

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

RECEIVED

DOROTHY GAUTREAUX, at al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
PHILLIP JACKSON, its Executive Director

Defendants.

SEP 17 1999

JUDGE MARVIN E. ASPEN
UNITED STATES DISTRICT COURT
No. 66 C 1459

Chief Judge Marvin E. Aspen

**RECEIVER'S REPLY IN SUPPORT OF ITS REQUEST FOR INSTRUCTIONS
REGARDING CABRINI-GREEN REDEVELOPMENT**

Two starkly different approaches are proposed by the LAC and the Receiver in the briefs filed to date in connection with the LAC's Waiver Motion and the Receiver's Request for Instructions ("Request"). The LAC's suggestion is that the Court either (i) grant a revitalizing waiver based upon its proposed 1998 consent decree or (ii) instruct the Receiver to do nothing while the LAC prosecutes a lawsuit before Judge Coar over a long-dead 1996 "plan" that no one wants to implement anyway. Neither LAC suggestion should be adopted.

Suggestion (i) asks the Court to approve a draft consent decree that was not agreed to by a necessary party (the Receiver), has already been vetoed by another party whose consent is required (HUD), and contains several provisions that the Receiver believes will impede the development of desegregated housing at Cabrini. See Receiver's Response to Waiver Motion. Suggestion (ii) asks the Court to countenance indefinite stalemate, to consign the redevelopment of Cabrini to limbo until Judge Coar (and, presumably, the Seventh Circuit) resolves litigation over an irrelevant 1996 "plan." Meanwhile, the LAC's constituency continues to live in segregated and dangerous housing at

Cabrini. The LAC's agree-with-it-or-do-nothing approach is contrary to the interests of Cabrini residents, CHA and the City.

Fortunately, the Court does not have to choose between an ill-advised decree and stalemate. There is a third option, one that offers the hope of immediate progress in redeveloping Cabrini in harmony with Gautreaux objectives. The Receiver filed its Request for Instructions to present this third option. Its proposed approach is to push ahead, without further delay and, if necessary, without the LAC's agreement, with the process of redeveloping mixed-income, economically and racially integrated housing. After months of unsuccessful negotiations, there is no reason to wait for the Cabrini LAC lawsuit to be resolved or for the LAC to come to agreement.

The Cabrini LAC's Response to the Receiver's Report and Request for Instructions ("Response") rests on fundamental misunderstandings. It fails to grasp or acknowledge the Receiver's powers under the Receivership Order and its duties to this Court and to the public. And it misreads the Receiver's Request. Contrary to the Response, the Receiver does not seek to "impede the resolution of Judge Coar's case," Response at 2, to exclude the LAC from the development process, id. at 5, or to overstep its authority, Response at 6-7.

Rather, the Receiver is simply trying to move the stalled process forward responsibly in the wake of the negotiation impasse. The Receiver's Request for Instructions rests on the assumption that, in the **face of impasse**, doing nothing is a disservice to the Court and the public. However, since the Receiver remains mindful that it is an officer of the Court with defined powers, it submitted its Request before embarking on any course, so that the parties and the Court could speak to the matter.

Contrary to the LAC's assertion, the Receiver is not requesting an "advisory opinion." Response at 7. The LAC overlooks the fact that the Receiver is not an ordinary litigant. It is an agent of the Court, and must from time to time seek direction from the Court. Much of what it does pursuant to the Receivership Order is routine or ministerial and requires no special instruction. Reporting quarterly to the Court suffices, and the Court is free to instruct the Receiver based upon those reports. However, we are not at a routine or ministerial juncture. In the present context at Cabrini, involving important public issues, submitting a request for instructions, with notice to the parties and an opportunity to comment, was the prudent course to pursue.

A. The LAC Ignores the Receivership Order and This Court's Recent Rulings.

In its series of rulings during the past 18 months, this Court has repeatedly rejected a premise of the Response, namely, that the Receiver lacks authority "to embark on the broad task of making new plans for Cabrini-Green." Response at 2. Indeed, the LAC asserts, without citation, that "Habitat is responsible for any new, non-elderly public housing *CHA elects to construct* at Cabrini-Green." *Id.* at 6 (emphasis added). This argument ignores the plain terms of the Receivership Order and this Court's recent rulings, none of which the LAC discusses. These Orders, the law of the case, establish that Habitat is not a construction manager for CHA, as the LAC would have it.

