

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 96 C 6949
	)	
	)	Hon. David H. Coar
CHICAGO HOUSING AUTHORITY, <u>et al.</u> ,	)	
	)	
Defendants.	)	

DOROTHY GAUTREAUX, <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY, <u>et al.</u> ,	)	
	)	
Defendants.	)	

**PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF
PLAINTIFF'S SECOND MOTION TO COMPEL ENFORCEMENT
OF THE CONSENT DECREE**

The Cabrini-Green Local Advisory Council ("LAC") does not seek to remove any lease term from the Parkside Lease that would allow eviction for a felony conviction. The LAC simply requests that the CHA fashion a lease term that does not mandate eviction for any felony conviction. Instead of a blanket mandatory provision, the felony eviction provision should be tailored to comply with the federal housing statute and its legislative history, reaching only felony convictions that are related to the "safe and healthy environment" of public housing.

I. The statutory provision is not “unambiguous” on its face.

The CHA extrapolates its authority to include a blanket felony eviction provision from disjointed parts of the U.S. Housing Act of 1937 (“the Act”), 42 U.S.C. §§ 1437 et seq. Such a felony provision is not, as the CHA asserts, a “required” lease term. Section 1437d(l) of the Act governs which lease terms PHAs “shall” use. Leases must: (1) be for twelve-month terms, and renew automatically; (2) not contain unreasonable terms and conditions; (3) obligate the PHA to maintain the project in a decent, safe, and sanitary condition; (4) obligate the PHA to give adequate written notices of termination; (5) require that PHAs not terminate a tenancy except for serious or repeated violations of the lease or other good cause; (6) provide that any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises shall be cause for termination; (7) specify that a tenant will have an opportunity to examine relevant documents before a hearing or trial on an eviction or termination; (8) provide that falsifying information shall be cause for termination; and finally, (9) provide that tenant fleeing from prosecution, custody or confinement after conviction for a felony or a tenant violating a condition of parole or probation be subject to immediate termination. See 42 U.S.C. § 1437d(l).

Nowhere does the statute say that anyone with a felony conviction must be evicted (although “fleeing felons” must be). The CHA extracts that requirement from subsection (4), which requires “adequate written notice of termination of the lease.” 42 U.S.C. § 1437d(l)(4). That subsection requires PHAs to provide “a reasonable period of time, but not to exceed 30 days — . . . in the event of any drug-related or violent criminal activity or any felony conviction.” 42 U.S.C. § 1437d(l)(4). This language does not mean that any felony conviction requires eviction, but only that the notice period for a felony-based eviction cannot be longer than 30 days.

Moreover, this provision about reasonable notice clearly uses shorthand terms for the offenses that trigger notice of not more than 30 days. It is not “any drug-related or violent criminal activity” that requires termination (and the notice prescribed by subsection (4)); it is, as section (1)(6) explains, “any criminal activity that *threatens the health, safety, or right to peaceful enjoyment of the premises* by other tenants or any drug-related criminal activity *on or off the premises*.” (Emphasis added). Therefore, just as “any drug related or violent criminal activity” is not a mandatory ground for eviction, “any felony conviction” similarly is not a mandatory ground.

The CHA also cites a separate grievance procedure from § 1437d(k), which allows a PHA to exclude from the grievance procedures any termination that involves “any activity resulting in a felony conviction.” This is not, however, the section that governs lease terms and, therefore, does not provide any basis for deciding which lease terms are permissible under the Act.

While the LAC recognizes that the CHA has some authority, referenced in §§ 1437d(k) and 1437d(l)(4), to evict tenants for certain types of felony convictions, the statute does not unambiguously provide that CHA must evict tenants for any and all felony convictions. As discussed below, in the context of the statute as a whole, as well as its various legislative histories, these statutory references must be interpreted in a more limited way.

II. The disputed provision should be measured against the entire statute, including the provision prohibiting unreasonable lease terms.

