UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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| DOROTHY GAUTREAUX, et al., | Appeal from the United States District Court for the Northern District of Illinois |
| Plaintiffs, | |
| No. 05-3968 | |
| v. | No. 66 C 1459 |
| CHICAGO HOUSING AUTHORITY, et al | Honorable Marvin E. Aspen |
| Defendants, | |
| and | |
| CENTRAL ADVISORY COUNCIL, | |
| A Nonparty, as Appellant | |

INDIVIDUAL BRIEF AND APPENDIX FOR THE CENTRAL ADVISORY COUNCIL NONPARTY, AS APPELLANT

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a Nonparty, as Appellant

ORAL ARGUMENT REQUESTED

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel for the CENTRAL ADVISORY COUNCIL, a nonparty as Appellant, furnishes the following in compliance with Circuit Rule 26.1.

1. The name of the party represented by the undersigned counsel is the Central Advisory Council (CAC).

2. The CAC is a not for profit corporation public housing tenant organization established under Federal regulations issue by the United States Department of Housing and Urban Development (HUD) at 24 CFR Part 964.

3. Robert D. Whitfield, 10 South LaSalle Street, Suite 1301, Chicago, Illinois 60603.

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December 7, 2005

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## JURISDICTIONAL STATEMENT

NOW COMES the CENTRAL ADVISORY COUNCIL (CAC), a nonparty, and files the following jurisdictional statement. The CAC is a City wide public housing authority resident council organization established in accordance with State law, and Federal Regulations issued by the United State Department of Housing and Urban Development (HUD) at 24 CFR, Subpart B, Part 964. The relevant sections of the regulations allow the formation of public housing authority resident councils to represent public housing residents living within designated buildings or areas under the jurisdiction of the Public Housing Authority (PHA). The resident councils can then combine to form a jurisdiction-wide resident council to represent the interests of all public housing residents living in public housing units within the jurisdiction of that PHA. (CFR 964.105)

The public housing authority units comprising the Chicago Housing Authority (CHA) are grouped in approximately twenty three (23) public housing developments (e.g. Cabrini Green Homes, Henry Horner Homes, Robert Taylor Homes, etc.) located throughout the City of Chicago. Each of those 23 developments formed resident councils, or Local Advisory Councils (LACs), in

accordance with HUD's regulatory provisions at 24 CFR 964.115. The membership of each LAC is restricted to persons residing in CHA public housing units, per the provisions at 964.115.

The LACs are required by Federal regulations to hold periodic elections for officers, to include a President for each LAC. The elected LAC Presidents, and all persons participating in LAC elections, are required (by HUD regulations) to be residents of that particular CHA development.

The 23 sitting elected LAC Presidents have joined together and formed the Central Advisory Council (CAC), the jurisdiction-wide resident organization authorized under 24 CFR 964.105. The Gautreaux class consists of CHA public housing residents living in CHA family public housing units. The CAC is by definition therefore, a jurisdiction-wide public housing resident organization which has elected resident representatives who are members of the Gautreaux class; elected by persons living in other CHA public housing buildings and areas.

1. The District Court's Subject Matter Jurisdiction

This case was initiated in 1966 by an action alleging that CHA engaged in intentional racial discrimination in the selection of sites for family public housing, and adopted

discriminatory tenant assignment policies, all in violation of the Fourteenth Amendment of the Constitution of the United States, and 42 U.S.C. 1981 and 42 U.S.C. 1983.

The District Court has subject matter jurisdiction of this action under 28 U.S.C. 1331 and 1343. The District Court awarded injunctive relief in Gautreaux v. CHA, 304 F.Supp. 736 (N.D.Ill. 1969), and has issued numerous subsequent orders and decisions in this matter, including the orders that are subject of this appeal.

2. Jurisdiction of the Court of Appeals

The CAC and CHA previously negotiated and executed a legally binding CHA lease amendment in 2000 in a document titled the CHA Relocation Rights Contracts (RRC). The RRC was required by HUD as condition for HUD's approval of the current ten year CHA Plan for Transformation.

The RRC is a legally binding commitment by CHA that guarantees all lease compliant CHA residents in occupancy at CHA as of October 1, 1999, the right to return to new and or completely rehabilitated CHA public housing developed under the Plan for Transformation and further provided all such persons priority over persons on the CHA waiting list, and priority over

any subsequent new applications who are not currently on CHA's waiting list. The RRC priorities were subject to any orders issued in the Gautreaux case.

On or about May, 2000, CAC representatives met with counsel for the Gautreaux plaintiffs and discussed the entry of an Order allowing the CAC the opportunity to appear, and to present evidence, on the entry or modification of any Revitalizing Order issued in the Gautreaux case. The Order was subsequently presented to the Court by plaintiffs, without objections by any of the parties to the litigation, and approved by the Court on June 27, 2000.

The CAC subsequently became aware that Defendant CHA was in discussions with the developers for the CHA's Lake Park Crescent mixed income development (a combination of for sale and private rental units, and public housing units) to begin the process for soliciting persons for admission to the public housing units at Lake Park Crescent who were neither CHA residents or person on the waiting list for CHA family housing.

The CAC filed a motion on May 3, 2005 to amend the June 3, 1996 Order establishing minimum income limits for fifty percent

of the Lake Park Crescent public housing units. The motion sought the elimination of the requirement that fifty percent of the Lake Park Crescent public housing units be reserved for person making 50 to 80% of the Area Medium Income (AMI).