Attached hereto as Exhibit A and Group Exhibit B are the 1987 Receivership Order and this Court's orders of May 19, 21, 22, 1998, August 12, 1998, and May 6, 1999. In addition, the Court is respectfully referred again to the recent Seventh Circuit opinion in this case, Gautreaux v. CHA, 178 F.3d 951, 958 (7th Cir. 1999), reh'g denied, 1999 U.S. App. LEXIS 13938 (7th Cir. June 22, 1999), discussed in the Receiver's Response to the LAC's Waiver Motion at 3-4. These orders have been discussed at length and their terms will not be repeated here. Suffice it to say that the Receiver-

ship Order transfers to the Receiver not merely the “construction” oversight responsibilities posited by the LAC, but “all powers of CHA” respecting the “development” of new, non-elderly public housing, including “[m]aking all determinations governing the scattered site program,” such as, “without limitation,” “submission to HUD of applications for funding, development programs and other documents,” “site selection and acquisition,” “negotiating and executing any contracts or other documents.” Receivership Order ¶2. See also 8/12/98 and 5/6/99 Orders.

Thus, the LAC seriously understates the Receiver’s powers and duties. While it correctly identifies some items for which the Receiver is not responsible (e.g., deciding which public housing buildings to demolish, setting relocation and readmission policies for displaced residents, receiving federal funds for demolition or relocation purposes, Response at 6), it wrongly asserts that the Receiver is not responsible for consulting with public housing residents with respect to development issues, conducting viability studies (with respect to viability of new development), or deciding the quantity of public housing that will be built back on site. Id.

Because the Receiver possesses all of CHA’s new public housing development powers, it has both the right and the duty to try to move the process past the current stalemate at Cabrini. It had every right to, and it was proper, contrary to Response at 6, to “lay[] out the guidelines” under which it believes it is appropriate to proceed.

Finally, with respect to the scope of the Receiver’s authority, the LAC misconceives the Receiver’s role at Cabrini as limited to “seeing if the [Cabrini LAC] suit could be settled on terms that were acceptable to all parties in that case.” Response at 2.^{1/} But the Receiver’s function is not

^{1/} Response at 2 also incorrectly suggests that the Receiver “became involved in [the Cabrini (continued...) ”

merely to passively evaluate and pass judgment on plans prepared by others. Possessing as it does all of CHA's development powers, the Receiver has clear authority to be a fully active player in all aspects of the development process, including the creation of development plans, regardless of pending litigation. It did not become involved at Cabrini simply to "see if the suit could be settled." As the Court is aware from last year's litigation, the Receiver became involved because the CHA's prior administration had usurped the Receiver's development authority in trying to settle the suit, a usurpation that was the culmination of a series of actions to try unilaterally to exclude the Receiver from development activities at Cabrini and elsewhere.

It bears emphasizing that in reciting the scope of its authority, the Receiver is not proposing to proceed unilaterally. As the LAC observes and the Receiver has always recognized, CHA retains significant authority with respect to demolition, tenant relocation, management, and other matters. Cooperation and coordination are essential, as this Court acknowledged in its May 19 and 21, 1998 Orders. Moreover, the Receiver is optimistic that ongoing dialog and cooperation with CHA's new administration will occur with respect to development matters that are within the Receiver's purview. Redevelopment of this magnitude demands active City involvement and leadership. All parties, including the LAC, have agreed that public housing units will constitute but 30% of the new construction. Thus, the Receiver's Request at 3 stated that it would begin by seeking concurrence of the City and CHA, and suggested that the City chair the "Working Group" that would oversee the process.

^{1/}(...continued)

LAC] . . . case." It has had no involvement in the case itself other than presenting two subpoenaed witnesses for deposition.

