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

DOROTHY GAUTREAUX, at al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

NOTICE OF MOTION

TO: Counsel on attached Certificate of Service

PLEASE TAKE NOTICE that on **Thursday, September 8, 2005** at **10:30 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Marvin E. Aspen or any judge sitting in his stead, in Room 2568 of the U.S. District Court, 219 S. Dearborn Street, Chicago, Illinois and present **Joint Motion of the Receiver and the CHA to File Memorandum Instanter,** a copy of which is hereby served upon you.

Respectfully submitted,

MILLER SHAKMAN & HAMILTON LLP

Dated: September 2, 2005

By: Edward W. Feldman
Edward W. Feldman

Michael L. Shakman
Edward W. Feldman
MILLER SHAKMAN & HAMILTON LLP
180 N. La Salle Street, Suite 3600
Chicago, Illinois 60601
(312) 263-3700

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on September 2, 2005, he served copies of the foregoing **Notice of Motion** and **Joint Motion of the Receiver and the CHA to File Memorandum Instanter** on the parties listed below by causing true and correct copies thereof to be served by facsimile and U.S. first class mail, proper postage prepaid to:

Alexander Polikoff.
Julie Brown
Business and Professional
People for the Public Interest
25 E. Washington St., Suite 1515
Chicago, IL 60603
Fax: 312.641.5454

Gail Nieman
General Counsel
Chicago Housing Authority
200 West Adams St., Suite 2100
Chicago, IL 60606
Fax: 312.726.6053

Thomas E. Johnson
Johnson, Jones, Snelling, Gilbert & Davis
36 S. Wabash Ave. Suite 1310
Chicago, IL 60603
Fax: 312.422.0708

Robert D. Whitfield
Law Offices of Robert D. Whitfield
10 S. LaSalle St., Suite 1301
Chicago, IL 60604
Fax: 312.781.9401

Dated: September 2, 2005

Edward W. Feldman

IN THE UNITED STATES DISTRICT COURT
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DOROTHY GAUTREAUX, et al.,	)	
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Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
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CHICAGO HOUSING AUTHORITY,	)	Judge Aspen
	)	
Defendant.	)	

JOINT MOTION OF THE RECEIVER AND THE CHA
TO FILE MEMORANDUM INSTANTER

Daniel E. Levin and The Habitat Company LLC (collectively, "the Receiver") and The Chicago Housing Authority ("the CHA") jointly move the Court for leave to file instanter their four-page joint brief attached hereto. The attached joint brief addresses a new legal theory raised by the Central Advisory Council ("CAC") in a brief it was given leave to file on August 23, 2005. The CAC contends for the first time that the June 3, 1996 revitalizing order discriminates unlawfully on the basis of sex and familial status in violation of fair housing requirements. The attached joint brief explains why the CAC's novel theory is wrong.

In support of this Motion, the Receiver and the CHA advise the Court as follows:

1. On July 14, 2005 the Court denied the CAC's prior motion to amend the June 3, 1996 revitalizing order regarding North Kenwood-Oakland. The Court also entered an order permitting CHA and the private developer, Lake Park Crescent Associates I, L.P., to create a site-based waiting list of tenants who may qualify for those vacant units that the June 3, 1996 order reserved for households earning 50-80% of area median income.

2. On July 25, 2005, the CAC filed a Motion for Clarification of the Court's July 14, 2005 Order ("Motion to Clarify"), without a supporting brief.

3. On July 27, 2005, the Court set a briefing schedule for the Motion to Clarify, which provided for responses to be filed by August 11, 2005 and any reply by August 18.

4. On August 2, 2005, the CAC filed a Motion to Amend the Court's July 27, 2005 Order ("Motion to Amend"), which was unclear but appeared to ask for leave to file a brief regarding the July 14 orders.

5. On August 8, 2005, the Court entered a new briefing schedule providing for responses to CAC's two motions to be filed on August 18 and replies on August 25.

6. On August 18, 2005, pursuant to the amended briefing schedule entered by the Court on August 8, 2005, the Receiver and CHA each filed responses to the CAC's two motions.

7. The next day, the CAC filed a motion seeking leave to file a memorandum in support of its Motion to Clarify, which the Court granted on August 23, 2005.

8. The CAC filed no reply to the August 18 briefs filed by the Receiver and the CHA.

9. Most of the points in the CAC's memorandum were anticipated by the CHA and the Receiver, and addressed in their August 18 filings. However, the CAC raised a novel theory that the CHA and the Receiver had not previously addressed: that the provision in the June 3, 1996 revitalizing order reserving one-half of the public housing units for families earning between 50-80% of area median income violates the Fair Housing Act and implementing regulations. See Central Advisory Council's Memorandum in Support [etc.] ("CAC Mem.") at 4-6. Its theory is that the order unlawfully discriminates on the basis of sex and familial status. This theory is wrong, for reasons set forth in the attached joint brief.

10. Because the Receiver and the CHA have not had an opportunity to address the CAC's new theory, which CAC submitted one day after the Receiver and the CHA had filed their briefs, and because the joint brief may be of assistance to the Court, the Receiver and the CHA respectfully seek leave to file the joint brief instanter.

