SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 9

BARBARA JIGGETTS, et al.,	:	
Plaintiffs,	:	
-against-	:	Index No. 40582/87
CESAR PERALES, as Commissioner of the Department of Social Services, et al.,	:	
Defendants.	:	

PLAINTIFFS' POST-TRIAL MEMORANDUM OF LAW

Preliminary Statement

This action challenges the schedule of maximum shelter allowances paid to recipients of A.F.D.C. in New York City. 18 N.Y.C.R.R. § 352.3. It comes to this Court on remand by the Court of Appeals. Jiggetts v. Grinker, 75 N.Y.2d 411 (1990). In its decision, the Court of Appeals held that "section 350(1)(a) [of the Social Services Law] imposes a statutory duty on the State Commissioner of Social Services to establish shelter allowances that bear a reasonable relation to the cost of housing in New York City." 75 N.Y.2d at 415. This Court conducted a three and a half month trial on this issue commencing on March 4, 1991 and ending on June 14, 1991. As explained in the accompanying proposed findings of fact, the evidence presented at trial conclusively demonstrates that the shelter allowance does not bear a reasonable relationship to the cost of housing in New York City. Accordingly, the

Commissioner has failed to comply with the statutory standard and the Court should enter judgment for plaintiffs and grant the relief requested in this Memorandum.

Facts

1. Procedural History

Plaintiff Barbara Jiggetts commenced this action by order to show cause on February 26, 1987. An amended complaint was filed and motions for preliminary relief, class certification, intervention and joinder were made on March 9, 1987. Both the City and State Departments of Social Services cross-moved to dismiss the complaint. While these motions were pending, Theresa Felder, Maria Artiaga, Johnnie Mae Beal, Dorothy Hughes, Blanca Sanchez and Linda Green intervened in the action seeking preliminary relief.[1] Neither the City nor the State defendants opposed any of these motions to intervene.

On January 12, 1988, this Court issued a decision denying the City and State defendants' motions to dismiss and granting plaintiffs' motion for class certification and preliminary injunctive relief. The Court found that Social Services Law § 350(1)(a) sets forth a mandatory duty which the State Commissioner of Social Services must adhere to in setting shelter allowances. In granting plaintiffs' motion for preliminary relief, the Court found that "[t]he current [shelter allowance] regulation is totally

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[1] Additionally, the Court granted the motion to intervene of Andrew and Lorraine O'Malley. The O'Malleys subsequently withdrew from the action, although Mrs. O'Malley later received relief through the informal procedure established by the parties. PX. 92.

inadequate to provide adequate housing to plaintiffs and their children." Decision, dated Jan. 12, 1988, at p. 43. It also found that absent preliminary relief plaintiffs would be evicted and "will be faced with the dismal prospect of emergency housing since they will undoubtedly be unable to secure alternate affordable housing." Id. at pp. 44-45.[2]

On March 9, 1988 the Court entered an order further staying the evictions of plaintiffs, pending payment of their arrears. On March 15, 1988, the Court entered an order reflecting its January 1988 decision and ordering the City and State defendants to pay plaintiffs' arrears and full ongoing rents pending the outcome of the case.

The City and State defendants appealed from the order of March 15, 1988, which resulted in an automatic stay of the order pursuant to C.P.L.R. §5519(a). In a decision dated June 15, 1989, the Appellate Division, First Department, reversed the decision of this Court and dismissed the complaint. Jiggetts v. Grinker, 148 A.D.2d 1 (1st Dep't 1989). The Appellate Division concluded that the Social Services Law did not impose mandatory standards on the Commissioner of Social Services in setting shelter allowances. It also concluded that, in any event, the City defendant was not a proper party and that class certification should not have been granted. The court did not address issues of preliminary relief. Id.

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[2] The decision is reported in excerpted form at 139 Misc.2d 476 (Sup. Ct. N.Y. Co. 1988).