It also bears noting that the Receiver has objected to the proposed 1998 consent decree and submitted its Request for Instructions, not because, as the LAC portrays it, the proposed decree is imperfect but within the range of reasonable and Gautreaux-acceptable solutions that could be devised to redevelop Cabrini.^{2/} Rather, as the Receiver has explained elsewhere, the proposed decree is a bad solution in major respects. See Receiver's Statement in Response to Cabrini LAC's Waiver Motion, and Exs. I-J thereto. The Receiver has agreed to those parts of the proposed decree that would not violate its duties to this Court. For example, it has accepted the proposition that developers may propose a partnership role for the LAC, but not a deal-chilling and restrictive 51% share; it has agreed to the 50/30/20 mix of housing types in the decree, but not to let the LAC hold needed building demolition hostage to its concept of how the development should proceed. These are fundamental and important differences. They make the difference between a successful, racially and economically integrated development giving public housing residents the remedy long sought by the Court, or a development that would likely perpetuate their separate status and segregation.

B. The LAC Mischaracterizes the Receiver's Request.

The LAC finds something sinister in the Receiver's Request. It asserts that the Receiver "proposes to devise its plan in conjunction with the City and the CHA, but without any involvement by the LAC." Response at 5, citing Request at 3. That is patently incorrect. Here is what the

^{2/} See Cabrini LAC's Reply in Support of its Motion for a Limited Waiver, filed September 10, 1999, at 2-3. In suggesting there that the Receiver has conceded that the proposed decree is consistent with Gautreaux objectives, the LAC seriously misreads and distorts the Receiver's Response to the Waiver Motion. In several respects the Receiver has objected that the proposed decree would frustrate those objectives. See Receiver's Response to Waiver Motion at 2, 10-18. In any event, even if the LAC were correct that the Receiver is merely stating that there are better Gautreaux solutions than those offered by the proposed decree, that would be reason enough to deny the Waiver Motion.

Receiver's Request at 3 actually states (emphasis added): "A 'Working Group' would be formed, consisting of representatives of the City, CHA, *the Cabrini LAC*, and the Gautreaux plaintiffs. The Working Group *would oversee the redevelopment process*. It would be sensible for the City to chair the Group. *The Cabrini LAC will continue to be consulted regularly, as required under HOPE VI.*" See also Receiver's Response to LAC's Waiver Motion at 10-11. Moreover, the Receiver has agreed that RFP's for developers could permit developers to propose a development partnership with residents. Request at 3; Receiver's Response to Waiver Motion at 11. Given these statements, the LAC's statement that the Receiver seeks to exclude any involvement of the LAC or violate HOPE VI is baffling.

It is also incorrect for the LAC to state that the Receiver is trying to "forge a new plan" for Cabrini and that it "proposes to devise its plan [etc.]" Response at 5.^{3/} The Receiver has no secret, unilateral redevelopment "plan." It is not trying to foist anything on the LAC or anyone else. It is not trying to "spearhead the entire Cabrini-Green planning process." Id. at 2. Rather, the Receiver is simply trying to jump-start that stalled process. If it was not clear from the Request, the Receiver will clarify it now: the whole point of the "Working Group," at which the LAC will have a seat, is to have the parties proceed collectively: to work together to forge a new plan, prepare and issue the RFP, and oversee the development of the new, on-site public housing that the Cabrini tenants want and need.

The LAC's real objection is that it might not agree with or like everything the Working Group ultimately decides, and that it wants a veto. The Receiver too would much prefer to reach a

^{3/} As the LAC well knows, the elements outlined in Request at 3-4, were adapted from proposals prepared by Professor Rubinowitz during the mediation, and were discussed at length by the parties. There is nothing new or surprising to the LAC in the Request.

sensible agreement with LAC, and remains open to doing so. All else being equal, consensus is better than rancor, and settlement is better than litigation. But it cannot agree to the veto power that the LAC demands. The Receiver also parts company with the LAC on what should happen if the impasse continues. The LAC prefers no redevelopment in the absence of its agreement, even if it means delaying indefinitely the redevelopment of on-site or nearby replacement housing for current affected Cabrini residents and the continuation of their residency in substandard, often dangerous conditions.