The CHA misstates the LAC’s position. The LAC is not arguing that 1437d(l) “precludes additional lease terms” beyond those mandatory terms specified in § 1437d(l). Def.’s Opp. at 5. As the LAC described in its memorandum in support of its motion, any additional terms must be

judged against the overarching requirement that “each public housing agency shall utilize leases which . . . do not contain unreasonable terms and conditions.” 42 U.S.C. § 1437d(l)(2).¹

The LAC agrees that in the case of an ambiguous statute, canons of construction encourage the Court to view the contested provision in light of the entire section in which it appears and in light of the statute as a whole. See *Kmart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). Here, an overarching concern of the statute is that lease terms not be “unreasonable.” To interpret what terms are “unreasonable,” *Richmond Tenant Organization v. Richmond Development and Housing Authority*, 751 F. Supp. 1204 (E.D. Va. 1990), offers relevant and persuasive guidance.

The fact that Richmond is a “pre-QHWRA” decision does not matter because Richmond addresses § 1437d(l)(2), which pre-dates QHWRA and remains unchanged post-QHWRA. Also, the QHWRA amendments that added references to felony convictions (§§ 1437d(k) and 1437d(l)(4)) do not change this analysis for the reasons stated in Section I above. These QHWRA amendments must still be read in a manner consistent with the reasonable lease term requirement in § 1437d(l)(4).

In Richmond, the court required that lease terms be “rationally related to a legitimate housing purpose. . . . [T]he crucible of reasonableness will be defined by the particular problems and concerns of the housing authority. Lease provisions which are arbitrary and capricious, or

¹ The reasonableness requirement negates the CHA’s claim that it has absolute discretion under the Quality Housing and Work Responsibility Act (“QHWRA”) to adopt lease terms. The lease terms must still be reasonable under § 1437d(l)(2).

In addition, the fact that the LAC Community Development Corporation (“CDC”) may have some participatory role in reviewing evictions has no legal relevance as to whether this lease term is illegal on its face. In any event, the CDC’s role is consultative only; final authority lies with the management company as to who will be evicted.

excessively overbroad or under-inclusive, will be invalidated.” 751 F. Supp. at 1205-06. As discussed in detail in the LAC’s memorandum in support of its motion, a blanket felony eviction provision is unreasonable because it is overbroad, not related to a legitimate housing purpose, and contrary both to Congressional intent and public policy.

If the Court grants the LAC’s motion, it is not depriving the CHA of the degree of autonomy that the Act, as amended by QHWRA, grants to PHAs. The CHA has authority to adopt lease terms that are not necessarily spelled out in the Act. It cannot, however, adopt lease terms that violate the Act’s reasonableness requirement.

III. The disputed provision should be read in the context of its legislative history.

The LAC agrees with the CHA that the legislative history of the Quality Housing and Work Responsibility Act (“QHWRA”) supports a finding that Congress was concerned with affordable housing in “safe and healthy environments.” See Def.’s Opp. at 7 (citing H.R. 4194, 105th Cong. (1998)).

In conformity with this legislative history, and with Richmond, a blanket felony conviction term is overbroad for this stated purpose, and, therefore, unreasonable. The LAC’s memorandum in support of its motion lists a wide range of activities that have no bearing on the safety and health of the public housing environment, nor on the “health, safety, or right to peaceful enjoyment of the premises by other residents,” yet are charged as felonies in Illinois. The LAC does not seek to minimize the seriousness of such offenses, but eviction from public housing is an “excessively severe sanction” when the offense is not related to the public housing premises and has no bearing on the health or safety of the public housing environment. See Richmond, 751 F. Supp. at 1206.

Finally, the CHA mischaracterizes the LAC's argument about QHWRA's legislative history. As the LAC discussed in its supporting memorandum, Congress rejected a QHWRA amendment that would have required eviction for "any criminal activity on or off the premises." The LAC is not equating "any criminal activity" with any felony convictions, as the CHA contends. The LAC is simply pointing to this rejected amendment as an indicator of Congress's intent to limit the types of criminal activity that should serve as a reasonable basis for eviction. These limits, articulated in Richmond, should apply with equal force to limit the types of felonies that can serve as a reasonable basis for eviction.

IV. Eviction for any felony is also against public policy and, therefore, unreasonable.

The CHA fails to address the fact that a blanket felony eviction provision is contrary to public policy, and, therefore, unreasonable. As discussed in the LAC's supporting brief, such a broad term severely punishes people who have any felony conviction at a time when our federal, state, and local governments are all seeking to reintegrate ex-felons back into their communities, not continue to punish and stigmatize them. Depriving someone of stable housing for a felony that bears no relationship to the health or safety of the housing environment severely compromises that person's ability to find gainful employment and make a fresh start, which in turn compromises the person's efforts not to re-offend. Such a policy only serves to make communities less safe.