On November 28, 1989, the Court of Appeals granted plaintiffs' motion for leave to appeal. It also stayed the order of the Appellate Division dismissing the complaint. Jiggetts v. Grinker, 74 N.Y.2d 933 (1989). On April 3, 1990, the Court unanimously reversed the decision of the Appellate Division. 75 N.Y.2d 411 (1990). It held that:

> we conclude that section 350(1)(a) imposes a statutory duty on the State Commissioner of Social Services to establish shelter allowances that bear a reasonable relation to the cost of housing in New York City.

Id. at 415. After reviewing provisions of the Social Services Law, the Court stated that:

> We construe these provisions as manifesting the Legislature's determination that family units should be kept together in a home-type setting and imposing a duty on the Department of Social Services to establish shelter allowances adequate for that purpose. A schedule establishing assistance levels so low that it forces large numbers of families with dependent children into homelessness does not meet the statutory standard.

Id. at 417.

The Court of Appeals remanded the action to this Court for a determination on the adequacy of the schedule of maximum shelter allowances.

2. Preliminary Relief

While the appeals to the Appellate Division discussed above

were pending, a number of additional A.F.D.C. recipients intervened in the action seeking preliminary relief to prevent their eviction and homelessness. In each instance the State defendant did not oppose the motion for intervention, apart from arguing that the entire action was stayed pending appeal.[3] During this period plaintiffs Nilsa Rodriguez, Pauline Smith, Bernadine Niles, Rita Bell, Ramona Oquendo, Marta Sanchez, Tammy Saxby, Maria Ramos, Judith Morris, Jaime Guzman, and Ulyses Jackson, were granted intervention. These individuals alleged that they were threatened with eviction because their rent exceeded their public assistance shelter allowances. The Court stayed their evictions and ordered payment of their arrears and full ongoing rents pending outcome of the case.[4] In each instance, the City and State defendants appealed and the relief was stayed pending appeal. C.P.L.R. § 5519(a).

After the decision by the Court of Appeals, interventions resumed. The Court granted motions for intervention and preliminary relief by Gloria Gonzalez, Yvette Parson, Iris Ross, Nilsa Carabello, Adrianna Melendez, Irene Rivera, and Roselaine Louis-Charles without opposition by the State defendant. In each instance, as with previous intervenors, the proposed plaintiff alleged that her rent exceeded the shelter allowance, that she had

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[3] The Court correctly rejected this argument. See, e.g., Walker v. Delaware & Hudson Railroad, 120 A.D.2d 919 (3d Dep't 1986).

[4] The one exception is Nilsa Rodriguez who did not seek this preliminary relief.

fallen behind in rent payments and that she was threatened with eviction as a result. The Court stayed each intervenor's eviction pending payment of arrears by the Department of Social Services.

In order to obviate the need for repetitive motion practice, the parties established an informal procedure for dealing with potential intervenors in this action. Under this procedure, counsel for an individual seeking relief makes an informal request to Robert J. Schack of the Attorney General's Office. If the State defendant consents to the relief for the individual, the Human Resources Administration (H.R.A.) pays rent arrears and ongoing rent without a formal order by the Court. See Blaustein Tr. 750-52. See Transcript of Proceedings, Feb. 27, 1991, at 14-28. By March 12, 1991, H.R.A. had made such payments to 135 families. PX. 92. Since that time, the number has continued to increase.

On February 27, 1991, at a pre-trial conference, counsel for the State defendant announced that her client intended to cease processing additional requests for interim relief in this action on an informal basis. Transcript of Proceedings, Feb. 27, 1991, at 14. This Court issued an order directing that the State defendant continue to process requests for interim relief. The order noted that if the State defendant considered the relief to be inappropriate because of the individual circumstances of the case, he remained free to reject the request. In such a situation, the applicant also remained free to seek interim relief by motion.