The District Court issued a Minute Order establishing a briefing schedule on the CAC's May 3, 2005 motion, and heard oral arguments on the motion on July 7, 2005. The Court subsequently issued an Order on July 14, 2005 denying the CAC's motion to amend the June, 1996 Order.

The Court also issued an Order dated July 14, 2005 authorizing the CHA to establish an on-site waiting list for certain public housing units at Lake Park Crescent, to include persons who meet the 50 to 80% income requirement, but are neither current public housing tenants, or persons currently on CHA's waiting list for family public housing.

The CAC filed a motion on July 25, 2005 for clarification of the Court's July 14, 2005 Order. The CAC sought clarification whether the July Order was only for the public housing units built in Phase One of the Lake Park Crescent development, or applied to units in subsequent phases; and clarification whether the July 14th Order constituted a waiver

of HUD regulations requiring all public housing authorities (PHAs) to process new admissions by date of application. The District Court denied the CAC's motion for clarification by Order dated September 9, 2005.

The CAC filed a Notice of Appeal and Jurisdictional Statement on October 11, 2005, seeking a reversal of the July 14, 2005 and September 9, 2005 Orders. The Seventh Circuit Court of Appeals has jurisdiction from the final decision of the District Court issued on September 9, 2005, pursuant to 28 U.S.C. 1291.

## ISSUES PRESENTED FOR REVIEW

1. Whether the District Court's denial of the CAC's May 3, 2005 motion to amend the June 3, 1996 Order was arbitrary, inconsistent with the prior orders and decisions affording relief to Gautreaux class members, and an abuse of the Court's discretion.

2. Whether the District Court's July 14, 2005 order approving the solicitation of persons for admission to Lake Park Crescent public housing units who are neither current CHA residents or persons currently on CHA's waiting list for family public housing was inconsistent with prior Court orders and decisions, and therefore arbitrary and an abuse of the Court's discretion.

3. Whether Federal regulations at 24 CFR Part One, issued by HUD, require CHA to admit applicants for public housing units at the Lake Park Crescent by date of application from the current waiting list, and are in conflict with the Lake Park Crescent process approved in the Court's July 4, 2005 Order.

4. Whether the District Court's September 9, 2005 Order denying the CAC's motion for clarification of the July 14,

2005 Order, without explanation, was arbitrary and an abuse of the Court's discretion.

## STATEMENT OF THE CASE

This is an appeal from a decision by the District Court denying a motion by the Central Advisory Council (CAC), a nonparty, to amend a June 3, 1996 Order. The CAC is a resident organization consisting of elected resident leaders, organized under regulations issued by the United States Department of Housing and Urban Development (HUD), authorized to represent all families residing in the public housing units operated by the Chicago Housing Authority (CHA). The 1966 Order designated the North Kenwood-Oakland neighborhood as a Revitalizing Area, and further provided that half of the 150 public housing units developed on CHA owned sites were to be occupied by families whose incomes were within 50 to 80% of the Area Median Income (AMI).

The CAC and the Chicago Housing Authority (CHA) negotiated and executed a CHA lease amendment document in October, 2001 titled the CHA Relocation Rights Contract (RRC). The RRC provided a right to return for all 25,000 families residing in CHA public housing units as of October 1, 1999, and was a mandatory requirement for HUD's continued approval and funding of the CHA's Ten Year Plan for Transformation. This requirement

was set forth in the Moving to Work (MTW) Agreement signed by CHA, HUD and the City of Chicago on February 6, 2000.

New public housing units developed in the North Kenwood-Oakland neighborhood were supported by funding under the MTW Agreement, and included Lake Park Crescent, a mixed income development consisting of private for sale and rental housing, and public housing units subject to the June, 1996 Revitalizing Order. Public housing units at Lake Park Crescent were completed and became available for occupancy in early 2005.

The CHA experienced difficulty in filling the new Lake Park Crescent public housing units designated for families with incomes between 50 and 80% of AMI, and considered a proposed amendment to its tenant selection plan which would allow the solicitation of families from the general public who met the income requirement, but were neither families currently residing in CHA public housing units, or families on the CHA waiting list; or families who were in occupancy at CHA in October, 1999, and therefore entitled to priority for new public housing units under the RRC.

The CAC filed a motion in May, 2005 to amend the June 3, 1996 Order establishing a 50 to 80% income requirement. The

District Court set a briefing schedule, and heard oral arguments on July 7, 2005. The Court then issued a July 14, 2005 Order denying the CAC's motion to amend the June 3, 1996 Order. The Court also issued a July 14, 2005 Order allowing CHA to solicit families from the general public who were not members of the Gautreaux class (CHA families or families on CHA's waiting list), or CHA families covered by the RRC negotiated between CHA and the CAC, for public housing units with the 50 to 80% income requirement.

The CAC filed a motion to clarify on July 25, 2005. The motion sought clarification whether the July 14th Order was only for Phase One of North Kenwood-Oakland development, and clarification whether the Order was intended as a waiver of applicable HUD regulations. The District Court set a briefing schedule, and subsequently issued an Order dated September 9, 2005, denying without explanation, the CAC's motion for clarification. The CAC then filed this appeal of September 9, and July 14, 2005 Orders.

## STATEMENT OF FACTS

This is an appeal from a decision by the District Court denying a motion by the Central Advisory Council (CAC), a nonparty, to amend a June 3, 1996 Order. (Appendix, A-1) The 1996 Order designated the North Kenwood-Oakland neighborhood as a Gautreaux Revitalizing Area, and further provided that half of the 150 public housing units developed on CHA owned sites were to be occupied by families whose incomes were within 50 to 80% of the Median income (AMI).

