, Esq. MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE 208 South LaSalle Street, Suite 1100 Chicago, Illinois 60604
---	--

PLEASE TAKE NOTICE that on Thursday, August 6, 1998, we filed with the clerk of the District Court for the Northern District of Illinois, AFFIDAVIT OF RICHARD WHEELOCK, a copy of which are attached hereto and served upon you.

Dated: August 6, 1998
Chicago, Illinois



Nancy Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
(312) 407-0700
Counsel for Defendants
CHICAGO HOUSING AUTHORITY

AFFIDAVIT

I, Richard M. Wheelock, on oath, state that this affidavit is made on my personal knowledge, and, if sworn as a witness at trial, I could competently testify to the following facts:

1. I am the Housing Supervisory Attorney at the Legal Assistance Foundation of Chicago ("LAFC"), a legal aid program that provides civil legal services for the indigent in the City of Chicago.

2. LAFC represents the Cabrini-Green Local Advisory Council (LAC), a tenant organization that represents all families residing at the Cabrini-Green development.

3. The membership of the LAC is composed of lessees and authorized residents 18 years of age or older residing in the Cabrini-Green development. The LAC board is composed of elected representatives from each residential building in Cabrini-Green. Further, the officers of the LAC have been directly elected by the residents of Cabrini-Green in development-wide secret ballot voting.

4. By federal regulation, the CHA must recognize the LAC, being a duly elected resident council, as the sole representative of the residents of Cabrini-Green. See 24 C.F.R. § 964.18(a)(1).

5. In June 1996 the CHA and the City of Chicago announced the Near North Redevelopment Initiative ("NNRI"), which included, among other things, the demolition of 1324 public housing units at Cabrini-Green.

6. In October 1996, the LAC filed suit in federal court (Cabrini-Green Local Advisory Council v. Chicago Housing

Authority, et al., 96 C 6949 ("Cabrini-Green LAC") against the Chicago Housing Authority challenging the NNRI as violative of federal, state, and local law. The case was assigned to Judge Coar. In March 1997, the LAC amended its complaint to name the City and Mayor Daley as additional defendants.

7. I am lead counsel for the LAC in Cabrini-Green LAC.

8. On September 15, 1997, all parties appeared before Judge Coar on a Joint Motion For Limited Modification Of Discovery Schedule To Permit All Parties To Engage In A Structured Settlement Process ("Joint Motion"), a copy of which is attached hereto as Exhibit A.

9. Attached to the Joint Motion was an agreement executed by all parties providing for a formal settlement process to achieve an amicable resolution of Cabrini-Green LAC.

10. That agreement set forth the topics to be negotiated, including (a) the economic mix of households in the replacement housing units built as part of the Hope VI Plan and the Near North Redevelopment Initiative; (b) the provision of job training and employment opportunities to Cabrini-Green residents as part of the Hope VI Plan and the Near North Redevelopment Initiative; (c) the relocation process for Cabrini-Green residents who will be dislocated as a result of the demolition or rehabilitation of Cabrini-Green buildings as part of the Hope VI Plan and/or the Near North Redevelopment Initiative; (d) the right of dislocated residents to return to the revitalized community (including selection, screening, and transitional training, if any) as part

of the Hope VI Plan and the Near North Redevelopment Initiative; (e) the number of buildings to be demolished, as well as the sequence and timing of demolition of Cabrini-Green buildings as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (f) the number and type of replacement public housing units to be built in the revitalized community as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (g) the fate of those Cabrini-Green units not included in the HOPE VI Plan or the Near North Development Initiative; and (h) the consultation process during the implementation of the HOPE VI Plan and the Near North Redevelopment Initiative. The agreement also addressed the information to be exchanged and the conditions under which the settlement meetings would be held. Finally, the agreement included a confidentiality provision that the parties would treat the substance of the discussions as confidential and would not, except by mutual agreement, make statements to the public concerning anything said during any of the sessions. See Section F.6. of Agreement (attached to Joint Motion (Exhibit A)).