Order dated February 27, 1991.[5]

3. Trial

The Court conducted a trial of this action from March 4, 1991 through June 14, 1991. On their main case, plaintiffs presented 22 witnesses. These witnesses included five experts on poverty, housing and homelessness, three public assistance recipients, and eleven researchers who conducted a study of the availability of apartments renting within the shelter allowance. Plaintiffs also presented excerpts of deposition testimony by four State officials, and documentary evidence including State documents. The State defendant presented 14 witnesses, including one expert and nine present and former state employees. In rebuttal, plaintiffs presented two additional witnesses, including one additional expert.[6]

The facts established by the evidence adduced at trial are fully set forth in Plaintiffs' Proposed Findings of Fact, filed concurrently with this memorandum.

Argument

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[5] The informal procedure does not provide for stays of evictions. As a result, it has been necessary on occasion for plaintiffs to intervene in this action to seek stays of eviction from the Court. The following individuals have intervened in this action after the establishment of the informal relief procedure: Dorothy Deas, Yvonne Whaley, Wanda Rodriquez, Florence Dawson, and Jan Szymanski. In each of these instances, the State defendant consented to the relief sought. In the case of Celeste Rodriguez, intervention and preliminary relief were granted over the opposition of the State defendant.

[6] The credentials of the experts are fully set forth in plaintiffs' proposed findings of fact, at ¶¶ 5-18.

I. The Statutory Standard and the Decision of the Court of Appeals Require that the Shelter Allowance Schedule Provide A.F.D.C. Recipients with a Reasonable Chance of Finding Housing Renting within the Maximum Allowances

Social Services Law § 350(1)(a) requires that the Commissioner of Social Services establish shelter allowance schedules that bear a reasonable relationship to the cost of housing in each district. Jiggetts, 75 N.Y.2d at 415. As the Court of Appeals has explained, this requirement implements the Legislature's priority that dependent children be raised in a home-type setting. A shelter allowance schedule that leaves a large portion of A.F.D.C. recipients with rents in excess of their shelter allowances and does not provide these families with any realistic chance of relocating to apartments that rent within the schedule violates this requirement.

If the shelter allowance does not provide recipients with a reasonable opportunity to obtain housing, families with rents in excess of their shelter allowances are forced into a day to day struggle to avoid eviction. When they are forced out of apartments, because they cannot pay the rent -- or for any other reason -- they are unable to obtain alternative housing. As a result they are forced to double up or to enter the emergency shelter system. In either case, the legislative mandate is frustrated.

The failure of the shelter allowance to reflect the cost of housing in the market forces families receiving public assistance to face the grim choice of spending money on rent that the legislature has provided for other basic needs, or to face

eviction. Under the statutory scheme, as construed by the Court of Appeals, the Commissioner cannot place families in this dilemma. He does not discharge his statutory duty by establishing an inadequate shelter allowance and forcing families to spend funds provided for other needs, on rent.[7]

At trial, the State defendant argued that mere inadequacy does not violate the statutory standard. Tr. 1239-40. In essence, counsel argued that plaintiffs must also show that the shelter allowance is the principal cause of homelessness in New York City. Nothing in the statutory scheme or the decision of the Court of Appeals supports this argument. The existence of other causes of homelessness in no way diminishes the responsibility of the Commissioner for the consequences of his shelter allowance schedules. Under the Court of Appeals decision, plaintiffs are entitled to judgment upon showing that the shelter allowance does not reflect the cost of housing in New York City.[8] 75 N.Y.2d at 415.

Similarly, this action does not call upon the Court to make determinations as to all of the causes or possible solutions to the problem of homelessness. Thus, State defendant's evidence

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[7] At trial, plaintiffs demonstrated that many public assistance families are forced into ongoing crisis situations by paying rent with money provided to meet nonshelter needs. Plfs' Proposed Findings of Fact, at ¶¶ 250-76.

[8] Indeed, for years the Department of Social Services recognized this basic standard by requiring that locally established shelter schedules "provide a sufficient amount for all persons to obtain housing in accordance with standards of public health in the community." 18 N.Y.C.R.R. §352.3(a)(repealed 1975).

concerning administrative case closings, the working poor, the State's efforts to create additional housing, and other programs to assist the homeless or to prevent homelessness is beside the point. The sole question presented for resolution by this Court is whether the State defendant has complied with the Social Services Law by establishing a shelter allowance that bears a reasonable relationship to the cost of housing in New York. As discussed below, the evidence conclusively shows that he has not done so.