The 1996 Order is one of several resulting from the initial decision in Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907 (N.D.Ill. 1969) finding that the Chicago Housing Authority (CHA) had engaged in racial discrimination in its site selection and tenant assignment policies. The finding of discrimination was upheld, and or referenced, in many subsequent appellate decisions, including the Seventh Circuit's decision in a companion case filed against the United State Department of Housing and Urban Development (HUD), Gautreaux v. Rommey, 448 F. 2d 731 (7th Cir. 1971); and the United States Supreme Court's decision in Hills v. Gautreaux, 425 U,S, 284, 96 S.Ct. 282, 47 L.Ed.2d 792 (1976)

The concept of the Revitalizing Area (RA) results from the 1981 District Court decision in Gautreaux v. Landrieu, 523 F.Supp. 665 (N.D.Ill. 1981). This decision approved a consent decree against HUD, and stated the following:

> In addition, recognizing that total relief to Gautreaux families outside the Limited Area could not be provided in the foreseeable future, the proposed decree introduces the concept of Revitalizing Areas, areas which have substantial minority populations and are undergoing sufficient redevelopment to justify the assumption that those areas will become more integrated in a relatively time. Because these areas are buffer zones between the Limited and General areas with ongoing or planned financial reinvestment by private parties, they are considered the most promising neighborhoods for racial and economic residential integration. (Gautreaux v. Landrieu, at 669)

The 1981 decision listed ten criteria for determining if a neighborhood qualified for the RA designation; including whether the area" .....was free of an excessive concentration of assisted housing" and ".....located in an area which is not entirely or predominantly in a minority area." Gautreaux v Landrieu, at 671. The CAC met with Plaintiffs in 2000 and obtained agreement for the entry of a Procedural Order by the District Court dated June 28, 2000, allowing the CAC an opportunity to be heard before entry of any RA Order which

restricted or limited the opportunity of CHA residents to return to redeveloped public housing. (A-5)

The CHA began having difficulty filling the Lake Park Crescent public housing units designated for families in the 50 to 80% income range. (CHA's RESPONSE TO CAC'S MOTION TO AMEND THE JUNE 3, 1996 ORDER ESTABLISHING MINIMUM INCOME LIMITS FOR CERTAIN PUBLIC HOUSING UNITS, hereinafter "CHA's Response", p. 1 and 2) The statistical data contained in CHA's annual report as of January 1, 2005, indicates that of the 9,452 occupied CHA family units, only 552 of those CHA families (approximately 6%) had incomes between 5 and 80% of the area median income. The same data indicates that a much smaller percentage (228 out of 35,259) of families on CHA's waiting list meet the 50 to 80% income requirement. (CAC's REPLY TO THE STATEMENT AND RESPONSES TO CAC'S MOTION TO AMEND THE JUNE 3, 1996 REVITALIZING ORDER, hereinafter "CAC Reply").

The CHA, in its response, proposed the creation of a site based waiting list, to include families solicited from the general public who meet the 50 to 80% AMI income requirement. (CHA Resp., p. 2 and 3) The CHA also indicated that it " ..... supports and will implement either the site-based waiting list

that Draper and Kramer suggests, or the plan of the CAC. The key is that one or the other plan should be adopted promptly." (CHA Resp., p. 5) CHA also acknowledged that the CAC's plan for amending the June 3, 1996 Order would likely solve the leasing problem for the 50 to 80% income designated units, and preserve the rights of existing CHA residents (CHA Resp., p. 6)

The District Court appointed a Receiver for the CHA's former scattered site development program by an Order dated August 14, 1987. (A-7) The 1987 Receiver Order does not delegate any responsibility to the Receiver for the management of CHA properties, or responsibility for the administration of tenant assignment policies, and further states that the Receiver is to promptly turn over to CHA any building within the program after it's completion. (A-11, par. 5) This Court reviewed, and then dismissed on appeal, the CHA's challenge of 1998 Orders issued by the District Court, including an August 12, 1998 Order, (A-15) finding that HUD's HOPE VI redevelopment programs were within the jurisdiction of the Receiver. Gautreaux v. Chicago Housing Authority, 178 F.3d 951 7th Cir. 1999) Neither the August 12, 1998 Order, or the 1999 appellate decision, contain any language expanding the Receiver's responsibilities

to include issues and matter relating to tenant assignment policies for completed CHA units.

The Gautreaux plaintiffs filed a response to the CAC's motion titled GAUTREAUX PLAINTIFF'S RESPONSE TO CAC MOTION, hereinafter, "Pl. Resp". The response acknowledges there is merit to the CAC's position, as set forth in the CAC's motion to amend, that the new working requirement (not in effect in 1996) satisfies the intent of the June 3, 1996 Order to foster economic integration in the North Kenwood-Oakland; and further, specifically states "From this point of view, there should be no need to have both an income and a working requirement." (Pl Resp., p.4). The Plaintiffs concluded by urging the District Court to hear oral presentation. (Pl Resp., p. 4 and 5).