11. Judge Coar granted the Joint Motion.

12. The parties met pursuant to this agreement on the following dates: September 22, 1997; September 23, 1997; October 1, 1997; October 3, 1997; December 1, 1997; and December 8, 1997. The meetings included representatives from the LAC, the City of Chicago and CHA, including their counsel. All meetings were transcribed.

13. Subsequently, Magistrate Judge Pallmeyer offered to serve as a mediator, and so thereafter the parties met for settlement discussions in her court room on or about the following dates: February 19, 1998; April 15, 1998; and May 1, 1998.

14. On May 1, 1998, the parties reached an agreement in principle to settle the case, subject to drafting an agreement and seeking necessary court approval. See Judge Pallmayer's May 1, 1998 minute order, a copy of which is attached hereto as Exhibit B.

15. On July 7, 1998 representatives of the LAC and the CHA, including their counsel, met at the offices of the CHA to conclude final details of the agreements reached between the CHA and the LAC.

16. Throughout the entire settlement negotiation process it was always understood by the LAC that the proposed consent decree was contingent upon review and approval by Judge Aspen and the Court's receiver, The Habitat Co., pursuant to the decrees entered in Gautreaux, et al. v. CHA, 66 C 1459.

17. The proposed consent decree specifically provides that the consent decree shall not be effective, unless it is approved by the Gautreaux Court.

18. The parties anticipated that The Habitat Co. would have ample opportunity to review and comment upon the proposed consent decree after Judge Coar's approval.

19. The Habitat Co. was well aware of the ongoing settlement negotiations between the City, the CHA and the LAC, but made no demand upon the LAC prior to July 31, 1998 to be included in those discussions. See Brenda Grauer affidavit.

20. At no time prior to July 31, 1998 did the Habitat Co. communicate to the LAC its position that the CHA had no authority to negotiate with the LAC.

21. During a meeting with Alex Polikoff, Gautreaux plaintiffs' counsel, on or about September 29, 1997, I mentioned to him that settlement negotiations were ongoing between the CHA, the City and the LAC. The LAC received no demand from Mr. Polikoff prior to July 31, 1998 that he or The Habitat Co. be included in those negotiations.

22. From May 5, 1998 through July 16, 1998 the parties exchanged no fewer than 13 written drafts relating to the agreements reached among the parties. On or about July 21, 1998 Andy Mine, assistant corporation counsel for the City of Chicago, by telephone signed off on a final draft of the proposed consent decree delivered to him on July 16, 1998. On or about July 24, 1998 Thomas Johnson by telephone signed off on the same draft delivered to him on July 16, 1998.

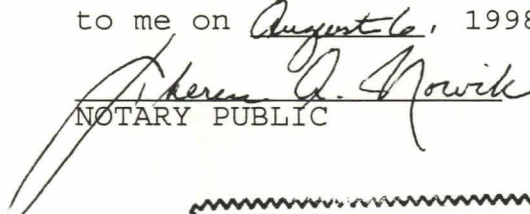
23. On July 28, 1998, the LAC unanimously approved the proposed consent decree.

24. On August 4, 1998, counsel for the LAC and the City appeared before Magistrate Pallmayer for a status report. Counsel for the LAC and the City represented that all parties had

signed off on the proposed consent decree, but that Judge Aspen had issued a temporary restraining order prohibiting its presentation to Judge Coar.


Richard M. Wheelock

Subscribed and sworn
to me on August 16, 1998


NOTARY PUBLIC



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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,)

Plaintiff,)

-vs-)

CHICAGO HOUSING AUTHORITY and)
JOSEPH SHULDINER,)

Defendants.)

MAURICE W. DOLAN
96 C 6949 DISTRICT COURT
Hon. David H. Coar
Magistrate Judge
Rebecca R. Pallmeyer

NOTICE OF MOTION

To: Richard M. Wheelock
Legal Assistance Foundation
of Chicago
343 S. Dearborn Street
Suite 700
Chicago, IL 60604

Andrew Mine
Asst. Corporation Counsel
30 N. LaSalle Street
Suite 900
Chicago, IL 60602

PLEASE TAKE NOTICE that on September 11, 1997, at 9:15 a.m.,
or as soon thereafter as counsel may be heard, I shall appear
before the Honorable David H. Coar, or any judge sitting in his
stead, in the courtroom usually occupied by him in the United
States District Courthouse, 219 S. Dearborn Street, Chicago, IL,
and then and there present the attached JOINT MOTION FOR LIMITED
MODIFICATION OF DISCOVERY SCHEDULE TO PERMIT ALL PARTIES TO ENGAGE
IN A STRUCTURED SETTLEMENT PROCESS.

