Unpublished Disposition
205 F.3d 1322
NOTICE: THIS IS AN UNPUBLISHED OPINION.
(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. See Federal Rule of Appellate Procedure 32.1 and this court's local Rule 32.1.1. for rules regarding the citation of unpublished opinions.)
United States Court of Appeals, Second Circuit.

Pauline DAVIS; Cynthia Williams; Blanca Iris Hernandez, on behalf of themselves and all others similarly situated; Gina Campbell, on behalf of themselves and all others similarly situated; Jeanette Vargas, on behalf of themselves and all others similarly situated; Cornelia Simmons; Kim Rivera, Plaintiffs-Appellees,
v.
NEW YORK CITY HOUSING AUTHORITY, Defendant-Appellant.

No. 99-6238. | Feb. 23, 2000.

Appeal from the United States District Court for the Southern District of New York, Sweet, J.

Attorneys and Law Firms

Henry Schoenfeld, of counsel; Jeffrey Schanback, General Counsel, on the brief, New York City Housing Authority, New York, NY, for appellant.

Scott A. Rosenberg, Director of Litigation; Helaine Barnett, Attorney in Charge, on the brief, The Legal Aid Society, Civil Division, Civil Appeals & Law Reform Unit, New York, NY, for appellees.

Present KEARSE, WALKER, and POOLER, Circuit Judges.

Opinion

SUMMARY ORDER

***1** UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this matter is remanded to the district court for supplementation of the record.

Defendant-appellant New York City Housing Authority ("Authority") has appealed from the August 11, 1999 judgment of the district court granting the motion by plaintiffs-appellees Pauline Davis et al. ("plaintiffs") for an order permanently enjoining the Authority from implementing the working family preference ("WFP") at housing projects whose tenant body is more than 30% white.

Following consideration of the briefs and oral arguments of the parties and the record on appeal, the panel has determined that it would benefit from further factual development in three areas. First, we would like to know how the actual figures for move-outs under the WFP, to the extent such data are available, affect the analysis of the expert witnesses. For example, plaintiff's expert's projections were based on historical move-out rates from the period 1991-94. However, beginning in 1998, the WFP has been implemented at all projects not covered by the injunction, so that data as to actual move-outs by race or ethnicity may be available. Plaintiff's counsel indicated at oral argument that actual move-out figures from 1998 were not available at the time of the hearing below. If these data are currently available, we would like to know whether and to what extent actual move-outs correspond with projected move-outs and whether and to what extent the actual numbers influence the experts' conclusions.

Second, because the legal significance of the impact of the WFP on the rate of desegregation of the sites covered by the district court's injunction may turn in substantial part on the expected delay, if any, in desegregating each project if the WFP is implemented there, we would like to have data as to each project bearing on the following questions: (a) under the original Tenant Selection and Assignment Plan ("TSAP"), how many months it is expected to take to achieve a white occupancy rate below 30% at that project; and (b) under the modified TSAP incorporating the WFP, how many months it is expected to take to achieve a white occupancy rate below 30%.

Third, we suggest that the district court revisit the question of whether to credit projections that relied on an estimation that white admissions under the WFP would increase to approximately 9.9%. Plaintiff's expert, Dr. Leonard Cupingood, on whose data the district court relied, appears to suggest in an affidavit dated July 27, 1999 that using actual figures on white admissions under the WFP, after accounting for the so-called "pipeline effect" and other factors, reduces the projected white admissions rate to 8.53%. The Authority notes in response that correction of a calculation error by Dr. Cupingood would lower this figure to 8.28%. Although Dr. Cupingood states that the revised figure of 8.53% would

not alter his "fundamental conclusion that the WFP will significantly slow or reverse desegregation at the 21 Disproportionate Projects," the effect of the WFP at each housing project should be evaluated on the basis of tables that rely on an estimated white admissions rate that is as accurate as possible. We therefore ask the district court to consider whether the tables presented in its opinion that relied on the 9.9% admissions rate should be revised in light of Dr. Cupingood's July 27, 1999 affidavit.

***2** Accordingly, we remand this case to the district court for supplementation of the record, pursuant to the procedures described in *United States v. Jacobson,* 15 F.3d 19, 21-22 (2d Cir.1994). We request that, within sixty days of this order, the district court, after receiving any additional submissions from the parties and their experts, make further express findings and, if warranted, modify its existing findings.

The mandate shall issue forthwith and shall state that the parties are to inform the clerk of this court when the district court has issued its supplementation of the record in accordance with this order. Following such notification, jurisdiction of the appeal will be automatically restored to this court, and the clerk will reassign the appeal to this panel, without a need for either party to file a new notice of appeal. After jurisdiction is restored, the clerk shall set an expedited briefing schedule, and the parties may, if they wish, submit supplemental letter briefs not to exceed 10 single-spaced pages confined to the implications on the case of the data requested in this order and the district court's findings with respect thereto. It is unlikely that further oral argument will be necessary.