The Gautreaux Receiver filed a May 26, 2005 response to the CAC's motion titled STATEMENT OF THE RECEIVER CONCERNING THE CENTRAL ADVISORY COUNCIL'S MOTION TO AMEND THE JUNE 3, 1996 REVITALIZING ORDER, hereinafter "Statement". The Receiver's Statement basically objects to the CAC's motion and asserts that the motion, if granted would "break important promises made to the broader community", and would not "adequately promote

economic integration". (Receiver's Statement, P. 13 and 14) The Receiver's Statement acknowledges that CHA families awaiting relocation to new public housing units would have their choices limited by the 50 to 80% income restrictions, "thereby delaying their ultimate relocation into a new unit". (Statement, p. 14) The Receiver's Statement concludes by supporting the CHA proposal for a site based waiting list with families solicited from the general public. (Statement, p. 14).

The CAC filed a response to the Receiver's Statement and the responses filed by Plaintiffs and Defendant CHA, titled CENTRAL ADVISORY COUNCIL'S REPLY TO THE STATEMENT AND RESPONSES TO CENTRAL ADVSORY COUNCIL'S MOTION TO AMEND THE JUNE 3, 1996 REVITALIZING ORDER, hereinafter, "CAC Reply". The CAC Reply included employment data reflecting the salary levels of various jobs and occupations that would not meet 50 to 80% income requirement. (CAC Reply, Ex. One and Two) The CAC Reply also contained data on the extremely small number of CHA families and families on CHA's waiting list (the two groups of families constituting the Gautreaux class) that will qualify for the

public housing units reserved for families making 50 to 80% of AMI; and the number of CHA families who would qualify if CHA rented to person in the 30 to 50% income range. (CAC Reply, Ex. Three) The reply also focused on the increase in income levels in the North Kenwood-Oakland area in recent years. (CAC Reply, Ex Four)

The District Court heard oral presentations from Plaintiffs, Defendant CHA, the CAC and the Gautreaux Receiver, in open Court on July 7, 2005. The District Court also allowed oral presentations by a representative from the Chicago HUD office, the Alderwoman for the North Kenwood-Oakland neighborhood, a community representative from the North Kenwood-Oakland neighborhood, and the CAC Chairperson.

CHA stated, during oral presentations, that it could implement either the site based waiting list option, or the CAC proposal to eliminate the 50 to 80% income requirement. (Transcript (Tr.), p. 9, lines 22 to 26) CHA also stated that once a plan for leasing units was decided on "... we should confine ourselves just to Lake Park Crescent at this point." (Tr., p. 11, lines 19 to 21).

Plaintiffs oral presentations included an acknowledgement that a site bases waiting list would result in offering remedial Gautreaux units to families who were not members of the Gautreaux class. (Tr., p. 13, lines 16 to 21) Plaintiff also indicated that things had changed dramatically since the entry of the Order, and that the North Kenwood-Oakland area neighborhood was "... enormously strengthened as compared to what it was then"; and further stated that thousands of adjacent or nearby mostly low income public housing units were now gone. (Tr., p. 14, lines 9 to 23) Plaintiffs concluded by stating their opposition to the site based waiting list option, and their support for the CAC's proposal to eliminate the 50 to 80% income requirement. (Tr., p. 16 lines 4 to 7).

A representative from the Chicago HUD office indicated that the site based waiting list option of leasing units to families solicited from the general public who are not on the current CHA public housing waiting list "... is problematic to HUD". (Tr., p. 36 lines 1 to 3).

The HUD representative also stated that she had contacted CHA officials and confirmed that the alternative option of leasing to families below the 50 to 80% income level would solve the current occupancy problem because of the large number of CHA families in the lower 35 to 50% income range. (Tr., p.37, lines 1 to 9).

The Court concluded oral presentations and asked the parties to meet and attempt to reach a compromise resolution of the issue. The parties met, but were unable to resolve the matter and so informed the District Court. The Court then issued a July 14, 2005 Order denying the CAC's motion to amend the June 3, 1996 Order. The Court also issued a July 14, 2005 allowing CHA families from the general public, who were not members of the Gautreaux class (CHA families or families on CHA's waiting list) or CHA families covered by the RRC negotiated between CHA and the CAC, for public housing units with the 50 to 80% income requirement.

The CAC filed a motion to clarify on July 25,2005. The motion sought clarification whether the July 14th Order was only

for Phase One of North Kenwood-Oakland development, and clarification whether the Order was intended as a waiver of applicable HUD regulations. The District Court set a briefing schedule, and subsequently issued an Order dated September 9, and July 14, 2005 Orders.

The Receiver received approval from the District Court to participate in this appeal; and subsequently filed the RECEIVER'S DOCKETING STATEMENT on October 25, 2005. The Receiver's Docketing Statement raised the issue of the CAC's standing, as a nonparty, to participate in the appeal.

This Court issued an Order dated October 27, 2005 requiring the CAC to respond to the Receiver's Docketing Statement. The CAC filed its response on November 9, 2005. The Court then issued an Order requiring the Clerk to distribute the Receiver's Docketing Statement, and the CAC's Response, to the panel assigned to determine the merits of this appeal.

## STANDARDS OF REVIEW

The standard for appellate review of the District Court's procedural rulings is for abuse of discretion. Chavez v. Illinois State Police, 251 F.3d 612, 628. (7th Cir. 2001) Tomas v. General Motors Acceptance Corp., 288 F.3d 305,308 (7th Cir. 2002) Abuse of discretion exists only where the result is not one that could have been reached by a reasonable jurist, or where the District Court decision is fundamentally wrong, or is clearly unreasonable, or arbitrary. Chavez, 251 F.3d at 628.