Leslie A. Jones

One of the Attorneys for Defendants

Thomas E. Johnson
Leslie Ann Jones
Anne Megan Davis
JOHNSON, JONES, SNELLING, GILBERT & DAVIS
36 S. Wabash Ave., Suite 1310
Chicago, IL 60603
(312) 578-8100

CERTIFICATE OF SERVICE

LESLIE ANN JONES, an attorney, hereby certifies that a copy of
the foregoing NOTICE OF MOTION and the attached JOINT MOTION was
served upon the party listed above by hand delivery on September 9,
1997.

Leslie A. Jones

LESLIE ANN JONES

EXHIBIT

A

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,

Plaintiff,

-vs-

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, CITY OF CHICAGO,
RICHARD M. DALEY,

Defendants.

96 C 6949

Hon. David H. Coar

Magistrate Judge
Rebecca R. Pallmeyer

JOINT MOTION FOR LIMITED MODIFICATION OF DISCOVERY SCHEDULE TO
PERMIT ALL PARTIES TO ENGAGE IN A STRUCTURED SETTLEMENT PROCESS

Plaintiff Cabrini-Green Local Advisory Council ("LAC"),
Defendants Chicago Housing Authority and Joseph Shuldiner
(collectively the "CHA Defendants") and Defendants City of Chicago
and Richard M. Daley (collectively the "City Defendants") jointly
move for a limited modification of the discovery schedule to permit
all parties to engage in a structured settlement process to which
all parties have agreed. This structured settlement process will
commence September 15, 1997 and end October 10, 1997, will concern
all issues in this lawsuit, and involve both the principals and
their attorneys. A copy of the Agreement setting forth the details
of the process is attached hereto as Exhibit A. In order to devote
their full resources to this settlement process, the parties
jointly request that the Court modify the discovery schedule so
that the existing deadline for dispositive motions and the trial
date are maintained, but the deadlines for depositions are
extended.

In support of this motion, the parties further state as follows:

1. Plaintiff filed this action on October 27, 1996 against the CHA Defendants only. In an Amended Complaint, filed April 2, 1997, plaintiff also sued the City defendants. The CHA Defendants, City defendants and the LAC desire to enter into a meaningful settlement process about the issues raised in the Amended Complaint in the hope of avoiding the uncertainty, expense and delay of further litigation and resolving all claims raised in the litigation by entry into a consent decree.

2. By its order of April 8, 1997, the Court set a discovery schedule. A copy of this Order is attached hereto as Exhibit B. Under the Order, as pertinent here, the deadline for all document and non-expert deposition discovery is set for October 1, 1997; expert depositions must be completed by January 1, 1998; and rebuttal expert depositions must occur before March 1, 1998. Dispositive motions are due February 1, 1998. The case is set for trial on June 15, 1998.

3. Over the past months, plaintiff and defendants have exchanged more than 20,000 documents and two lengthy depositions of CHA officials have occurred. Some document production issues remain, but most have been successfully resolved by the parties, with the aid of Magistrate Judge Pallmeyer. Currently, twenty-two depositions are set for the month of September.

4. The parties had extensive discussions concerning the logistics of a structured settlement process which would include

consideration of all issues between the parties. These discussions have reached fruition in an agreed process in which the parties would engage in an intensive series of meetings over thirty days, recorded by a court reporter, at which all matters would be aired and an agreement on all remaining issues would be sought. All parties agree that the sooner these meetings commence, the greater the likelihood of significant progress in reaching an agreement on the substantive disputes between them.