DATE: September 2, 2005

Respectfully submitted,

THE CHICAGO HOUSING AUTHORITY

Thomas E. Johnson (EWF)
One of their attorneys

Thomas E. Johnson
JOHNSON JONES SNELLING ET AL
36 S. Wabash Ave.
Suite 1310
Chicago, Illinois 60603
(312) 578-8100

DANIEL E. LEVIN AND
THE HABITAT COMPANY LLC, RECEIVER,

Edward W. Feldman
One of their attorneys

Michael L. Shakman
Edward W. Feldman
MILLER SHAKMAN & HAMILTON LLP
180 North LaSalle Street, Suite 3600
Chicago, Illinois 60601
(312) 263-3700

EXHIBIT

IN THE UNITED STATES DISTRICT COURT
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Plaintiffs,	)	
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CHICAGO HOUSING AUTHORITY,	)	Judge Aspen
	)	
Defendant.	)	

JOINT RESPONSE OF THE RECEIVER AND CHA TO THE CENTRAL ADVISORY COUNCIL'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR CLARIFICATION OF THE COURT'S JULY 14, 2005 ORDER, AND ITS SUBSEQUENT MOTION TO AMEND THE COURT'S JULY 27, 2005 ORDER

On August 18, 2005, pursuant to the amended briefing schedule entered by the Court on August 8, 2005, the Receiver and CHA each filed responses to the Central Advisory Council's Motion for Clarification of the Court's July 14, 2005 Order ("Motion to Clarify"). The next day, the Central Advisory Council ("CAC") submitted a memorandum in support of its Motion to Clarify. Most of the points in this memorandum were anticipated by the CHA and the Receiver, and addressed in their August 18 filings. However, the CAC raised a novel theory that the CHA and the Receiver had not previously addressed, and respectfully address herein.

The CAC argues for the first time that the provision in the June 3, 1996 revitalizing order reserving one-half of the public housing units for families earning between 50-80% of area median income violates the Fair Housing Act and implementing regulations. See Central Advisory Council's Memorandum in Support [etc.] ("CAC Mem.") at 4-6. Its theory is that the order unlawfully discriminates on the basis of sex and familial status. Putting substance aside for a moment, the argument raises several procedural problems. For example, the 1996 order has been

in place for over nine years without objection by CAC or HUD, the agency charged with enforcing fair housing requirements; a similar requirement was agreed to by HUD in 1995 in the Horner consent decree, which was approved by this Court and Judge Zagel; and CAC could have raised this objection in the proceedings leading to the July 14 order. Moreover, its argument proves too much, since its position in the prior proceedings (that the 50-80% provision could remain a priority, though not a requirement), would still result in "discrimination" under its theory. (Indeed, the "working requirement" provision in the regulations and the entire statutory policy favoring mixing of incomes favors two-income households or households headed by two adults rather than one.) But the Receiver and the CHA need not advance an argument based on waiver, laches or inconsistency. The CAC's argument is facially wrong. The nine-year old requirement does not discriminate on the basis of sex or familial status.

CAC's sex discrimination theory rests on unsupported assumptions that the majority of the families in CHA households and on its waiting list are headed by women. The 50-80% income requirement, it argues, discriminates against women because it favors "two parent families (with two incomes) over a single mother with one income." CAC Mem. at 4. Assuming the correctness of CAC's assumptions, its conclusion is wrong because there is no resulting discrimination on the basis of sex.

Two-parent families generally consist of a woman and a man, either married or not. If CAC is correct that the 50-80% provision favors these two-parent families, there is no resulting sex discrimination. Households headed by a single male are affected identically as those headed by a single female. Thus, if the provision can be said to "discriminate" at all, it favors working women who are partnered with another working adult (man or woman) over working women who have no live-in partner. The sex of the single household head, or that of the partnered household head (or

of his or her partner), is irrelevant. There is no discrimination based on sex. Cf. Spearman v. Ford Motor Co., 231 F.3d 1080, 1084 (7th Cir. 2000) ("'the phrase in Title VII prohibiting discrimination based on sex' means that 'it is unlawful to discriminate against women because the are women and against men because they are men'") (quoting Ulane v. Eastern Airlines, Inc., 742 F.2d 1081, 1085 (7th Cir. 1984)); Cleaves v. City of Chicago, 68 F. Supp. 2d 963, 967 (N.D. Ill. 1999) (Bucklo, J.) (ordinance that treats men and women the same with regard to their marital status does not violate Title VII).[1/]

Turning to "familial status," CAC appears to assume that a policy that favors two-parent families discriminates unlawfully on that ground. It is mistaken because the definition of "familial status," which CAC does not cite, reads in relevant part:

> Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with –
>
> (1) A parent or another person having legal custody of such individual or individuals; or
>
> (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.
>
> The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

42 U.S.C. § 3602(k) (2005); see also 24 C.F.R. § 100.20 (2005) (identical definition). Plainly, nothing in this definition addresses whether a household is headed by one or two adults, or whether the adults have incomes or not. It is concerned with discrimination against households with children. It is inapplicable here.

[1/] There is also no discrimination here based on marital status. The alleged advantage of two-income couples to meet the 50-80% requirement inures equally to married and unmarried couples. In any event, marital status is not protected by federal civil rights laws. See Cleaves, 68 F. Supp. 2d at 967.

The income-tiering concept in the June 3, 1996 order, which includes the 50-80% provision at issue, was agreed to by the parties and the Receiver, and entered by the Court in 1996, to achieve the important public purposes of deconcentrating poverty and remedying the racial segregation that had given rise to this case. This provision does not discriminate on the basis or sex or familial status, and is creating a better public housing community that is being integrated into the revitalizing North Kenwood-Oakland area and the City as a whole. For the foregoing reasons and those set forth in their prior filings, the Receiver and the CHA respectfully request that the Court deny the CAC's Motion to Clarify.

DATE: September 2, 2005

Respectfully submitted,

THE CHICAGO HOUSING AUTHORITY

Thomas E. Johnson (ELD)
One of their attorneys

Thomas E. Johnson
JOHNSON JONES SNELLING ET AL
36 S. Wabash Ave.
Suite 1310
Chicago, Illinois 60603
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