V. Conclusion

Because the felony eviction provision in CHA's Parkside lease is unreasonably overbroad and contrary to congressional intent and public policy, the CHA should be required to revise the provision so that it is rationally related to a legitimate housing purpose. Accordingly, Plaintiff

requests that this Court enter an order (1) declaring that the Parkside felony lease provision violates federal law and the Consent Decree; (2) compelling the CHA to amend the Parkside Public Housing Lease Rider in a manner that complies with the Consent Decree, as described above; and (3) granting the LAC such further relief as this Court deems just and proper.

Respectfully Submitted,

/s Richard M. Wheelock

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FOR THE NORTHERN DISTRICT OF ILLINOIS,
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DOROTHY GAUTREAUX, *et al.*

Plaintiffs,

V.

CHICAGO HOUSING AUTHORITY, et al.,

Defendants.

No. 66 C 1459

Hon. Marvin E. Aspen

CABRINI-GREEN LOCAL ADVISORY COUNCIL,

Plaintiff,

V.

CHICAGO HOUSING AUTHORITY, et al.,

Defendants.

No. 96 C 6949

Hon. David H. Coar

NOTICE OF FILING

Please take notice that on November 29, 2006 the attached PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S SECOND MOTION TO COMPEL ENFORCEMENT OF THE CONSENT DECREE was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, a copy of which is herewith served upon you.

s/ Richard M. Wheelock
Attorney for the Cabrini-Green LAC

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Certificate of Service

I, Richard Wheelock, certify that a copy of this notice of filing and PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S SECOND MOTION TO COMPEL ENFORCEMENT OF THE CONSENT DECREE was electronically served upon the counsel listed below on or before 5:00 p.m. on November 29, 2006.

/s/ Richard M. Wheelock

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**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
ATTORNEY APPEARANCE FORM**

NOTE: In order to appear before this Court an attorney must either be a member in good standing of this Court's general bar or be granted leave to appear *pro hac vice* as provided for by Local Rules 83.12 through 83.14.

In the Matter of

Case Number: 1966-C-1459

Gautreaux, et al. v. Chicago Housing Authority, et al.

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:

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ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE? YES ☐ NO ☒	
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE? YES ☒ NO ☐	
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR? YES ☐ NO ☒	
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY? YES ☐ NO ☒	
IF THIS IS A CRIMINAL CASE, CHECK THE BOX BELOW THAT DESCRIBES YOUR STATUS. RETAINED COUNSEL ☐ APPOINTED COUNSEL ☐	

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
ATTORNEY APPEARANCE FORM**

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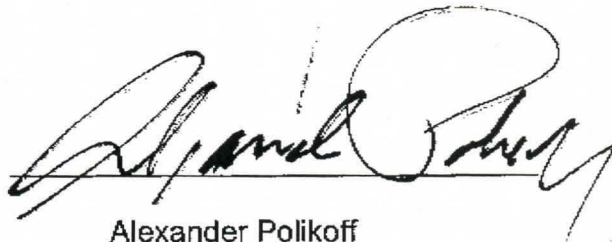
Case Number: 1966-C-1459

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:
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CERTIFICATE OF SERVICE

Alexander Polikoff, an attorney, hereby certifies that on Tuesday, May 3, 2005, he caused a copy of the foregoing Notice, together with the **Plaintiffs' Motion for Leave to File Response to CHA Motion to Stay Briefing and for a Conference**, to be served by personal service as indicated on the attached Service List.

A handwritten signature in black ink, appearing to read "Alexander Polikoff", is written over a horizontal line.

Alexander Polikoff

Service List

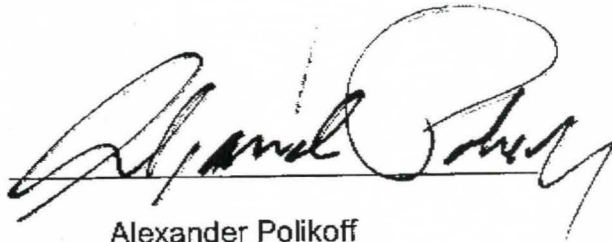
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