Like any litigant, the LAC is free to try to use its refusal to agree as leverage to get what it wants. But there is no *legal* basis for its “agree-or-do-nothing” position. There is no legal requirement that the LAC approve any proposed redevelopment. HOPE VI provides it a seat at the table, not a veto. See Receiver’s Response to LAC’s Waiver Motion at 6-10. So long as the LAC is fully consulted under HOPE VI, and other applicable laws are complied with, the parties legally responsible for the redevelopment are free, as a legal matter, to proceed if they choose to do so.^{4/}

In essence, then, the Request for Instructions boils down to this: the Receiver asks the Court for permission to move forward, to proceed in compliance with its powers and applicable law, to

^{4/} The LAC’s misunderstanding of the Receiver’s authority and of HOPE VI is echoed in its Reply Memorandum in support of its Waiver Motion, where it argues that a Memorandum of Understanding **executed** by, among others, the Receiver, City, CHA, and the ABLA LAC mandates consensus **decision-making**, thereby providing tenants with a veto. LAC Reply Mem. at 12 n. 16, 15 & Ex.C. **It is wrong.** The ABLA “MOU” is consistent with HUD’s requirement, described at length in the Receiver’s Response to the LAC’s Waiver Motion at 6-10, that the HOPE VI grantee retain final decision-making authority. The MOU sets forth the parties’ intent to make good faith efforts to make decisions by consensus, but “CHA and Habitat shall remain separately responsible for those duties imposed respectively upon each under the HOPE VI and other public housing capital funding rules and regulations, orders of the Gautreaux court, and all federal, state and local laws.” ABLA MOU at 1. Thus, CHA and Habitat retain tie-breaking authority if consensus cannot be reached. Habitat specifically requested this provision during the negotiations over the MOU in order to preserve this authority required by HOPE VI and the Receivership Order.

work with the City, CHA and Gautreaux plaintiffs to advance the redevelopment process with – or without – the LAC’s agreement. Thus, contrary to Response at 6-7, the Receiver is not asking the Court to bless “amorphous” or “inchoate” redevelopment plans. Rather, it has made a specific request for approval of a process so that redevelopment may proceed.

C. Permitting the Receiver to Continue the Redevelopment Process Will Not Interfere With Judge Coar’s Lawsuit.

The LAC’s claim that permitting the redevelopment process to proceed will somehow “encroach[] on Judge Coar’s authority,” “impede the resolution of Judge Coar’s case,” or “invite[] . . . unnecessary conflict” is wrong and internally inconsistent. Response at 1, 2, 5.

The LAC concedes that its lawsuit against the City and CHA “involves issues that are largely distinct from the issues in Gautreaux.” Response at 5. “The LAC’s complaint sought to enjoin implementation of [an alleged 1996 CHA] plan, not to require the construction of any specific number or type of replacement housing units.” Id. at 3. The LAC further concedes that a settlement involving new public housing development cannot occur without the Receiver’s acquiescence (as this Court has ruled). Id. at 4. The Receiver is not proposing that the Working Group implement the 1996 alleged “plan” or anything similar. No one else is proposing that such a plan be implemented, and no order prohibits the creation of a new plan. It is hard to see, then, why there is any “encroachment,” “impediment” or “conflict.” Continuing litigation before Judge Coar over the legality of a long-dead 1996 CHA-City “plan” would be unfortunate and wasteful, but it has no bearing on whether a yet-to-be-devised and wholly different 1999 or 2000 plan should be

implemented.^{5/} Any new plan will be judged on its merits. The fate of the 1996 plan before Judge Coar is simply irrelevant.^{6/}

If the LAC disagrees with the plan ultimately adopted by the Working Group, it may bring those objections before this Court and obtain review of the merits of the plan. The Working Group will need to present the plan to this Court in any event to obtain a locational waiver. The LAC is free to raise any objections in that context.^{7/} That process will not impede Judge Coar's case, but can only advance it substantially. For if the LAC prevails before Judge Coar it will obtain, at most, a declaration that the City or CHA failed in the past to consult with it and that a different plan created in 1996 was flawed. But any such decision will not build new housing. Win or lose, the LAC will still need a plan to develop housing, and that plan must be reviewed by this Court and implemented with the Receiver's involvement. If that plan has already been completed or is substantially underway by the time Judge Coar rules, then everybody is better off, regardless of what Judge Coar decides.