5. All parties agree that they are unable to both satisfactorily conduct over twenty-two depositions during September and devote the necessary resources to the settlement process. All parties also agree that, in the event the parties are unable to resolve their disputes, maintaining the existing discovery schedule with respect to dispositive motions and trial is important for a prompt resolution of this case so that the redevelopment of Cabrini-Green can proceed.

6. Accordingly, the parties move that the Court modify the discovery schedule so that: 1) the deadline for document production and non-expert witness depositions is extended to December 15, 1997; 2) the deadline for expert witness disclosure is extended to January 1, 1998; 3) the deadline for expert witness depositions is extended to February 1, 1998; 4) the deadline for rebuttal expert witness disclosure is extended to March 1, 1998; and 5) the deadline for rebuttal expert witness depositions is extended to April 1, 1998. There is no need to modify either the original date

for dispositive motions, pretrial order, pretrial conference, or trial.

Leslie A. Jones
One of the Attorneys for Defendants

Thomas E. Johnson
Leslie Ann Jones
Anne Megan Davis
JOHNSON, JONES, SNELLING,
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Attorneys for the CHA Defendants

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Attorney for Plaintiff

Andrew Mine
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Litigation Division
30 N. LaSalle St., Suite 900
Chicago, IL 60602
(312) 744-7220

Attorney for Defendant City of Chicago

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,)

Plaintiff,)

v.)

CHICAGO HOUSING AUTHORITY
("CHA"), an Illinois Municipal
Corporation; JOSEPH SHULDINER,
In His Official Capacity As
Executive Director of the CHA;
CITY OF CHICAGO, an Illinois
Municipal Corporation; and
RICHARD M. DALEY, In His
Official Capacity As Mayor of
the City of Chicago,)

Defendants.)

No. 96 C 6949

Hon. David H. Coar

Complaint for
Declaratory and
Injunctive Relief

AGREEMENT

Plaintiff Cabrini-Green Local Advisory Council ("LAC"), Defendants Chicago Housing Authority ("CHA") and Joseph Shuldiner (collectively "CHA Defendants"), and Defendants City of Chicago and Richard M. Daley (collectively "City Defendants"), by their respective attorneys, hereby agree as follows:

A. Definitions

In this Agreement, the following terms shall have the following meanings:

1. "LAC" means the plaintiff Cabrini-Green Local Advisory Council;
2. "CHA" means defendant Chicago Housing Authority, an Illinois Municipal

Corporation, created and existing under the Housing Authorities Act, 310 ILCS 10/1 et. seq.

3. "Shuldiner" means defendant Joseph Shuldiner, the Executive Director of the CHA.
4. "CHA Defendants" means collectively CHA and Shuldiner.
5. "City" means defendant City of Chicago, a municipal corporation created and existing under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et. seq.
6. "City Defendants" means City and the defendant Richard M. Daley, Mayor, collectively.
7. "Amended Complaint" refers to the Amended Complaint filed by plaintiff on April 2, 1997.
8. "Cabrini-Green" means the public housing development consisting of Cabrini Homes, Cabrini Extension, and Green Homes.
9. "Hope VI" means the Urban Revitalization Program, PUB. L. 102-389, Title II, 106 Stat. 1579, reprinted at 42 U.S.C. §12571, note.
10. "Near North Redevelopment Initiative" or "NNRI" means all activities related to the City's initiative in revitalizing the Near North community which includes Cabrini Green.
11. "HUD" means the United States Department of Housing and Urban Development.
12. "Lawsuit" means the above-captioned action.

B. Conditions Leading to this Agreement

1. The lawsuit involves the revitalization of Cabrini-Green. All of the parties agree that Cabrini-Green is in need of significant change to improve the viability of that community, and all of the parties recognize the importance of proceeding toward the common goal expeditiously and with a minimum of rancor and distraction.

2. Plaintiff commenced this lawsuit complaining, inter alia, that the CHA Defendants had not adequately consulted or negotiated with it in developing a revitalization plan for Cabrini-Green. These claims are set forth, as against the CHA Defendants, in Counts IX and XII of the Amended Complaint. Plaintiff's Amended Complaint also raises a number of other claims against the CHA Defendants and/or the City Defendants concerning the effect of the current revitalization plan on the residents of Cabrini-Green.