## SUMMARY OF ARGUMENT

The District Court's July 14, 2005 Decision and Order denying the CAC's motion to amend the June 3, 1996 Revitalizing Order was fundamentally wrong, and clearly unreasonable, an should therefore be reversed under the abuse of discretion standard set forth in. Chavez v. Illinois State Police, 251 F.3d 612, 628 (7th Cir. 2005) The arbitrary nature of the District Court decision is apparent from its clearly erroneous conclusion the "... we do not see an extraordinary change in circumstances at this time which suggests we must modify our June 3, 1996 order by removing the 50-80% AMI provision".

The Plaintiffs, during oral presentations, specifically set forth several substantial and significant changes since 1996, which included 1) the elimination of thousands of CHA public housing units in the adjacent and nearby areas which were occupied primarily by very low income families; 2) the significant strengthening of the North Kenwood-Oakland neighborhood since 1996; and 3) the fact that after decades of waiting for remedial unit for Gautreaux class members, a situation has arisen that resulted in a proposal (the site based

waiting list) that would, for the first time, in the history of this extraordinary case, result in families who are not class members receiving a priority for remedial units over Gautreaux class members.

The District Court's decision is clearly arbitrary, since it ignores the undisputed facts and denies a motion that was not opposed by any of the parties to the litigation; and further, was endorsed by a representative from the United States Department of Housing and Urban Development (HUD). The District Court's July 14 Order allowing the solicitation of families from the general public, was issued, even though there was no motion pending before the District Court at that time requesting approval of the site based waiting list.

The District Court's September 9, 2005 motion for clarification, was arbitrary since it provided no basis for denial, and did not clarify obvious ambiguities. For example, the HUD regulation at issue, 24 CFR 960.206(a), was referenced in the Court's Order as a continued requirement and requires leasing by date of application. A similar HUD regulations at 24 CFR Part One, but was ignored by the District Court, even though

the issue of leasing by date of application was raised by HUD during oral presentations, and again by the CAC in its motion to clarify.

ARGUMENT

The CAC is comprised of twenty three CHA residents, elected to serve as resident leaders by other residents living in CHA public housing developments throughout the City of Chicago. Resident leaders are elected every three years in accordance with mandatory HUD regulations. Twenty of the twenty three CAC members reside in CHA family public housing units and are therefore unnamed members of the Gautreaux class; elected by other CHA residents who are also unnamed Gautreaux class members. The exceptions are the three elected CAC members who reside in CHA senior housing units. The Unites States Supreme Court decision in Devlin v. Scardelletti, 536 U.S. 1, 122 S.Ct. 2005, 153 L.Ed.2d 27 (2002), allow unnamed class member to participate in an appeal without formal interventions. See also, In Re Synthroid Marketing Litigation, 325 F.3d 974, 976 (7th Cir. 2003).

The CAC has several years been recognized by both CHA and HUD, as the only jurisdiction wide tenant organization authorized to represent all families living in CHA public housing developments. The CAC is therefore authorized to

participate in this appeal based on its composition, mostly consisting of unnamed Gautreaux class members elected by other class members; and based on the appellate decisions cited above, and in the CAC's jurisdictional statement.

The District Court's July 14, 2005 Decisions and Order denying the CAC's motion to amend the June 3 1996 Revitalizing Order was fundamentally wrong, and clearly unreasonable, and should therefore be reversed under the abuse of discretion standard set forth in Divane v. Krull Elec. Co., Inc., 194 F.3d 845, 847 (7th Cir. 1999). The arbitrary nature of the District Court decision is apparent from its clearly erroneous conclusion that "... we do not see an extraordinary change in circumstances at this time which suggest we must modify our June 3, 1996 order by removing the 50 -80% AMI provision".

The plaintiffs, during oral presentation, specifically set forth several substantial and significant changes since the entry of the June 3, 1996 order removing the 50-80% income requirement. First, as pointed out by Plaintiffs, the CHA has now demolished (and is continuing to demolish) thousands of CHA public housing units in areas that are either adjacent or near the North Kenwood-Oakland (NKO) neighborhood. These CHA public

housing units were occupied primarily by very low income families. Second, there has been significant strengthening of the NKO neighborhood since 1996, a fact also emphasized by the CAC in its filings before the District Court.

Another important issue mentioned by Plaintiffs and the CAC is the delay that Gautreaux class members will experience after the implementation of the District Court's July 14th Order allowing a site based waiting list with members of the general public who are not members of the class, but will nevertheless receive priority for Gautreaux remedial units ahead of class members, many of whom have been awaiting relief for decades. Clearly none of the parties knew in 1996 whether CHA families targeted for return to new public housing units in the NKO area would sufficiently improve their individual situation to satisfy the 50 to 80% income requirement, and if so, how many families would meet the criteria when units eventually became available; nor was their any knowledge by the parties at that time that CHA would subsequently implement a working requirement for all its mixed income developments, including public housing units in the NKO area.

The 1996 Order was silent as to what was to occur if there

were insufficient Gautreaux class members to satisfy the 50 to 80% income requirement, and certainly does not contain any language that allows the radical departure now authorized by the District Court's July 14, 2005 order allowing priority for non class members solicited from the general public. The very fact that the District Court was required to issue the July 14th Order authorizing the site base waiting list is itself a contradiction of the finding in the other July 14th Order where the Court states that there has been no extraordinary change in circumstances since 1996. Clearly, a situation that has resulted in remedial units being leased to non class members ahead of Gautreaux class members qualifies as extraordinary; a fact that was not even mentioned in either of the District Court's July 14, 2005 Orders. The July 14th Orders were therefore arbitrary, and contrary to the facts presented to the District Court, and should be reversed. Divane v. Krull Elec. Co., Inc., 194 F.3d 845, 847 (7th Cir. 1999) Significant changes have arisen that resulted in a proposal (the site based waiting list) that would, for the time, in the history of this extraordinary case, result in families who are not Gautreaux

class members receiving a priority for remedial units over class members.