^{5/} Indeed, since neither the City nor CHA is remotely interested in pursuing the alleged 1996 "plan," we cannot understand why that lawsuit is not moot. But that is obviously a matter for Judge Coar to decide if the litigation resumes.

^{6/} Of course, if, as LAC contends, Judge Coar has entered any injunctions concerning demolition, it may be necessary for the parties to seek relief from him on that issue. That would be a matter for CHA and the City to decide if the Working Group is formed and the Group collectively decides to proceed with demolition.

^{7/} Were the LAC to have objections to a plan advanced by the Receiver for the redevelopment of the Cabrini area, this Court would be the only proper forum to decide them.

Conclusion

For the foregoing reasons, the Receiver respectfully requests that its Request for Instructions be granted, and that the Court permit the Receiver to proceed with the redevelopment process as outlined in the Request, subject, as always, to further instruction of Court.

Respectfully submitted;

Date: September 17, 1999

A handwritten signature in cursive script, reading "Edward W. Feldman", written in dark ink. The signature is fluid and extends to the right.

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

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on September 17, 1999 he served copies of the *Receiver's Reply in Support of its Request for Instructions Regarding Cabrini-Green Redevelopment* on the parties listed below by causing true and correct copies of the same to be placed in properly addressed envelopes with first-class postage affixed thereto, and depositing same in the United States mail box located at 208 S. LaSalle Street as of this date.

Dated: September 17, 1999

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Edward W. Feldman

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

DOROTHY GAUTREAUX, et al.,
Plaintiffs,

vs.

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

Defendants.

Civil Action No. 66C1459
66C1460
(Consolidated)

O R D E R

This matter coming on to be heard pursuant to plaintiffs' motion dated May 8, 1967 for the appointment of a receiver for the scattered site program (defined below), due notice having been given and the Court having heard the presentations of the parties, the Court makes the following findings of fact and conclusions of law:

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

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

EXHIBIT

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

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

WHEREFORE, IT IS HEREBY ORDERED:

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

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

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

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

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

3. The Receiver shall have the right at any time, upon due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.3, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgement by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

ENTER:


United States District Judge

August 14, 1987

United States District Court, Northern District of Illinois

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

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

MOTION:

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

DOCKET ENTRY:

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

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

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

EXHIBIT

B

ORDER

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

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

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

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

It is so ordered.

A handwritten signature in black ink, appearing to be 'MGL' or similar, is written over the text 'It is so ordered.'

United States District Court, Northern District of Illinois

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

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state brief 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.		☐ No notices required.	4 number of motions date docketed docketing deputy initials 5/21/1998 date mailed motion GL mailing deputy initials	Document Number
☒ Notices mailed by judge's staff.				
☐ Notified counsel by telephone.				
☐ Docketing to mail notices.				
☐ Mail AO 450 form.				
☐ Copy to judge/magistrate judge.				
GL	courtroom deputy's initials	Date/time received in central Clerk's Office		

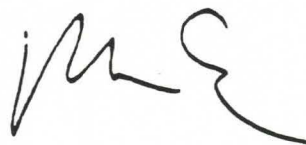
ORDER

Now before us is the 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 13, 1998, 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.



United States District Court, Northern District of Illinois

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

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DOCKET ENTRY:

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

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

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.



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	8/12/1998
CASE TITLE	Gautreaux 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:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
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- (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] Receiver's motion for the entry of an order directing the CHA to comply with the 1987 receivership order and our 1988 HOPE VI orders is granted.

- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.		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.		8/12/1998	
Mail AO 450 form.		date mailed notice	
Copy to judge/magistrate judge.		GL	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

ORDER

The Receiver has moved for the entry of an order directing the CHA to comply with the 1987 receivership order and our 1998 HOPE VI orders. The plaintiffs and the City of Chicago support this motion. The CHA contests it.

The receivership order in this case gives the Receiver "all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program." It specifies that these powers include, *inter alia*, "negotiating any contracts or other documents necessary or appropriate to implement the scattered site program." It also provides that the CHA must provide the receiver with "full access to all information, records, documents, [and] files relating to the scattered site program." As we have instructed the CHA previously, compliance with our orders is not optional and we will take every necessary step to ensure the compliance of all parties.