II. The Evidence Presented at Trial Overwhelmingly Demonstrates that the Commissioner has Violated his Statutory Duty to Establish an Adequate Shelter Allowance Schedule

The evidence presented at trial conclusively establishes that the shelter allowance does not provide A.F.D.C. recipients with a reasonable chance of securing housing in New York City.[9] It shows that the tens of thousands of families face rent bills each month that exceed their shelter allowances. Plaintiffs' Proposed Findings of Fact ("Plfs' Prop. Findings"), at ¶¶ 77-79. These families do not have any realistic prospect of relocating to housing that they can afford.

This evidence was presented by Professor Michael A. Stegman, one of the foremost authorities on the housing market in New York City. Professor Stegman explained how the shelter allowance has

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[9] Sections II and III of this memorandum provide an overview of the facts established at trial. All facts discussed in these sections are more fully explained in plaintiffs' Proposed Findings of Fact, which contains a more detailed discussion of the evidence.

simply failed to keep pace with rising rents in New York City, Plfs' Prop. Findings, at ¶¶ 80-89, and how, as a result, families looking for housing renting within the shelter allowance have little prospect of success. Id. at ¶¶ 101-18. They are, as Professor Stegman said, looking for a "needle in a haystack." Stegman Tr. 306-07, 3324-25. Professor Stegman also pointed out that the United States Department of Housing and Urban Development ("H.U.D.") promulgates an annual schedule of "fair market rents," designed to reflect the cost of decent nonluxury housing in New York City, that is roughly twice the level of the shelter allowance. Plfs' Prop. Findings, at ¶¶ 121-26.

Dr. Stegman's testimony was supported by the testimony of Professor Emanual Tobier, Chairman of the Urban Planning Program at the New York University Graduate School of Public Administration. Tobier Tr. 449-80. It was also confirmed at trial by the experiences of individuals who have actually looked for housing renting within the shelter allowance including public assistance recipients, Plfs' Prop. Findings, at ¶¶ 280-310; Scott Auwarter, director of a project that assists homeless families in finding housing, Id. at ¶¶ 108-12; and eleven researchers who looked unsuccessfully for apartments in Brooklyn renting at or below the maximum shelter allowances by consulting newspaper advertisements. Id. at ¶ 113.

Professor Stegman's testimony was also corroborated by repeated admissions by the State defendant. Id. at ¶¶ 116, 118. In the Department of Social Services' formal budget submission for

the year 1988-89, the Department stated that "[d]espite an increase in the shelter allowance, public assistance recipients have been unable to purchase quality housing and are frequently forced to pay as much as 45% of their grant for housing that is substandard." PX. 34-61. The record is replete with similar admissions by the State defendant. See, e.g., PX. 39-68, at p. 5. ("Despite a recent increase in the shelter allowance, public assistance recipients are unable to compete for quality housing and people are forced to use more of their basic allowances to meet shelter obligations that may not be code compliant."); 26-41.

Similarly, an official report of the Department of Social Services to the Legislature admitted that public assistance recipients in New York City have no real opportunity to "act more economically" in their choice of housing. PX. 21-29, at p. 18. The Department of Social Services' own survey conducted in 1988 showed that 81% of recipients with recent experience in the housing market do not believe that they can find an apartment within the shelter allowance. Plfs' Prop. Findings, at ¶ 114; PX. 20-27, at p. 7.

