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9/22/81

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

DOROTHY GAUTREAUX, et al.)
)
Plaintiffs,)
)
v.)
)
SAMUEL R. PIERCE, Secretary)
of Department of Housing and)
Urban Development, et al.,)
)
Defendants.)

NO. 66 C 1459
66 C 1460
(Consolidated)

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PLAINTIFFS' RESPONSE TO OBJECTIONS OF HUD AND
THE CITY TO MOTION FOR FURTHER RELIEF Judge Marvin E. Asper
U. S. District Court

Verification of Facts

Can it be that it was intended by the order of September 18, 1980, that HUD would rely exclusively upon information received from the City in preparing its report to the Court? The question is almost rhetorical. Since the City is obviously not disinterested, the only reasonable reading of the order is that HUD was to be responsible to the Court for the information upon which its report was based. Thus, HUD must verify the information received from the City. Where insufficient or no information was received, HUD must obtain it.

(We believe there can be no dispute that HUD's report relies, without verification, exclusively upon information and representations from the City. See HUD's report, p. 24:

"The City has advised HUD of the following actions it has taken, in the exercise of its lawful powers..."*)

Evaluation of Facts

HUD's report likewise fails to do the evaluation job imposed upon it by the order of September 18, 1980. HUD merely reports which lawful powers were used and not used; it fails to relate the use or nonuse of such powers to particular deficiencies in compliance. (Section IV of the September 18 order requires, in part, that HUD determine "whether... the City has used all of its lawful powers to attempt to comply..." Emphasis supplied.) For example, HUD discusses the unavailability of tandem financing as a major impediment to achievement of production. One of the City's lawful powers is the "employment of other measures to reduce development costs." (Section I(D)(9), September 18 order.) However, HUD never discusses whether the City could have used CDBG funds as a financing mechanism to enable development to go forward (as it would have if tandem financing had been available) and whether, if that power had been employed, it would have enabled the City to achieve, or come closer to achieving, compliance with Conditions IIB and IIC. This is only one illustration of the way HUD's report fails to evaluate the

* HUD's Response acknowledges this situation, and contends that HUD was entitled to place "good faith reliance on the information provided to it by the City..." (p.9.) Only as to the production status, a matter as to which there is no dispute, does HUD say it relied on its own, as distinguished from the City's, information.

City's use and nonuse of its lawful powers in relation to compliance as required by a fair interpretation of the September 18 order. Until an analysis of this sort is provided, there is no adequate basis for HUD or the Court to conclude whether further remedial powers should be exercised.*

In the present posture of this proceeding, no testimonial evidence appears to be necessary. The Court can determine whether our reading of the order and HUD's report are or are not correct from an examination of those two documents.

Nor is there any reason not to impose the same condition upon next year's CDBG funds as was imposed upon this year's.** No sanction or penalty of any sort results from the September 18 order; the order merely provides for such further proceedings as may be appropriate following the Court's receipt of HUD's report. On the other hand, not to continue the condition in effect would be to deny plaintiffs the relief this Court determined they were entitled to receive by the September 18

* In this connection, the relevant inquiry is whether the exercise of any of the City's lawful powers could have reduced the extent of noncompliance and not, as HUD's report implies (pp. 33-34), whether the exercise of such powers would have resulted in full achievement of the production requirements.

** The City contends that HUD's decision to approve the City's Year VII CDBG application without imposing any conditions is an appropriate exercise of its administration discretion, but the matter before the Court is not the exercise of HUD's discretion in an administrative review context but whether HUD has fairly complied with the September 18 order.

order. If plaintiffs are right in their view that HUD's report is deficient, they are entitled not to lose the benefit of the September 18 order as a consequence of that deficiency.

Respectfully submitted,



Alexander Polikoff

Alexander Polikoff
Elizabeth L. Lassar
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September 22, 1981

CERTIFICATE OF SERVICE

I certify that on this 22nd day of September, 1981, I served the foregoing Response to Objections of HUD and the City to Motion for Further Relief upon each of the attorneys whose names appear on the attached Service List of the foregoing Notice by causing it to be mailed, postage prepaid, to their addresses as shown on said Service List.

Elizabeth L. Lassar
Attorney

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NOTICE OF FILING

To: Persons on the attached Service List **Judge Marvin E. Aspen**
U. S. District Court

PLEASE TAKE NOTICE that on this 22nd day of September, 1981, I have filed plaintiffs' Response to Objections of HUD and the City to Motion for Further Relief with the clerk for the Honorable Judge Marvin Aspen in the United States District Court for the Northern District of Illinois, Eastern Division, a copy of which is attached hereto and herewith served upon you.

Elizabeth L. Lassar
One of the attorneys for
plaintiffs

Dated: September 22, 1981

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