The present dispute arose when the local media reported that the CHA had reached an agreement with representatives of residents of the Cabrini-Green housing development with regard to future development on the Cabrini-Green site. This agreement, if approved, would settle a case brought by the residents against the CHA which is now pending before Judge Coar. The Receiver complains that it was not allowed to participate in the discussions which led to this agreement, and it asks that we enjoin the CHA from further unilateral non-elderly housing development activities and from implementing the Cabrini (and any other similar) deal, and that we compel the CHA to turn over control of such development to the Receiver and to disclose all information about CHA's non-elderly development activities to the Receiver.

The CHA's only meaningful objection to this request is that it has intended all along to seek a waiver of the primary injunction in this case, which, if we consented, would mean that the Receiver would have no role in development at Cabrini-Green. The problem is that *no waiver has been sought*. Without a waiver the CHA lacks the authority to unilaterally negotiate *any* contract or agreement respecting the construction of housing, for the receivership order provides that the scattered site program includes *all* non-elderly housing.

The CHA is hereby enjoined from developing or negotiating or otherwise pursuing any agreement with any person or entity regarding the development of dwelling units (a term defined in the original injunction in this case) without the full participation of the Receiver unless, of course, it has already secured a waiver for the contemplated development. By full participation we mean that the Receiver must have timely and unfettered access to "all information, records, documents, [and] files" relating to the contemplated development and that the Receiver must be given advance notice of all meetings (whether conducted in person or by any other means of communication) related to such development and allowed to attend and give his input. The Receiver, of course, possesses *all* of the CHA's development authority, so the CHA may not come to any agreement regarding development without his written consent.

As for the CHA's agreement with the Cabrini-Green representatives, the parties must now return to the drawing board and renegotiate their agreement with the full participation of the Receiver since the CHA has not yet secured a waiver of the injunction. If the CHA chooses instead to seek a waiver, it should know that we will consult the Receiver on the merits of the proposed waiver (and we will require the CHA to provide "all information, records, documents, [and] files" concerning the Cabrini-Green development and proposed waiver to the Receiver so that he may offer us intelligent and informed comments on the proposed waiver). So, the more prudent, effective, and efficient course will be to negotiate with the Receiver prior to seeking our involvement.

The Receiver's motion is granted. It is so ordered.



United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/6/1999
CASE TITLE	Gautreaux 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:

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- (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] Lakefront Community Organization's motion for clarification is granted.

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

	No notices required, advised in open court.				Document Number
	No notices required.			number of notices	
✓	Notices mailed by judge's staff.			date docketed	
	Notified counsel by telephone.			docketing deputy initials	
	Docketing to mail notices.			5/6/1999	
	Mail AO 450 form.			date mailed notice	
	Copy to judge/magistrate judge.				
GL	courtroom deputy's initials			GL	
		Date/time received in central Clerk's Office		mailing deputy initials	

ORDER

Lakefront Community Organization (LCO) has asked that we explain our earlier ruling denying its Second Motion to Intervene, as our first minute order stated only that the motion "is denied." This order sets forth the requested clarification.

We denied LCO's motion to intervene because to grant it would have been futile. LCO's Intervenor Complaint asks that we order the CHA and the *Gautreaux* Receiver to secure funding from HUD, obtain control of land, and build housing, all within 10 months and all pursuant to the terms of a 1995 contract between LCO and CHA. The problem is that the requested relief must come from the Receiver, and the Receiver was not a signatory to the deal. Or, to put it differently, because of the Receivership Order the CHA did not have the authority to enter into a contract concerning the development of non-elderly public housing — the Receiver's domain — and it did not have the authority to contract on the Receiver's behalf. (This principle is set out in greater detail in an order dated August 12, 1998.) Those parts of the contract concerning the development of non-elderly public housing are unenforceable, so to allow LCO to intervene to attempt to enforce them would have been a waste of time.

The motion for clarification is granted. It is so ordered.

A handwritten signature in black ink, appearing to be 'M R' followed by a long horizontal stroke.