Against all of this evidence, State defendant offered only the testimony of Randall Filer, an economist with little experience in New York City housing issues. As Professor Stegman explained during plaintiffs' rebuttal case, Randall Filer greatly distorted and exaggerated the number of apartments available to public assistance recipients. Plfs' Prop. Findings, at ¶¶ 95-100. For example, he counted apartments occupied by other families as "available" to public assistance recipients. He also considered

all New York City Housing Authority and in rem apartments to have rents within the shelter allowance, even though these apartments are allocated according to special rules and are, in fact, not generally available to public assistance recipients looking for housing. Id. Tellingly, there is no evidence that any official of the Department of Social Services agrees with Dr. Filer's view that low income housing in New York City is readily available. Id. at ¶¶ 116, 118; PX. 128-64, at p. 32-35; 34-61 ("lack of decent affordable housing"); 159, at p. 3 (describing "lack of low income housing").

Plaintiffs also established that the current shelter allowance was not derived in a manner that reflects the cost of housing in New York City. Plfs' Prop. Findings, at ¶¶ 21-75. Essentially, the evidence shows that State defendant arbitrarily pegged the shelter allowance in 1988 to the 65th percentile of the rents of public assistance recipients. Id. at ¶ 45. Defendant conducted no study of whether the 35% of recipients with rents in excess of the 1988 schedule had any chance of relocating to less expensive housing. Id. at ¶¶ 48, 53-54.

In fact, the record shows that State officials were fully cognizant of the fact that these recipients did not have a realistic chance of relocating. Id. at ¶¶ 60-61. In responding to a public comment on the 1988 shelter schedule, the Department replied that "we agree that the new rent schedules may still be below the actual cost of housing in New York City." PX. 26-41. While the schedule was being developed, one official reviewed data

on operating and maintenance costs of buildings that was collected and analyzed by New York City's Department of Housing Preservation and Development and concluded "even our current proposal would be grossly inadequate to bring shelter allowances back into the ball park of what is needed to give PA clients a fair chance of keeping afloat in the current housing market." PX. 11-9, at p. 1. The proposal referred to in that statement called for a much higher increase than was ultimately adopted. See also PX. 16-19, at p. 4.

The only justification offered by State defendant for setting the allowance at the 65th percentile of recipient rents was that it replicated the percentile of rents covered following the 1984 shelter allowance increase. Plfs' Prop. Findings, at ¶ 62. This argument, however, provides no support for State defendant's position, because the 1984 increase contained the same fundamental flaws as the 1988 increase -- it was set at a percentile of recipient rents with no consideration for what would happen to those families whose rents continued to exceed the shelter allowance. Id. at ¶¶ 31-43, 37. Furthermore, the 1984 increase was based on data collected in 1981 and no adjustment was made to account for inflation during the intervening three years. Id. at ¶¶ 35-36. Even the official who designed the 1984 methodology recognized that the 1984 schedule was seriously out of date at the time it was implemented. PX. 12-11, at p. 2.

III. Plaintiffs have Shown that the Shelter Allowance Contributes to Family Homelessness in New York City

The evidence clearly shows that the inadequacy of the shelter

allowance contributes significantly to homelessness among families in New York City. This evidence provides further support for finding that the shelter allowance schedule violates Social Services Law § 350(1)(a).

Plaintiffs presented three experts on housing and homelessness who have concluded that the shelter allowance contributes to family homelessness. Based on his years of study of the New York City housing market, Professor Stegman has concluded that the inadequacy of the shelter allowance contributes to rent arrearages and evictions among public assistance recipients that cause them to lose their apartments. Plfs' Prop. Findings, at ¶¶ 158-60. As Professor Stegman explained, families who lose their apartments do not have a realistic chance of obtaining other housing that they can afford and as a result, they are often forced into homelessness. Id.; Stegman Tr. 322-23; 3422-23. These findings were concurred in by Professor Tobier and Dr. Anna Lou Dehavenon, a cultural anthropologist who has studied homeless families in New York City for years. Tobier Tr. 477-78; Dehavenon Tr. 557.

