

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

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CLERK U.S. DIST. COURT
MINNEAPOLIS, MN

Lucy *Hollman*, et. al.,

Plaintiffs,

v.

Mel Martinez, et. al.,

Defendants,

Civil 4-92-712

Cora McCorvey, et. al.,

Defendant Cross-Claimants,

STIPULATION AND
ORDER

v.

Mel Martinez, et. al.,

Defendants.

The undersigned parties to the *Hollman* consent decree hereby stipulate as follows:

1. **Moving to Work Agreement.** HUD stipulates and agrees that as of December 9, 2003, \$12,840,871 was available in the MPHA's Section 8 program reserve to provide capital funding for replacement housing under Amendment No. 1, dated December 14, 2000, to the Moving to Work (MTW) Agreement between HUD and MPHA. Except as provided below, this \$12,840,871, as well as the additional \$525,000 referred to in paragraph 6(a) of this Stipulation and Order, will remain available for capital funding until spent by the MPHA for *Hollman* replacement housing purposes. No

non-capital section 8 expenditures by the MPHA, prior to the date of execution of this stipulation, will reduce this amount available for capital expenditures. No non-capital section 8 expenditures by the MPHA, subsequent to the date of this stipulation will reduce this amount available for capital expenditures unless: a) no Section 8 funds remain in the MPHA's Section 8 reserve other than those deemed available for capital expenditures herein; b) HUD is not in default of any duty to replenish such reserves or to provide additional Section 8 funding; and c) there are capital funds in the reserve account which are not obligated by contract to be spent to fund public housing development required by the decree. In that case, the MPHA shall expend such unobligated funds as are necessary to meet Section 8 program financial obligations and to discharge other Section 8 Program responsibilities. In consideration for the foregoing HUD acknowledgments and commitments, (a) the MPHA forever waives and releases any and all rights to the accrual or expenditure of any additional Section 8 funds - other than the \$12,840,871 and \$525,000 referred to above – pursuant to Provision II of Appendix A to the MTW agreement, and (b) Provision II of Appendix A to the MTW agreement is hereby acknowledged as null and void except as it applies to the \$12,840,871 and \$525,000 referred to above.

2. RHF Funding for FYs 2001-2003. HUD will allow the MPHA to retain \$1,103,259 of Replacement Housing Factor (RHF) funds that HUD had indicated its intent to recapture by letter dated April 1, 2003 from Deputy Secretary Liu to the MPHA's Executive Director. These represent RHF funds for fiscal years (FYs) 2001-2003 that HUD hereby agrees, for purposes of this Stipulation and Order, were appropriately awarded to the MPHA, given that (a) 143 public housing units were

awarded under the decree as “incentive” units awarded to other housing authorities rather than “replacement” units for purposes of the statutory “one for one” replacement requirement, (b) as a consequence, under the terms of the decree, 143 Section 8 vouchers provided by HUD under the decree were deemed to be replacement units for purposes of the statutory “one for one” replacement requirement, and (c) for purposes of HUD’s RHF regulations, replacement funding provided in the form of Section 8 assistance does not negate a housing authority’s entitlement to RHF funding for units removed from the housing authority’s public housing inventory.

3. RHF Funding for FYs 2004-2005. Consistent with the foregoing provision and the five-year duration of RHF funding under HUD regulations, HUD will, subject to Congressional appropriations, award the MPHA approximately \$350,000 of RHF funding for the aforementioned 143 demolished *Hollman* units in each of fiscal years 2004 and 2005.

4. RHF Funding for FYs 2006-2010. The MPHA intends to timely apply for a second five years of RHF funding, beginning in fiscal year 2006, for the aforementioned 143 *Hollman* units. HUD agrees to consider such timely application for funding under the eligibility criteria that are applicable to all housing authorities at that time and acknowledges that, assuming adequate appropriations and the continued applicability of the eligibility criteria that were in effect at the time of the execution of this Stipulation and Order, the MPHA would be eligible to receive approximately \$350,000 per year between fiscal years 2006 and 2010.

5. Repayment of RHF Funds. In the near future, HUD will recapture from the MPHA \$3,537,782 in RHF funds, consistent with the aforementioned April 1, 2003 letter

from Assistant Secretary Liu. The remaining \$1,877,000 due to HUD pursuant to that letter will be repaid by MPHA in installments as provided herein. The MPHA intends to repay the amount due with all RHF funds received in Fiscal Years 2004 and subsequent years with respect to the 143 *Hollman* units referred to in Paragraphs 2-4 above. HUD acknowledges that repayment of the amount due is an eligible use of these funds.

