

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Appeal No. 98-3145

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

BRIEF OF PLAINTIFFS-APPELLEES
DOROTHY GAUTREAUX, ET AL.

Alexander Polikoff
Julie Elena Brown
Business and Professional People
for the Public Interest
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Dated: September 29, 1998

CERTIFICATE OF INTEREST

Appellate Court No: 98-3145

Short Caption: GAUTREAUX v. CHICAGO HOUSING AUTHORITY

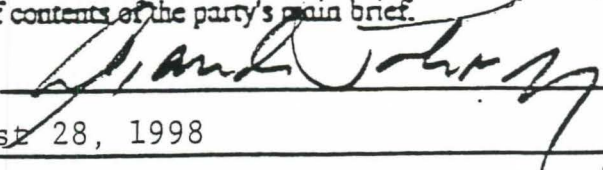
U.S.C.A.—7th Circuit
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- (1) The full name of every party or amicus the attorney represents in the case:
Dorothy Gautreaux (deceased), Odell Jones (deceased),
Dorothea R. Crenshaw, Eva Rodgers, James Rodgers, and
Robert M. Fairfax, and a class of similarly-situated individuals,
- (2) If such party or amicus is a corporation:
- i) Its parent corporation, if any; and
N/A
- ii) A list of stockholders which are publicly held companies owning 10% or more of the stock in the party or amicus:
N/A
- (3) The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court:

BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST

This certificate shall be filed with the appearance form or upon the filing of a motion in this court, whichever occurs first. The attorney furnishing the certificate must file an amended certificate to reflect any material changes in the required information. The text of the certificate (i.e. caption omitted) shall also be included in from of the table of contents of the party's main brief.

Attorney's Signature: 

Date: August 28, 1998

Attorney's Printed Name: Alexander Polikoff

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U.S.C.A.—7th Circuit
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CERTIFICATE OF INTEREST

Appellate Court No: 98-3145

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TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATES OF INTEREST */	
TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF JURISDICTION	3
ISSUES PRESENTED FOR REVIEW	3
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
SUMMARY OF ARGUMENT	4
ARGUMENT	5
I. BECAUSE JUDICIAL ORDERS MUST BE OBEYED UNLESS STAYED, VACATED, OR MODIFIED, THIS COURT SHOULD UPHOLD THE AUGUST ORDER WITHOUT REACHING CHA'S ARGUMENTS AS TO ITS MERITS	5
II. CHA'S ARGUMENTS ON THE MERITS ARE WITHOUT SUBSTANCE	9
CONCLUSION	15
RULE 32 CERTIFICATE	16

*/ Copies included here; originals filed August 31, 1998.

STATEMENT OF FACTS

To avoid needless repetition the Court is respectfully referred to:

- (A) the Statement of Facts in Appellees' prior brief, pp. 7-23; and
- (B) the Statement of Facts in the Receiver's current brief, pp. 4-16.

Appellees adopt these Statements of Facts as their Statement of Facts in this brief.

SUMMARY OF ARGUMENT

The "Celotex Rule" obligates persons subject to an injunctive order issued by a court with jurisdiction to obey the order until it is stayed, vacated or modified, even if they have proper grounds to object to the order. Celotex Corp. v. Edwards, 514 U.S. 300, 306 (1995). Cf. Alexander v. Chicago Park District, 927 F.2d 1014, 1025 (7th Cir. 1991).

The negotiation provision of the 1987 Receivership Order, which withdraws from CHA and vests in the Receiver the exclusive authority to negotiate for the development of new, non-elderly public housing, has never been appealed, stayed, vacated or modified. By reason of the district court's unstayed February and May Orders, there is no question that the Receiver's negotiating authority embraces new, non-elderly HOPE VI-funded replacement housing. Yet CHA flouted the negotiation provision and itself negotiated with Cabrini-Green tenants an agreement

that included the proposed development of new, non-elderly HOPE VI-funded replacement housing. If the Celotex Rule is to be honored and the district judge and judicial process respected, the ensuing order of the district court - directing CHA to comply with the negotiation provision of the Receivership Order - should be upheld without considering in this appeal CHA's arguments as to the merits of the negotiation provision.

In any event, each of CHA's five merits argument is without substance.