They are also corroborated by academic studies which show that eviction is one of the primary causes of family homelessness. Plfs' Prop. Findings, at ¶¶ 168-75. This finding was reported by Professors James Knickman and Beth Weitzman, who conducted a survey of homeless families in 1988. Id. at ¶ 175. It was also confirmed by Dr. Dehavenon's studies of families seeking emergency shelter and it was admitted by the State defendant in a recent report to the Legislature, which found a "strong causal link" between

eviction and family homelessness. Id. at ¶¶ 167, 174; PX. 160, at p. 14. The studies also show that many homeless families lost their apartments due to nonpayment of rent. For example, Dr. Dehavenon found that in 1989-90, 55% of homeless families that had their own apartments lost them through evictions, and that 60% of these evictions were for nonpayment of rent. Plfs' Prop. Findings, at ¶ 176; Dehavenon Tr. 551-52; see DX. AG-111 (18.4% lost apartments through nonpayment evictions, and another 28.9% lost apartments because their rents were too high).

Because the vast majority of homeless families are recipients of public assistance, State defendant's policies for providing emergency assistance to families threatened with eviction also shed light on the causes of family homelessness. Plfs' Prop. Findings, at ¶ 172. Although State defendant provides emergency rent arrears grants to families with rents at or below the shelter allowance who are threatened with eviction, no such grants are provided to families who owe rent that is in excess of the shelter allowance. Id. at ¶ 181. The result of State defendant's own policies is that the public assistance families who lose apartments due to nonpayment of rent are those with rents in excess of the shelter allowance.

In fact, plaintiffs presented substantial evidence that hundreds of public assistance families are threatened with eviction due to the shelter allowance. In addition to the 135 families receiving relief in this case as of March 12, 1991, PX. 92, plaintiffs presented 129 administrative "fair hearing" decisions,

virtually all of which deny emergency grants of rent arrears to public assistance families on the ground that the Department will not pay rent arrears for rent due in excess of the shelter allowance. Plfs' Prop. Findings, at ¶¶ 182-92. All told, plaintiffs presented evidence concerning approximately 250 threatened evictions due to the level of the shelter allowance. However, the actual number of evictions is necessarily much higher, because no general notice has been provided to A.F.D.C. recipients of the availability of relief pursuant to this case. In addition, fair hearing decisions are only issued in instances where a recipient administratively appeals a denial of emergency assistance, despite the fruitless nature of such appeals in light of the State defendant's policies.

It is also clear that the inadequacy of the shelter allowance prevents families from finding apartments, regardless of the reasons for which they lose them. Id. at ¶¶ 101-118. It also prevents families who are homeless from leaving homeless shelters. In this way, the inadequacy of the shelter allowance transforms the loss of a housing situation into an event that precipitates a prolonged period of homelessness, rather than simply a relocation to another apartment.

In view of this overwhelming evidence, it is not surprising that the State defendant has admitted on many occasions that inadequate shelter allowances are a significant cause of homelessness. Id. at ¶¶ 161-67. The State defendant took administrative notice of this fact in the State Register: "It is

also a fact that insufficient shelter allowances help increase the homeless population and contribute to the reduction of suitable housing for public assistance recipients." PX. 38-67. A similar statement was included in the 1987-88 executive budget. PX. 37-66, at p. 361. See PX. 35-62, at p. 4; 23-33; 8-2.

In response to this evidence, the State defendant presented only the testimony of Randall Filer. Dr. Filer essentially argued that the problem of family homelessness is an artifact caused by families cynically manipulating the system in order to obtain City owned apartments.[10]

This claim does not withstand even the most casual scrutiny. First, this argument is only potent if families are foregoing viable housing options when they enter the shelter system. If they are leaving one intolerable situation for another, then it is clear that the shelter allowance has not enabled them to obtain decent housing. Randall Filer cited no evidence that families were foregoing viable housing options in order to enter the shelter system.