The District Court's decision is also clearly arbitrary, since it ignores undisputed facts and denied a motion that was not opposed by any of the parties to litigation; and further, was endorsed by a representative from the United States Department of Housing and Urban Development (HUD). This was acknowledged by the Receiver in its October 25, 2005 request filed with the District Court for leave to participate in the CAC's appeal. The Receiver's motion stated, in part, that "... neither the CHA nor the Plaintiffs opposed the CAC's position, with each party finding some merit in both the CAC's position and in the Receiver's position."

Further, the District Court's July 14, 2005 Order allowing the solicitation of families from the general public, was issued, even though there was no motion by any party pending before the District Court at that time requesting approval of a site based waiting list. This is further indication of the arbitrary nature of the July 14th Order, and an additional for reversal.

The District Court's July 14, 2005 Order authorizing the

site based waiting list specifically states that the list "... shall be maintained in accordance with federal regulations concerning the maintenance of public housing unit waiting lists, 24 CFR 960.206, including the prohibitions against discrimination." (A-21) Section 960.206 is contained in 24 CFR Part 960, entitled Admission to, and Occupancy of Public Housing. These HUD regulations are mandatory for all public housing authorities (PHAs), including CHA. Section 960.102 of this part specifically requires that all PHA's administer their programs in accordance with Federal regulations, including HUD's regulations governing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, at 24 CFT Part One.

The HUD Title VI regulations are specifically referenced in, Section 5.105 (a) as part of the applicable Federal requirements, and are therefore mandatory under HUD regulations at 24 CFR Part 960. The regulations implementing Title VI require all PHAs to lease their public housing units on a community wide basis, in sequence, and by date and time of application. 24 CFR 1.4 (b) (2) (ii) This regulatory provision is not consistent with the site based plan approved in the

District Court's July 14, 2005 Order. The CAC therefore filed its motion for clarification as to whether the District Court was waiving the relevant portions of Part 260, and Part One, that require leasing in sequence by date of application. The District Court completely ignored these facts and issued a September 9, 2005 Order denying, without explanation, the CAC's motion to clarify. (A-23) The District Court's September 9, 2005 Order ignored the undisputed facts, and the regulatory provisions cited above, and provided no legal basis or explanation for its ruling. The September 9, 2005 Order denying the motion to clarify was therefore unreasonable and arbitrary, and should be reversed. Divane, 194 F.3d at 848.

The District Court's September 9, 2005 Order denying, without explanation, the CAC's motion, was arbitrary since it provided no basis for the denial, and did not clarify obvious ambiguities. The HUD regulation at issue, 24 CFR 960.206 (a), was referenced in the District Court's Order as a continued requirement and requires leasing by date of application, as do HUD regulations at 24 CFR Part One. This ambiguity was ignored by the District Court, even though the issue of leasing by date of application was also raised by the HUD representative during

oral presentations, and again by the CAC in it motion to clarify. The failure to acknowledge the above was contrary to the record, and unreasonable, given the acknowledged impact on members of the Gautreaux class.

## CONCLUSION

For the foregoing reasons, Appellant, the Central Advisory Council, respectfully request this Honorable Court to reverse the Orders entered on July 14, 2005 and remand the matter to the District Court, and provide such other relief as my deemed to be necessary and appropriate.

Respectfully submitted,

Robert D. Whitfield
Appellant's Attorney

Robert D. Whitfield
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## FEDERAL RULE OF APPELLATE PROCEDURE 32 CERTIFICATION

The undersigned counsel does herby certify that this Brief complies with Federal Rule of Appellant Procedure 32(a)(7)(A)(B)and (C) because it contains 6,529 words a counted by the "Properties Information" function of Corel Word Perfect 8.0.

Robert D. Whitfield
One of the attorneys for
Appellant, Central Advisory Council

Robert D. Whitfield
10 South LaSalle Street, Suite 1301
Chicago, Illinois 60603

## CIRCUIT RULE 30(d) STATEMENT

The attorneys for the defendant-appellant, Central Advisory Council, hereby certify that materials hereby required by Circuit Rules 30(a) and 30(b) are herein included in the attached Appendix.

Robert D. Whitfield
One of the attorneys for
Appellant, Central Advisory Council

Robert D. Whitfield
10 S. LaSalle Street, Suite 1301
Chicago, Illinois 60603

CERTIFICATE OF SERVICE

I, ROBERT D. WHITIFLED, hereby certify that I caused a copy of the CENTRAL ADVISORY COUNCIL'S APPELLANT'S BRIEF AND APPENDIX, in the case of Gautreaux v. Chicago Housing Authority, et al., Appeal Cae No. 05-3968, to be served on the parties listed below, by U.S. Mail on Monday, December 12, 2005, before 5:00pm.