3. There are eight aspects of the current revitalization plan for Cabrini-Green about which plaintiff, through its attorneys, has requested settlement negotiations. These are (a) the economic mix of households in the replacement housing units built as part of the Hope VI Plan and the Near North Redevelopment Initiative; (b) the provision of job training and employment opportunities to Cabrini-Green residents as part of the Hope VI Plan and the Near North Redevelopment Initiative; (c) the relocation process for Cabrini-Green residents who will be dislocated as a result of the demolition or rehabilitation of Cabrini-Green buildings as part of the Hope VI Plan and/or the Near North Redevelopment Initiative; (d) the right of dislocated residents to return to the revitalized community (including selection, screening, and transitional training, if any) as part of the Hope VI Plan and the Near North Redevelopment Initiative; (e) the number of buildings to be demolished, as well as the sequence and timing of demolition of Cabrini-Green buildings as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (f) the number and type of replacement public housing units to be built in the revitalized community as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (g) the fate of those Cabrini-Green units not included in the HOPE VI Plan or the Near North

Development Initiative; and (h) the consultation process during the implementation of the HOPE VI Plan and the Near North Redevelopment Initiative.

4. The parties disagree as to the extent to which the LAC has had, and/or has availed itself of, opportunities for consultation, and as to the form and nature of a productive mechanism for sharing information and consulting about the revitalization of Cabrini-Green.

5. The CHA Defendants and City Defendants, and the LAC desire to enter into a meaningful settlement process about the eight issues set forth in paragraph B.3 above, in the hope of avoiding the uncertainty, expense, and delay of further litigation and resolving all claims raised in the litigation by entry into a Consent Decree.

6. The City Defendants, while not sued with respect to the "consultation" and "negotiation" claims set forth in Counts IX and XII of the Amended Complaint, nevertheless have an interest in participating in meaningful consultation with the parties, as well as in avoiding the uncertainty, expense, and delay of unnecessary litigation, including additional paper discovery and a substantial number of depositions.

C. Information

1. In order for the parties to be adequately informed about the affected population of Cabrini-Green residents for purposes of the settlement process, no later than seven days prior to the first settlement meeting, the CHA Defendants shall provide to the other parties the best information it has concerning the following matters:

a. the current number of families living in all 23 high-rises at Cabrini-Green and the total number of vacancies in these buildings;

b. the location, by category of housing, of families relocated from 1150-60 North Sedgewick, 1158 North Cleveland, 1117 North Cleveland, and 1157-59 North Cleveland;

c. currently available, anticipated, or possible sources of funds for the redevelopment of Cabrini-Green;

d. all available data and reports concerning the viability of Cabrini-Green compiled in accordance with §202 of the Omnibus Rescission and Appropriation Act of 1996 and HUD's Notice, Assessment of the Revitalization Potential of Certain Public Housing Required by law, 61 Fed. Reg. 50,532 (Sept. 26, 1996) and Standards A-E thereof; and

e. all other discovery sought in plaintiff's previously filed written discovery requests, as agreed following the parties' Local Rule 12(k) conferences.

2. The LAC and City Defendants shall similarly produce information responsive to the outstanding discovery on them, respectively, as agreed following the parties' Local Rule 12(k) conferences.

3. The City Defendants shall produce information responsive to paragraph C.1.c above, no later than seven days prior to the first settlement meeting.

4. The City Defendants and the CHA Defendants shall produce any and all information used as the basis for the percentages of public housing proposed in the NNRI no later than seven days prior to the first settlement meeting.

D. Settlement process

1. Commencing September 15, 1997, the parties and their respective lawyers and consultants shall commence a series of six meetings at a neutral and accessible location with multiple rooms available for the parties' private use.