To the contrary, overwhelming evidence documents that families entering the shelter system come from "doubled up" situations. Many left doubled up situations that were horribly overcrowded. Plfs' Prop. Findings, at ¶ 216-17. Others were evicted by the

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[10] Dr. Filer also testified at one point that family homelessness is caused by administrative closings of public assistance cases. However, he did not mention this cause in his testimony on trends in homelessness throughout the 1980s, Filer Tr. 1953-57, and apparently did not think it important enough to mention in an article he wrote entitled "What Really Causes Family Homelessness." Filer Tr. 2233-34.

primary tenant. Id. at ¶¶ 216. Dr. Dehavenon presented uncontradicted testimony about the terrible conditions that families entering the homeless shelter system endured in the places that they last stayed. Id. at ¶¶ 198-203; Dehavenon Tr. 552-56. These findings are confirmed by the report of Professors Knickman and Weitzman. Plfs' Prop. Findings, at ¶ 199. For example, the Knickman Report found that 89% percent of homeless families entering the shelter system who were doubled up with their parents stayed in apartments where there were four or more people per bedroom, and that 71% of homeless families previously doubled up with others also reported having lived in apartments with four or more persons per bedroom. Id.; DX. B 108, vol. 2, at pp. 95-97.

In fact, all of the studies that Dr. Filer cited in his testimony reached the opposite conclusion from his -- they all found that families entering the shelter system do not have viable housing options. Plfs' Prop. Findings, at ¶¶ 214-15.

Second, Professor Filer's testimony ignores the terrible conditions that families face in the emergency shelter system. Id. at ¶¶ 219-28. These conditions, in conjunction with the extremely long waiting period that families endure before being referred to permanent apartments, id. at ¶¶ 230-31, make it highly unlikely that families entering the shelter system would pass up decent housing accommodations to enter the shelter system. Dr. Filer admitted that for the most part, families do not even become eligible for placement in City apartments until they have been in the shelter system for a year. Id. While in the system, they

endure horrible conditions. Id at ¶¶ 220-28. These conditions have been the subject of many court decisions. See, e.g., McCain v. Koch, 117 A.D.2d 198 (1st Dep't 1986), rev'd in part on other grounds, 70 N.Y.2d 109 (1987); Matter of Lamboy v. Gross, 129 Misc.2d 564 (Sup. Ct. N.Y. Co. 1985), aff'd 126 A.D.2d 265 (1st Dep't 1987); McCain v. Koch, Decision, dated March 25, 1991 (Sup. Ct. N.Y Co.); McCain v. Koch, Interim Order, dated Jan. 8, 1991 (Sup. Ct. N.Y. Co.); McCain v. Koch, Decision, dated Sept. 14, 1989 (Sup. Ct. N.Y. Co.); Slade v. Koch, 135 Misc.2d 283 (Sup. Ct. N.Y. Co.), modified, 136 Misc.2d 119 (Sup. Ct. N.Y. Co. 1987).

Dr. Filer also based his view that the shelter allowance is not related to family homelessness on trends in the numbers of families in the City's emergency shelter system. As Professor Stegman explained, this analysis is entitled to little weight because too many other variables influence the number of families in the system at a given time. Therefore, no conclusions may be drawn about the impact of the modest and inadequate increases in the shelter allowance in 1984 and 1988. Plfs' Prop. Findings, at ¶ 241. Furthermore, Dr. Filer relied on erroneous data with respect to the number of families entering the shelter system before and after the 1988 increase. Id. at ¶¶ 244-48. The City official who operates the computer system from which the data was derived explained that the numbers in the reports relied on by Dr. Filer were found to be erroneous. Id. at ¶¶ 247-49. The corrected numbers simply do not support Dr. Filer's testimony. Id.

IV. The Court Should Declare the Shelter Allowance to be Inadequate and Should Order Appropriate Relief

The Court should enter an order declaring the shelter allowance to be unlawful and granting relief that provides recipients with an effective remedy from the harms that have been so thoroughly demonstrated in this case. Although an order should be settled after decision by the Court, plaintiffs outline their request for relief below.

First, the Court should provide a declaration that the shelter allowance violates the statutory standard found in Social Services Law § 350(1)(a), and that the method of deriving the shelter allowance employed by the State defendant did not provide for a reasonable calculation of the cost of housing in New York City.