Assuming that the aforementioned RHF funds are provided by HUD in the approximate amounts indicated above, the MPHA will repay the \$1,877,000 according to the following schedule:

Before 9/30/04	\$350,000
Before 9/30/05	\$350,000
Before 9/30/06	\$350,000
Before 9/30/07	\$350,000
Before 9/30/08	\$350,000
Before 9/30/09	\$127,000

If the aforementioned funds are not provided in these amounts, the MPHA will repay the debt to the maximum extent possible by the end of fiscal year 2009 and in full by the end of fiscal year 2010, after which time HUD may offset any amount owing against HUD grants for capital purposes that would otherwise be payable to the MPHA or take any other legally available collection action. HUD will not take any punitive action against the MPHA for its \$1,877,000 expenditure of RHF funds that is the origin of the debt discussed herein.

6. MPHA Section 8 Program

(a) **“One Month Reserve”.** Based on the MPHA’s representation that it does not seek to operate its Section 8 program with a full one-month’s reserve to cover higher-than-anticipated program costs, HUD hereby agrees to allow the MPHA to use for *Hollman* capital purposes, under the MTW Agreement, an additional \$525,000 of its

certain increased HAP obligations beyond those reflected in the PHA's initial annual contributions contract for the year only if the PHA's reserve balance is less than an amount equal to 50% of the average monthly cost of the PHA's voucher program for HAPs, based on the most recent six months of HAP data submitted by the PHA (i.e., half of the PHA's one-month reserve amount, as defined in paragraph 6(a) herein). The PHA's balance is determined by adding to the balance approved by HUD on the most recently closed year-end statement the budget authority applicable to each month since that date and subtracting therefrom disbursements for Section 8 HAP contracts since that date. Unless and until applicable law changes or HUD procedure is changed for all PHAs, HUD will consider the foregoing precondition to have been met with respect to the MPHA, if the MPHA's reserve balance calculated in this manner, but excluding the portion of the MPHA's Section 8 reserves that are eligible for capital expenditure, is less than an amount equal to 50% of the MPHA's one month reserve amount, as defined in paragraph 6(a) herein.

7. Production of remaining public housing units. At the time of the execution of this stipulation, fifty of the 770 public housing units which the Decree requires are not yet under contract. These will be produced on the following schedule:

- a. Thirty eight (38) units in the third rental phase of the Heritage Park development. Local defendants will take all reasonable measures to make these units ready for occupancy as early in 2005 as possible, but in any event, these units will be ready for occupancy by December 31, 2005, unless local defendants apply to the Court to reopen the Decree for an extension of time.

- b. Seven (7) units will be developed by the MPHA on scattered sites. Four (4) of these will be ready for occupancy by December 31, 2004 and the other three (3) by December 31, 2005.
- c. The MPHA has applied for \$1 million from the City and MCDA's (hereinafter referred to collectively as "the City") Affordable Housing Trust Fund for the development of the final five (5) units on a site at 3824 West 44th Street in Minneapolis. These units will be ready for occupancy by January 30, 2006. If the MPHA anticipates that the funding for these units will not be available so as to permit timely completion, it is the MPHA's intent to temporarily designate 5 units in the elderly project to be developed by the MPHA with HOPE VI funds within the Heritage Park as *Hollman* replacement units, carrying the *Hollman* occupancy priorities. The MPHA will in that case designate the next five family public housing units it develops in non-concentrated areas as *Hollman* replacement units and will assign these units *Hollman* occupancy priorities. In that case, the MPHA may remove the *Hollman* priorities from the HOPE VI units. Plaintiffs reserve their right to apply to the Court for a determination that MPHA and/or the City are legally obligated under the Decree to fund, and the MPHA to develop, the remaining five units within a designated time period, and that the designation of HOPE VI units must be temporary, and MPHA and the City reserve their right to argue to the Court that they are not so obligated.

8. **Production of the homeownership units.** The City has entered a development agreement for the construction of 167 units of homeownership housing on property north

of Olson Memorial Highway. The development agreement calls for more than 100 of these units to be completed and ready for occupancy by December 2005, and all 167 units to be ready for occupancy by December 2006. The remaining 193 of the total 360 homeownership units called for in the Master Plan are to be constructed in the redevelopment project area described in the Master Plan, or on sites near the redevelopment project area. Construction of the remaining 193 units will be completed by December 31, 2009. This Stipulation does not relieve the City of its obligations under the Consent Decree for implementation of the homeownership component of the redevelopment project, as called for in the Action Plan and Master Plan.

