

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

DOROTHY GAUTREUX, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	Civil Action No. 66C1459
v.)	66C1460
)	
CHICAGO HOUSING AUTHORITY, <u>et al.</u> ,)	
)	
)	
Defendants.)	

FEDERAL DEFENDANT'S MOTION FOR
CLARIFICATION OR VACATION OF ORAL RULING

Federal defendant Samuel R. Pierce, Jr., Secretary of Housing and Urban Development (HUD), respectfully moves this Court to clarify or vacate that portion of its oral decision of September 14, 1988, denying federal defendant's motion to modify consent decree, in which the Court stated that: (1) "both the CHA and HUD has been responsible for" the delay of the scattered site program (Tr. at p. 18, lines 18-21); and (2) "it is clear that the City of Chicago has gotten the shortend of the stick in terms of funding and other support to the benefit of other communities through the years." (Tr., at p. 18, lines 23 to p. 19, line 1). Without prejudice to federal defendant's right to renew his request for modification of the consent decree in the future, if appropriate, defendant Pierce seeks no other change in the Court's decision.

In support of this motion, federal defendant states as follows:

1. On September 14, 1988, this Court denied federal defendant's motion to modify Consent Decree in an oral ruling from

the bench. Attached hereto as Exhibit A is a transcript of the Court's remarks at the hearing.

2. At the hearing, the Court stated that "I think it's clear from the list [sic] of delay in this case, a delay which both the CHA and HUD has been responsible for -- and I'm certainly not talking about the 1988 HUD or the 1988 CHA." (Tr., at 18, lines 18-21). Although the Chicago Housing Authority has on numerous occasions alleged that HUD bears some responsibility for the delay in the implementation of the scattered site program, HUD has consistently denied those allegations and the issue has never been adjudicated. The Court has therefore never had occasion to rule upon whether HUD was responsible for the delay in the implementation of the scattered site program. In the context of federal defendant's motion to modify Consent Decree, neither plaintiffs nor HUD submitted any evidence concerning the reasons for the delay in carrying out the Court's 1969 Order.

3. At the hearing, the Court also stated as follows: "but it is clear that the City of Chicago has gotten the shortend of the stick in terms of funding and other support to the benefit of other communities through the years." Tr. at p. 18-19. In this context, there was no evidence before the Court concerning the level of funding historically allocated to the City of Chicago in comparison with other communities for either the public housing program or any other assisted housing program administered by HUD, nor has this issue previously been adjudicated in this case.

4. The above statements, to the extent they may be construed as findings of fact, may be prejudicial to federal defendant in future proceedings before this Court or in related proceedings.

5. Accordingly, the federal defendant asks the Court to clarify its oral ruling by making clear that the above statements were not intended as findings of fact or by vacating the same if they were so intended.

6. Counsel for plaintiffs has advised counsel for federal defendant that he agrees that there has been no evidentiary hearing on the two matters that are the subject of this motion and that therefore he has no objection to the requested clarification or vacation as the court may determine.

Respectfully Submitted,

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Secretary of Housing and Urban
Development

1 window and that is our only point, that basing the affidavit
2 upon an abandonment of competitive bidding is simply not
3 dealing with the real world as it exists. Therefore we
4 believe that the argument is irrelevant.

5 THE COURT: As I indicated before, I certainly
6 appreciate the broad obligation that HUD has to communities
7 other than this one and I certainly appreciate the good faith
8 in HUD's position with regard to competitive bidding.
9 Although I have suggested that special exigencies in this case
10 really warrant an experience, a good faith experience to the
11 terms of negotiated bidding to see whether or not there are
12 steps that can be taken without any of the dangers that are
13 normally inherent in noncompetitive bidding but that perhaps
14 are warranted here because of the need to get a program moving
15 that should have been moving many years ago.

16 I don't think though it's a simple request. The
17 opposition of the plaintiffs is a request to stockpile funds
18 for the sake of stockpiling funds. I think it's clear from
19 the list of delay in this case, a delay which both the CHA and
20 HUD has been responsible for -- and I'm certainly not talking
21 about the 1988 HUD or the 1988 CHA. Unfortunately this case
22 has more than a 20 year history and there have been delays
23 that many individuals have been responsible for, but it is
24 clear that the City of Chicago has gotten the shortend of the
25 stick in terms of funding and other support to the benefit of

1 other communities through the years. This delay is well
2 documented on many other occasions and Court proceedings in
3 this case.

4 Based upon this delay and based upon what I view as
5 the good faith efforts of both plaintiffs and the CHA to
6 comply with the decree and based upon my finding that there is
7 no adverse or hidden agendas that I can see in any attempt to
8 stockpile funds for the sake of stockpiling funds, I believe
9 the plaintiffs should not be subject to any further risk
10 because of this delay. This risk may not be substantial but
11 nonetheless it is a clear risk that funds will not be
12 available in the future and as a result if the funds are not
13 allocated in 1988 that conceivably those funds may not be
14 forthcoming in the future maybe because of some decision by
15 some other administration, certainly not this one to abandon
16 this type of funding.

17 For all of these reasons I am going to deny the
18 motion at this time. And again I am sympathetic with HUD's
19 request. I think it's a proper one, but I think balancing all
20 the other considerations and this Court's obligations to
21 enforce and implement the consent decree it is one that I
22 should not grant at this time.

23 I will again ask HUD if it will to make a good faith
24 effort to involve itself in a very limited experiment to see
25 whether negotiated contracts can be developed which will get

1 this project moving faster and make up some of the lost ground
2 over the years and at the same time will not put the contracts
3 in process into jeopardy of the type of favoritism that we
4 often find in noncompetitive bidding and that I find just as
5 abhorrent as HUD does.

6 Thank you.

7 (Proceedings concluded.)

8 C E R T I F I C A T E

9 I do hereby certify that the foregoing is a complete,
10 true, and accurate transcript of the proceedings had in the
11 above-entitled cause before the Honorable MARVIN E. ASPEN, one
12 of the judges of said Court, at Chicago, Illinois, on
13 September 14, 1988.

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Diane Meyer-Moran, Official Court Reporter Date

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

Plaintiffs,

v.

SAMUEL R. PIERCE, JR., Secretary
of the Department of Housing and
Urban Development, and CHICAGO
HOUSING AUTHORITY,

Defendants.


Civil Action No. 66C1459
66C1460
(Consolidated)

NOTICE OF MOTION

TO: Attached Service List

PLEASE TAKE NOTICE that on Tuesday, November 15, 1988, at 9:30 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Marvin E. Aspen at the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, Room 1941, and then and there present Federal Defendant's Motion for Clarification or Vacation of Oral Ruling, a copy of which is herewith served upon you.

Dated: November 8, 1988

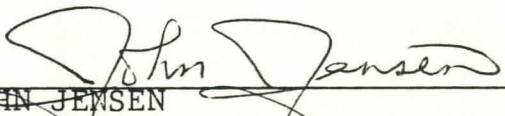

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CERTIFICATE OF SERVICE

I, John Jensen, hereby certify that I caused copies of the foregoing Notice of Motion and Federal Defendant's Motion for Clarification or Vacation of Oral Ruling to be served on all parties on the service list by causing copies thereof to be deposited in the United States mail, first class postage prepaid, at 547 West Jackson Blvd, Chicago, Illinois this 8th day of November 1988.

Dated: November 8, 1988



JOHN JENSEN
One of the Attorneys for the
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