ARGUMENT

The order appealed from (the "August Order") was entered on the motion of the Receiver. To avoid repetition we respectfully refer the Court to the Receiver's current brief, which we adopt, including its discussion of the standard of review. We confine our argument here to two brief points.

I. **BECAUSE JUDICIAL ORDERS MUST BE OBEYED UNLESS STAYED, VACATED OR MODIFIED, THIS COURT SHOULD UPHOLD THE AUGUST ORDER WITHOUT REACHING CHA'S ARGUMENTS AS TO ITS MERITS.**

The rule is familiar and well-established that "persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." Celotex Corp. v. Edwards, 514 U.S. 300, 306 (1995), quoting GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 386 (1980). The reason is "out of respect for judicial

TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATES OF INTEREST <u>*/</u>	
TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF JURISDICTION	3
ISSUES PRESENTED FOR REVIEW	3
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
SUMMARY OF ARGUMENT	4
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I. BECAUSE JUDICIAL ORDERS MUST BE OBEYED UNLESS STAYED, VACATED, OR MODIFIED, THIS COURT SHOULD UPHOLD THE AUGUST ORDER WITHOUT REACHING CHA'S ARGUMENTS AS TO ITS MERITS	5
II. CHA'S ARGUMENTS ON THE MERITS ARE WITHOUT SUBSTANCE	9
CONCLUSION	15
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For a decade following 1987 the parties cooperated in implementing the judgment and receivership orders, including in revitalizing areas and in HOPE VI contexts as well as in developing scattered site public housing. (Appellees' prior brief, Statement of Facts, 11-18.) Notwithstanding the "legitimate disagreements" which CHA says have now arisen regarding CHA's duty under the orders (CHA Memo, p. 8), and even if those disagreements amount to "proper grounds to object" to the orders (Celotex, supra, 514 U.S. at 306), CHA is "expected to obey" the orders until they are modified or reversed. (Id.)

That CHA has not done. Though CHA has said numerous times that it intends to file a motion to clarify or modify the Receivership Order, it has not filed such a motion. In particular, CHA has not moved to clarify or modify the negotiation provision of the Receivership Order. Instead CHA proceeded to ignore and violate the negotiation provision. By engaging in a negotiation with Cabrini tenants that undeniably included the proposed development of new non-elderly public housing, CHA flouted the Celotex Rule and demonstrated disrespect for the district judge and judicial process. The August Order and the present appeal are the result.

There is a temptation to be drawn into particulars which, under Celotex and Alexander, have no place in this appeal, for example:

- CHA's persisting misstatement that displaced residents have a "right" to remain in their community (CHA Br. 9);

Receiver "could only 'try to stop him.'" (AA-201.) This is not a case in which the defendant has intended to comply with court orders but failed to do so because it misunderstood or was confused.¹

II. CHA'S ARGUMENTS ON THE MERITS ARE WITHOUT SUBSTANCE

Nonetheless, we will comment briefly on CHA's five "merits" arguments.

A. CHA's first argument (CHA Br. 8-11) is that because the development of new non-elderly replacement housing is said to be "entwined" with other issues to be negotiated with Cabrini residents, "CHA had full power and authority to settle the litigation." (Id. 9, 10.)

In the first replacement housing order of December 10, 1993, involving replacement units in the Lawndale neighborhood, the Receiver was authorized to develop (through the joint venture with a CHA affiliate) units that were to replace existing CHA units "proposed to be demolished . . ." (AA-86.) Since CHA, not the Receiver, has the power to demolish, the replacement and demolition activities were "entwined" at Lawndale, and were jointly negotiated with the residents by CHA and the Receiver. The same is true of the 377 Washington Park and Cabrini-Green

¹ CHA says these and other statements appear only in "self-serving affidavits." (CHA Br. 4.) The accuracy of the affidavits (there are two of them, and the CHA statements were made in the presence of a HUD representative - AA-197, 216, RA-452) has never been called into question by counter-affidavits, or even by unsworn denials. Under these circumstances the affidavits may be accepted as true. Bell v. Little Axe

units covered by the same order (id.), and of subsequent orders as well. (E.g., the Horner orders, AA-94-95.)