Second, the Court should order the State defendant to recalculate the shelter schedule in a manner that satisfies the statutory requirement. Although the Court should accord State defendant an appropriate amount of discretion in conducting this recalculation, it should also provide safeguards to ensure that State defendant does not simply produce yet another thoroughly deficient schedule of allowances. Such an order which would require the State defendant to develop its own lawful shelter schedule in accordance with the findings of the Court is well within the traditional remedial powers of the Court. See McCain v. Koch, 70 N.Y.2d 109, 118 (1987) (Supreme Court has the power to require provision of minimally adequate emergency shelter) Thrower v. Perales, 138 Misc.2d 172, 178 (Sup. Ct. N.Y. Co. 1987)

(requiring State defendant to develop plan to provide home relief benefits to homeless singles).[11]

In particular, the Court should order the State defendant to submit a proposed schedule and an accompanying report explaining its derivation to the Court within 120 days of entry of the order. The Court should require that the recalculation of the schedule be based on a determination that recipients whose rents exceed the new schedule have a reasonable chance of obtaining decent housing that rents within the schedule. The Court should require the State defendant to take into account the costs to building owners of providing housing, and the supply of vacant units renting within the new schedule. State defendant should also be required to provide an appropriate adjustment for rent or cost increases that effect the validity of the data that is used.

Furthermore, the Court should require the Commissioner of the Department of Social Services to submit a certification stating that he has personally reviewed the proposed schedule and finds it to be in accord with the order of the Court and that it reasonably reflect the cost of decent housing in New York City. This requirement would prevent State defendant from relying exclusively on a hired expert to develop the proposed schedule without any assurance that Department officials stand behind it. The

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[11] Indeed, although not requested by plaintiffs, the Court of Appeals' decision in McCain shows that in the absence of a valid shelter allowance schedule promulgated by the Department of Social Services, the Court has the power to order implementation of a judicially determined interim schedule. 70 N.Y.2d at 119-20 (in absence of valid administrative standards, the court has the power to establish its own minimum standards).

tremendous disparity between the views of Department officials as revealed in the documentary evidence presented at trial and the State defendant's litigation positions warrants this assurance.

After the State defendant has fully complied with these procedures, it should be required to implement the new schedule and to seek any additional appropriations that are necessary to do so.

The Court should also order the State defendant to develop written procedures providing for periodic review of the adequacy of the shelter allowance in New York City. This review should be required to take place no less often than once every 12 months. The State defendant should also be required to seek any appropriations necessary to implement changes in the schedule that periodic review shows to be necessary. This case has taken over four years to litigate. Plaintiffs are entitled to some guarantee that once a new schedule is promulgated, State defendant will not return to his past practice of permitting rent increases to render the shelter allowance inadequate within a few years. The Court should require that these procedures also be submitted to it within 120 days.

Pending the completion of the study discussed above, and the recalculation of the schedule, the Court's order of February 27, 1991, directing State defendant to continue to process requests for interim relief, should be continued. However, the Court should require State defendant to accept requests for interim relief from non-attorneys, including the Human Resources Administration.[12]

State defendant has refused to process requests unless they are submitted by attorneys. The requirement that requests be submitted by counsel is unfair and restricts greatly the availability of relief because counsel are not available for all recipients who may be eligible for relief.

Lastly, the Court should retain jurisdiction over this matter, until State defendant implements the recalculated schedule. Retention of jurisdiction will permit the parties to seek judicial resolution of disputes pertaining to the interim relief and will enable the Court to resolve any disputes about whether State defendant has fully complied with the Court's order.

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[12] The record shows that H.R.A. has in fact asked the State defendant for permission to pay rent arrears in excess of the shelter maximum in some instances. Lewis Tr. 2356-57. Plaintiffs, however, only seek an order providing that H.R.A. may submit requests to the State defendant to be processed along with other applications for interim relief.

Conclusion

Based upon the evidence presented at trial, plaintiffs respectfully request that the Court enter judgment for plaintiffs and grant the relief requested.

Dated: New York, New York
November 4, 1991

Respectfully Submitted,

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