2. All discussions during these common meetings shall be recorded by a court reporter.

3. These six days of meetings shall take place in three two-day sessions, with approximately seven days between each session. The first day of each session shall address topics (a)-(d), as identified in paragraph B.3 above. The second day of each session shall address topics (e)-(h), as identified in paragraph B.3 above. Each topic shall be allocated approximately 2 hours per session, one half hour being allocated to each set of parties, and a final half-hour for common discussion. The topics to be discussed during each day of the sessions, the time spent on each topic, and the duration of the meetings may be modified subject to the agreement of the parties.

4. The parties recognize that the topical divisions described in paragraph B.3 and D.3. above are not absolute, inasmuch as each topic necessarily implicates some of the other topics (e.g., opportunities for increased employment affects the economic mix of tenants). Thus, the parties acknowledge that there will be some overlap among the topics.

5. In order to facilitate meaningful dialogue during the course of the settlement negotiation, each set of parties (the LAC, the CHA Defendants, and the City Defendants) shall each have a maximum of four participants, exclusive of the lawyers of record in the litigation, in the room at any one time, with the understanding that this numerical limitation shall be flexible and may be waived if the presence of additional persons is necessary to proceeding efficiently with any particular aspect of the process.

6. In order to provide focus to the oral discussions, each set of parties shall exchange with the other set of parties, two days prior to the commencement of each two-day session, written Statements of Position outlining their current position with respect to each of the issues

on the table. Each set of parties shall also indicate, along with its Statement of Position, who it expects its participants to be for each upcoming session.

7. The discussions shall not be formal presentations of evidence, but any party may elect to present its position through one or more of the following methods or formats:

- a. witness statements;
- b. documentary materials;
- c. oral and/or written statements by counsel;
- d. any other reasonable mode of presenting information within the topical and time constraints set forth above.

8. Within ten days of the conclusion of this six-meeting process, the defendants shall prepare and circulate a report summarizing, for each topic, the agreements reached and the disagreements that remain. The plaintiff shall have ten days to circulate to defendants a response to the defendants' report.

9. The parties may, by agreement, provide for extension of this settlement process as appropriate. The parties may, by agreement, moreover, provide for ongoing settlement discussions with respect to any one or more of the eight issues set forth in paragraph B.3. above, and may provide for a modified format for such continued negotiations.

E. Stay of Proceedings

Based on the foregoing, the parties agree to stay all lawsuit proceedings from September 15, 1997 through October 10, 1997, and an extension of the discovery deadline to December 15, 1997, the disclosure of experts to January 1, 1998, the deadline for expert witness depositions to February 1, 1998, the deadline for rebuttal expert witness disclosure to March 1, 1998, and the

deadline for rebuttal expert witness depositions to April 1, 1998, subject to the agreement of the Court.

F. Miscellaneous Provisions

1. This Agreement shall not be construed as an admission by the defendants that they have violated any legal duty owed to the LAC or any other person or entity;

2. The headings, captions and arrangements used in this Agreement are for convenience only, and shall not be deemed to limit, amplify, or modify any terms or affect any meanings;

3. The terms of this Agreement constitute the entire understanding of the parties, and no statement, remark, agreement or understanding, oral or written, which is not contained herein, shall have any legal relevance to the construction of this Agreement.

4. Failure of any party to this Agreement, during the course of the settlement process set forth above, to come to a substantive resolution concerning any issue set forth in paragraph B.3 above, despite best efforts, shall not constitute violation of the Agreement.

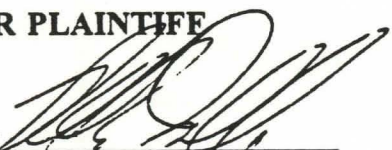
5. The parties may enter into an agreement with respect to any of the specific topics set forth in paragraph B.3 above, prior to the conclusion of the full settlement process.

6. The parties agree that, to help ensure candid and free airing of the issues on the table during the course of these sessions, the parties will treat the substance of the discussions as confidential and will not, except by mutual agreement, make statements to the public concerning anything said during any of the sessions, nor disseminate to the public the transcripts of the proceedings. This assurance of confidentiality is not meant to limit or affect the ability of the

parties to make reference to the discussions in court proceedings to the extent allowed in paragraph F.7.