If for some reason CHA no longer wished to participate jointly with the Receiver in negotiations with tenants, it could have asked the district court to modify the negotiation provision of the Receivership Order to address the "entwined" situation differently. Instead it asserts without logic or authority that because of "entwining" it is entitled to assume, and proceed as if, the Receiver had been stripped of the negotiating power it would otherwise have had but for "entwining." To state the argument is to answer it.

B. CHA's second argument (CHA Br. 11-14) is that CHA is free to negotiate, thereby arrogating to itself power that belongs to the Receiver, so long as it intends subsequently to seek a waiver - "to make receipt of [the] waiver a condition subsequent . . ." (Id. 12.) Again, to state the argument is to answer it, for otherwise every person subject to an injunctive order could engage in prohibited acts merely because he intended subsequently to seek a waiver of the injunction.

C. CHA's third argument (CHA Br. 14-20) is that the district court's orders respecting the Receiver's HOPE VI authority are unclear (id. 14-16, 18-19), that the Receivership Order conflicts with HOPE VI (id. 16-17), and that responsibility for a HOPE VI project cannot be shared. (Id. 19-20.)

Independent School Dist. No. 70, 766 F.2d 1391, 1403, n. 8 (10th Cir. 1985).

As to lack of clarity, the Celotex Rule obligates CHA to obey supposedly unclear orders unless they are stayed, vacated or modified. CHA's view would entitle every person subject to an injunction to detect some lack of clarity in the injunctive order as justification for proceeding to ignore it.

As to conflict, CHA adds nothing to the incompatibility arguments it has previously made; these arguments are addressed in appellees' prior brief, pp. 38-42, to which the Court is respectfully referred.

As to the inability to share HOPE VI responsibility, CHA's own words speak tellingly to the contrary. For example, CHA's HOPE VI planning grant request (seeking funding for planning activities for achieving the goals "embodied in the HOPE VI Program and the Chicago Housing Authority's vision for the redevelopment of its housing stock" - AA-142) touted its shared responsibility with the Receiver:

"[T]he Development Team [for HOPE VI] . . . is composed of CMHDC [CHA's affiliate] and Habitat as the non-profit partnership overseeing all development activity in concert with the . . . present requirements of the Gautreaux decisions . . ." (AA-145, quoted in Appellee's prior brief, p. 18.)

But even if it were true that responsibility could not be shared, CHA had a duty to obey the existing negotiation order until and unless it was stayed or vacated, or modified to deal with the supposed problem of shared responsibility.

D. CHA's fourth argument (CHA Br. 20-24) is that the duty to pursue desegregation is vague and therefore unenforceable

(even though CHA acknowledges it is "duty-bound to pursue desegregation" - id. 22), and that in any event CHA's desegregation duty would be fulfilled by implementing HOPE VI plans.

In a variety of contexts courts speak of the affirmative obligation of a Fourteenth Amendment violator to dismantle its segregated system. See, for example, U.S. v. Fordice, 505 U.S. 717, 743 (1992) ("affirmative obligation to dismantle its prior dual system . . ."); Parents for Quality Educ. v. State of Ind., 977 F.2d 1207, 1211 (7th Cir. 1992) ("state's failure to take affirmative steps [to dismantle dual system] is an ongoing violation of the Fourteenth Amendment; . . . district court may enjoin . . . by ordering the state to take affirmative actions..."). In such cases the dismantling obligation is not an abstraction; it becomes embodied in the particular provisions of specific remedial orders designed to effectuate the affirmative obligation. Here CHA's continuing affirmative obligation to dismantle its segregated system is in part embodied in the specific negotiation provision of the Receivership Order.

The August Order is predicated on CHA's violation of that specific provision. It is the violation of the particular negotiation provision, not of CHA's general dismantling duty, that is the focus of the August Order. Thus the Court need not address the hypothetical, general order to desegregate to which CHA's argument is directed.²

² CHA's argument that its dismantling duty is no part of the Receiver's responsibility (CHA Br. 21-22) flies in the face both of the very purpose of the Receivership Order - to "effectuate"

The contention (CHA Br. 22-23) that carrying out HOPE VI fulfills CHA's dismantling duty because HOPE VI is subject to the Fair Housing Law would mean that every Fourteenth Amendment violator could satisfy its dismantling duty by complying with civil rights laws in its future activities, ignoring its duty to remedy the persisting effects of past violations - a novel view of the law that, had it any merit, would have obviated 40 years of post-Brown litigation.