9. **Construction of Infrastructure and Parks.** The City plans to construct the North-South Boulevard (Van White Memorial Boulevard) between Plymouth Avenue North and Glenwood Avenue North by the end of 2004. The extension of the Boulevard between Glenwood Avenue North and Dunwoody Boulevard will be constructed by the end of 2008. Sumner Park north of Olson Highway will be completed by the summer of 2004. Construction of the new park south of Olson Highway has begun and the City plans for it to be completed by the fall of 2006.

10. Nothing in this stipulation relieves MPHA or the City of any other remaining obligations they may have under the Decree. The fact that the Court's jurisdiction will terminate in 2004 and that the period in which to reopen the decree will terminate in 2006 (as set out below) does not affect the plaintiffs' rights to assert any breach of contract claims to enforce the decree against local defendants subsequent to those time periods.

11. **Release of Claims Against HUD.** In consideration for the foregoing HUD

acknowledgments and commitments, and except as set out in the next sentence, all parties to the *Hollman* decree other than the HUD defendants hereby permanently release the HUD defendants from any financial responsibility for matters arising under, or relating to any party's performance under, the *Hollman* decree and hereby permanently release and waive all claims for money or money's worth, including attorneys' fees or costs, that could otherwise have been brought against any of the HUD defendants for any matter arising under, or relating to any parties' performance under, the *Hollman* decree.

Nothing in this paragraph, however, shall relieve HUD of the obligations expressly set forth in this Stipulation and Order, which will be enforceable by the MPHA, or from obligations under provisions of law independent from the decree relating to the MPHA's expenditure of funds pursuant to the Annual Contributions Contract in the amount of \$74,126,542 provided by HUD pursuant to paragraph 32 of the *Hollman* decree.

12. Dismissal of Plaintiffs' motion. In consideration for the foregoing commitments, the Plaintiffs dismiss their motion dated October 3, 2003.

13. End of Court Jurisdiction. The parties hereby stipulate that (a) the Court's jurisdiction over all parties to the decree shall terminate, and the case shall be closed, on November 1, 2004; and (b) no petitions to reopen the case shall be filed with, or accepted for consideration by the Court, beyond October 1, 2006.

14. Dispute Resolution. The parties hereby stipulate that paragraph 97 of the decree ("Dispute Resolution") is amended: (a) so that the third sentence reads: "The notice shall specify the facts supporting the allegation, and shall precede the filing of any motion to enforce the terms of this Decree or a letter to the Court seeking relief in the manner described below."; (b) to substitute the words "seven (7) days" for the

words "thirty (30) days" in the fourth sentence and to delete the words in the fourth sentence that follow that reference; and (c) to add the following sentence to the end of the paragraph: "The party may initiate the process of seeking relief by delivering a letter setting forth all relevant facts to the Court's chambers and providing a copy of the letter to counsel of record by the most rapid means available, but in no event less rapid than overnight mail."

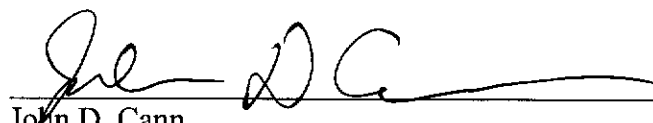
SO ORDERED

Dated

March 26th, 2004


James M. Rosenbaum
U. S. District Court Judge

Counsel for Minneapolis Public Housing Authority and Cora McCorvey

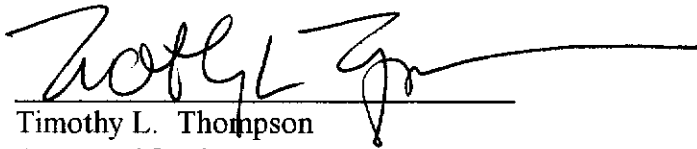
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Dated: March 23, 2004

Counsel for Plaintiffs

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A handwritten signature in black ink, appearing to read 'Timothy L. Thompson', is written over a horizontal line.

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Dated

3-18-04

OFFICE OF THE MINNEAPOLIS
CITY ATTORNEY

Dated March 18, 2004

A handwritten signature in cursive script, reading "Carol Lansing", written over a horizontal line.

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