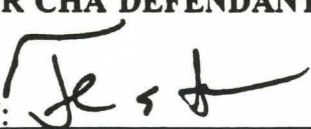
7. Except for information exchanged as set forth in paragraph C, above, no information communicated in the process of these settlement discussions shall be used as evidence in the lawsuit, save to the extent it is relevant and probative with respect to plaintiff's claims relating to alleged lack of meaningful consultation or alleged lack of ability to participate in the process of planning the Cabrini-Green redevelopment. Such relevant and probative evidence shall not include any substantive communications made during the settlement discussions, but may include, among other things, (a) this agreement, (b) the topics addressed during the settlement discussions, (c) the participants, (d) the meeting dates, (e) the length of meetings, (f) the location of meetings, (g) neutral, non-argumentative summaries of the positions taken by the parties at the end of each daily session (as orally articulated by the lawyers before the court reporter with the parties excused), and (h) any additional items to which the parties may stipulate.

FOR PLAINTIFF

BY: 

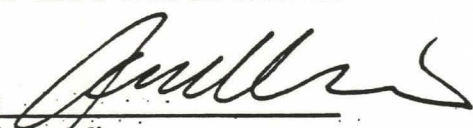
Richard M. Wheelock
Attorney for Plaintiff

FOR CHA DEFENDANTS

BY: 

Thomas E. Johnson
Attorney for the CHA Defendants

FOR CITY DEFENDANTS

BY: 

Andrew Mine
Attorney for the City Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Michael W. Dobbins
CLERK

Office of the Clerk

Thomas Edward Johnson
Johnson, Jones, Snelling & Gilbert
36 South Wabash Street
Suite 1310
Chicago, IL 60603

Case Number: 1:96-cv-06949

Title: Cabrini-Green Local v. CHA

Assigned Judge: Honorable David H. Coar

MINUTE ORDER of 4/8/97 by Hon. David H. Coar : Pretrial conference set to 5/29/98 at 3:00 p.m. Trial set to 6/15/98 at 10:00 a.m. Rule 16(b) scheduling conference held. Rule 26(a)(1) disclosures by 5/1/97. Amendments or joinder of parties on or before 6/1/97. Fact discovery cut-off 10/1/97. Disclosures of experts by 11/1/97. The parties will be permitted three (3) experts per side, however the court reserves the right to limit defendants' experts. Expert discovery to close on 1/1/98. The parties may depose the other side's expert any time prior to 1/1/98. The parties to disclose any rebuttal expert any time prior to 2/1/98. The parties have until 3/1/98 to depose the opposing party's rebuttal expert. Dispositive motions to be filed on or before due 2/1/98. Final pretrial order to be submitted 5/29/98. All discovery to be referred to Magistrate Judge. For the reasons stated on the record, the court will not get involved in mediation, but the parties may pursue. Mailed notice

This docket entry was made by the Clerk on April 10, 1997

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

Exhibit B

United States District Court, Northern District of Illinois

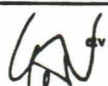
Name of Assigned Judge or Magistrate Judge	David H. Coar	Sitting Judge if Other than Assigned Judge	Rebecca R. Pallmeyer
CASE NUMBER	96 C 6949	DATE	5/1/98
CASE TITLE	Cabrini-Green Local vs. CHA		

[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] Settlement conference convened. Parties reach agreement in principle to settle case, subject to drafting agreement and seeking necessary court approval. Parties expect to present draft agreement to court on or before May 8, 1998. All dates now set for briefing of summary judgment stand. Defendant's motion to bar expert testimony by professor Siim Soot (Doc. No. 123-1 & 2) is stricken without prejudice.
- (11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

☐ No notices required, advised in open court.		8 + 7 judge number of notices	Document Number
☐ No notices required.			
☒ Notices mailed by judge's staff.		date docketed	
☐ Notified counsel by telephone.		docketing deputy initials	
☐ Docketing to mail notices.		5/4/98 date mailed notice	
☐ Mail AO 450 form.			
☒ Copy to judge/magistrate judge.			
 courtroom deputy's initials	Date/time received in central Clerk's Office	 mailing deputy initials	