HOPE VI is an important opportunity to further remedy CHA's still segregated system. Compliance with unstayed district court orders is not only required as a matter of law and out of respect for the district judge and judicial process. It is also the speediest way to complete the remedy - a denouement already delayed by two decades of CHA intransigence, see appellees' prior brief, pp. 8-9 - and return control of non-elderly public housing development to CHA.

E. CHA's fifth argument (CHA Br. 24-26) is that CHA's duty of cooperation under the Receivership Order is vague and therefore unenforceable. What is at issue under the August Order is not the duty of cooperation, but the duty not to negotiate unilaterally respecting the development of new, non-elderly public housing.

the district court's desegregation orders (AA-10) - and of its specific language: ". . . all powers of CHA [respecting non-elderly public housing development] . . . including . . . all determinations . . . in compliance with prior and future orders of this Court [as to] . . . site selection [etc.] . . ." (AA-11-12.)

Even if CHA's argument were relevant to the August Order, the Celotex Rule dictates that CHA must obey the Receivership Order until and unless it is stayed or modified; CHA is not free to flout an unstayed district court order and then advance a vagueness argument in defense of doing what it was not free to do.

For both of these reasons the Court need not reach CHA's argument, but in any event the cooperation duty is not unenforceably vague. CHA knew perfectly well what cooperation meant when it filed its HOPE VI planning grant application and its HOPE VI implementation grant application for ABLA/Horner, in both of which documents it touted the results to be achieved by cooperation. See appellees' prior brief, pp. 17-18. Cf. Scandia Down Corp. v. Euroquilt, 772 F.2d 1423, 1431-32 (7th Cir. 1985).

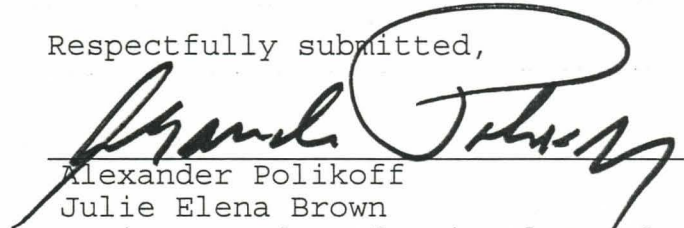
"[T]he Rule [65(d)] does not require the impossible . . . The more specific the order, the more opportunities for evasion ('loopholes'). . . When the difficulty stems from the inability of words to describe the variousness of experience, the court may prefer brief imprecise standards to prolix imprecise standards. The right to seek clarification or modification of the injunction provides assurance, if any be sought, that proposed conduct is not proscribed."

* * *

CONCLUSION

For the reasons stated this Court should affirm the August Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander Polikoff", is written over a horizontal line. The signature is stylized with a large, circular flourish at the end.

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Dated: September 29, 1998

CERTIFICATE

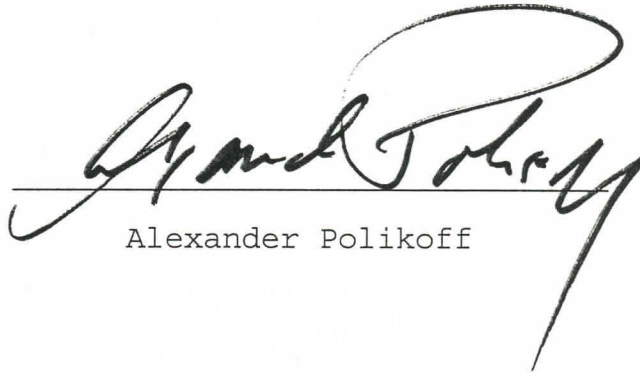
Pursuant to Circuit Court Rule 32, I certify that the attached brief contains 3,031 words.



Alexander Polikoff

CERTIFICATE OF SERVICE

Alexander Polikoff, an attorney, hereby certifies that on September 29, 1998, I caused copies of the Brief of Plaintiffs-Appellees to be served upon the persons on the attached service list in the manner shown.

A handwritten signature in black ink, appearing to read "Alexander Polikoff", is written over a horizontal line. The signature is stylized with a large, looping initial 'A' and a long, sweeping tail that extends downwards and to the right.

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