EXHIBIT

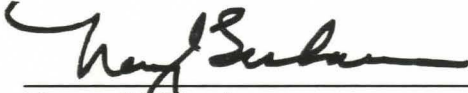
B

CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Thursday,
August 6, 1998, I caused a copy of the foregoing AFFIDAVIT OF RICHARD
WHEELLOCK to be served by hand delivery and facsimile (without exhibits) on counsel
listed below:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL
PEOPLE FOR THE PUBLIC INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

Michael L. Shakman, Esq.
Barry A. Miller, Esq.
MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604



Nancy S. Eisenhower

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

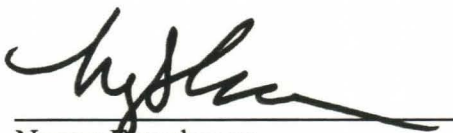
DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459
	)	
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

NOTICE OF FILING

TO: Alexander Polikoff, Esq.	Michael L. Shakman, Esq.
BUSINESS AND PROFESSIONAL	Barry A. Miller, Esq.
PEOPLE FOR THE PUBLIC	MILLER, SHAKMAN, HAMILTON,
INTEREST	KURTZON & SCHLIFKE
17 E. Monroe Street, Suite 212	208 South LaSalle Street, Suite 1100
Chicago, Illinois 60603	Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Thursday, August 6, 1998, we filed with the clerk of the District Court for the Northern District of Illinois, AFFIDAVIT OF BRENDA GRAUER a copy of which are attached hereto and served upon you.

Dated: August 6, 1998
Chicago, Illinois


Nancy Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
(312) 407-0700
Counsel for Defendants
CHICAGO HOUSING AUTHORITY

AFFIDAVIT OF BRENDA L. GRAUER

I, BRENDA L. GRAUER, being duly sworn, depose and state as follows:

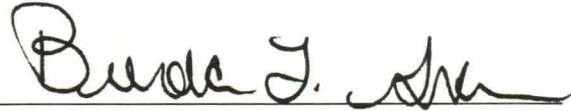
1. I am a staff attorney at the Legal Assistance Foundation of Chicago. I have been employed there since January 5, 1995. I am one of the attorneys representing the Cabrini-Green Local Advisory Council in Cabrini-Green LAC v. CHA et al., 96 C 6949.

2. During the course of the litigation, I took the deposition of Valarie Jarrett, the Executive Vice-President of The Habitat Company. The deposition began on or about November 11, 1997 and was continued and concluded on December 15, 1997. The deposition was conducted at the offices of the Legal Assistance Foundation of Chicago located at 111 W. Jackson, Suite #300, Chicago, Illinois.

3. On December 15, 1997, Ms. Jarrett, her counsel, Edward Feldman, and myself were seated in the LAFC conference room awaiting the arrival of counsel for the CHA and City of Chicago. While we were waiting, Ms. Jarrett explained that she was under the impression that the lawsuit had settled. I explained to her that while the parties were conducting settlement negotiations nothing had, as yet, been resolved.

4. Ms. Jarrett further inquired as to the reason for the delay in settling the case. I told her that the Cabrini LAC and CHA had reached agreement on most issues but that negotiations with the City seemed to be at an impasse.

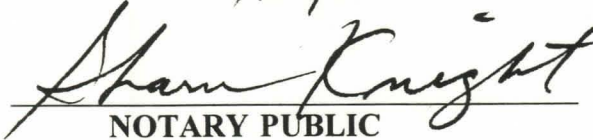
5. At that point Ms. Jarrett told me to, "let her know if there was anything she could do."



BRENDA L. GRAUER

Subscribed and sworn to before me

this 6th day of August, 1998.


NOTARY PUBLIC

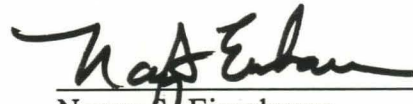


CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Thursday,
August 6, 1998, I caused a copy of the foregoing AFFIDAVIT OF BRENDA
GRAUER to be served by hand delivery and facsimile (without exhibits) on counsel
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Nancy S. Eisenhower