Robert D. Whitfield

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## INDEX TO APPENDIX

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

| | | |
|---|---|---|
| DOROTHY GAUTREAUX, et al.<br>Plaintiffs, | ) | |
| vs. | ) | 66 C 1459<br>66 C 1460 |
| CHICAGO HOUSING AUTHORITY and HENRY CISNEROS, Secretary of Department of Housing and Urban Development,<br>Defendants. | ) | (Consolidated) |

ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs, and Defendants Chicago Housing Authority and Department of Housing and Urban Development, for an order designating a North Kenwood-Oakland Revitalizing Area and permitting development of family public housing units therein, and the Court having heard presentations concerning the proposed order; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the proposal respecting the appropriate number of public housing units to be provided therein and the conditions to be made applicable thereto, and that they support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has

EXHIBIT
A

permitted public or assisted housing to be provided in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the North Kenwood-Oakland Revitalizing Area if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED:

1. The Court designates as the North Kenwood-Oakland Revitalizing Area ("Revitalizing Area") that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-way on the east, 47th Street on the south, and Cottage Grove Avenue on the west;

2. The Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop, through new construction or rehabilitation of existing buildings, up to 241 units of public housing within the Revitalizing Area, subject to the following conditions:

a) No more than 100 units of public housing shall be developed on CHA-owned land that is the site of CHA's Lakefront high-rise buildings (the area bounded by 40th Street on the north, the Illinois Central Railroad right-of-way on the east, 42nd Place on the south, and Lake Park Avenue on the west).

b) No more than approximately 50 units of public housing shall be developed on the site of the demolished Washington Park buildings (the CHA-owned property bounded by 41st Street on the north, Drexel Avenue on the east, Cottage Grove Avenue on the west, and Bowen Avenue on the south) and adjacent property.

c) The balance of such units of public housing within the Revitalizing Area, in addition to those referred to in subparagraphs (a) and (b) above, shall be developed on other sites distributed throughout the Revitalizing Area.

d) One-half of the public housing units developed pursuant to subparagraphs (a) and (b) above shall be occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and such units shall be geographically distributed approximately evenly among the units developed pursuant to subparagraphs (a) and (b).

3. The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified to afford eligible displaced Lakefront tenant families, as defined in the "Revised Agreement Regarding Former Residents of the Lakefront Properties and the Future Use of Those Properties," dated September 22, 1995, between CHA and the Lakefront Community Organization, first

priority to all public housing units developed pursuant to subparagraphs 2(a), (b) and (c) of this Order, subject only to the provisions of subparagraph 2(d) of this Order.

ENTER:

Judge

Date: June 3, 1996.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

hael W. Dobbins
CLERK

Office of the Clerk

Richard M. Wheelock
Legal Assistance Foundation of Chicago
111 West Jackson Boulevard
Third Floor
Chicago, IL 60604

---

Case Number: 1:66-cv-01459

Title: Gautreaux v. Chgo Housing Auth

ssigned Judge: Honorable Marvin E. Aspen

MINUTE ORDER of 6/27/00 by Hon. Marvin E. Aspen :
Plaintiffs' motion for procedural order is granted [0-1] .
(Entered Order) Mailed notice

This docket entry was made by the Clerk on June 28, 2000

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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

| | | |
|---|---|---|
| DOROTHY GAUTREAUX, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| v. | ) | 66 C 1459 |
| | ) | |
| CHICAGO HOUSING AUTHORITY, | ) | Hon. Marvin Aspen |
| | ) | |
| Defendant. | ) | |

**ORDER**

This matter coming on to be heard on the motion of plaintiffs, and the Court having heard the presentations of the parties, and being advised that CHA has no objection to the same, and believing that the resolution of the present controversy by entry of this order is in the best interests of the parties,

IT IS HEREBY ORDERED, that no Revitalizing Order of this Court which in practical effect restricts or limits the opportunity of displaced CHA residents to return to and be rehoused in a redeveloped CHA property shall be entered unless the Central Advisory Council of the CHA and the Local Advisory Councils for the affected property shall first have been afforded an opportunity to be heard, including an opportunity to present evidence, on the entry or modification of such Revitalizing Order.

ENTER: _____
Judge

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

| | | |
|---|---|---|
| DOROTHY GAUTREAUX, et al., Plaintiffs, vs. SAMUEL R. PIERCE, JR., Secretary of the Department of Housing and Urban Development, and CHICAGO HOUSING AUTHORITY, et al., Defendants. | ) | Civil Action No. 66C1459 66C1460 (Consolidated) |

ORDER

This matter coming on to be heard pursuant to plaintiffs' motion dated May 8, 1987 for the appointment of a receiver for the scattered site program (defined below), due notice having been given and the Court having heard the presentations of the parties, the Court makes the following findings of fact and conclusions of law:

(A) The Chicago Housing Authority (the "CHA") has joined in plaintiffs' motion for the appointment of a receiver for the reasons which CHA has heretofore stated in this cause.

(B) This Court has concluded that it has no reasonable alternative but to exercise its inherent power to effectuate its own orders and to so appoint said receiver for the scattered site program in accordance with the provisions of this order. It is the expectation of this Court that the appointment of a receiver will facilitate cooperation between the United States

Department of Housing and Urban Development ("HUD"), CHA and the receiver respecting the scattered site program.

(C) For purposes of this Order the "scattered site program" shall mean (i) the buildings and vacant sites listed in Exhibit A attached hereto (collectively, the "Uncompleted Units") and (ii) CHA Development Programs numbered Il 2-096, Il 2-098, Il 2-103 through Il 2-109, and Il 2-113 (excluding any completed buildings in such programs) and all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459.

WHEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby appoints Daniel E. Levin and The Habitat Company jointly as receiver ("Receiver") to develop and administer the scattered site program as effectively and expeditiously as possible in compliance with the orders of this Court, such appointment to be effective as of the Effective Date (defined below). Until the Effective Date, CHA shall continue to be responsible for implementing the scattered site program in compliance with the prior orders of this Court. On the Effective Date CHA shall turn over to the Receiver possession and control of the Uncompleted Units, it being understood, however, that title to the Uncompleted Units shall remain in the name of CHA.

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), (iii) the relocation of occupants, when necessary and (iv) construction and rehabilitation of dwelling units and the design and specifications therefor in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation (i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program, (ii) employing, transferring and discharging staff for the scattered site program, (iii) purchasing insurance insuring the Receiver, and the interest of CHA if feasible and available at no additional cost, against liability for such risks and in such amounts as the Receiver and HUD shall from time to time agree upon, (iv) managing and administering buildings included within the scattered site program prior to the turnover thereof to the CHA in accordance with Paragraph 5 below, and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel, consultants, attorneys, accountants and other professionals, as are determined by the Receiver to be necessary and appropriate to implement the scattered site

program and to enable the Receiver to discharge its duties pursuant to the provisions hereof.

3. The Receiver shall have the right at any time, upon due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.8, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgement by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief.

4. The Receiver shall have no obligation to make any expenditure except from funds provided by HUD in accordance with procedures to be agreed upon between HUD and the Receiver. The Receiver shall keep separate accounts for costs incurred in connection with the scattered site program from and after the Effective Date. The Receiver shall not be responsible for (i) payment of any costs or performance of any obligations incurred

by CHA prior to the Effective Date, except obligations incurred pursuant to the ACC unless the Receiver is excused from complying with the terms thereof pursuant to Paragraph 3 above, or (ii) payment of any costs or performance of any obligations incurred by CHA thereafter, except as may be specifically authorized by the Receiver in writing. Notwithstanding the foregoing, the Receiver shall not be responsible for (iii) compliance with the provisions of any ACC with respect to buildings and sites previously acquired or completed by CHA except those described in Exhibit A, or (iv) any act or omission of CHA either before or after the Effective Date.

5. The Receiver shall promptly turn over to CHA, and CHA shall accept, any building within the scattered site program upon completion of construction or rehabilitation of each such building. For purposes hereof, subject to the reasonable approval of HUD, construction or rehabilitation of a building shall be deemed to be completed when the Receiver's project architect determines that such building is ready for occupancy, and, if required by applicable law or ordinance, a certificate of occupancy has been issued for such building.

6. The Receiver shall prepare reports respecting the status and implementation of the scattered site program as of the end of each month in the year 1987, commencing with the month of September, 1987, and thereafter quarterly as of March 31, June 30, September 30 and December 31 of each year. Copies of the same shall be filed with the Court and served on

the parties within 20 days following the end of the period covered by each such report.

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program.

8. There shall be paid to the Receiver from funds provided by HUD pursuant to the ACC or Annual Contributions Contracts entered into between the Receiver and HUD, or by CHA if appropriate, (i) all direct costs and expenses reasonably incurred by the Receiver in connection with the performance by the Receiver of its duties pursuant hereto, (ii) to the extent not included in clause (i), a pro-rata share of all salary, compensation and other direct costs of those employees of The Habitat Company (other than Daniel E. Levin, James P. McHugh and Douglas R. Woodworth), James McHugh Construction Co. (other than James P. McHugh) or other entities which are affiliates of or controlled either directly or indirectly by the Receiver, who at the direction of the Receiver perform services on behalf of the scattered site program, for the actual time devoted by said employees to the performance of services for the scattered site program, and (iii) a fee in the amount of three percent (3%) of the aggregate development costs (excluding the costs described in clause (ii) above and any costs previously incurred by CHA)

for each building in the scattered site program (except buildings developed pursuant to a turnkey development) as reflected on the original development budget(s) therefor submitted by the Receiver and approved by HUD, the fee for such building being payable upon the completion thereof as determined in accordance with Paragraph 5 hereof. The Court will set a reasonable fee with respect to turnkey developments. The Court hereby determines that included in the category of expenditures for which the Receiver shall be entitled to reimbursement are all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) reasonably incurred or sustained by the Receiver by reason of the performance by the Receiver of its duties pursuant to the provisions hereof to the extent said costs, expenses and liabilities are not covered by the insurance described in Paragraph 2(b)(iii) above.

9. Nothing in this Order shall (i) preclude or restrict the Receiver or any party hereto from asserting any claims against the Receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or any other party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such claim, (ii) obligate HUD to furnish funds to the Receiver in addition to any funds which HUD would otherwise be obligated to provide

to CHA by virtue of any previous order of this Court or otherwise, or (iii) constitute a determination of the amount of funds which HUD is obligated to furnish by virtue of such previous orders or otherwise.

10. The Receiver is hereby excused from complying with Rule 9(b) of the Civil Rules of the United States District Court for the Northern District of Illinois.

11. The effective date of this Order (the "Effective Date") shall be the date upon which the Receiver has filed with this Court and served upon the parties hereto a notice signifying that the Receiver is satisfied that there is in force the insurance coverage referred to in Paragraph 2(b)(iii) above.

12. Except as and to the extent specifically provided in this Order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect. The Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information or material changes in conditions existing at the time of this order or any other matter.

ENTER:

United States District Judge

August 14, 1987

Minute Order Form (06/97)

# United States District Court, Northern District of Illinois

| Name of Assigned Judge or Magistrate Judge | Marvin Aspen | Sitting Judge if Other than Assigned Judge | |
|---|---|---|---|
| CASE NUMBER | 66 C 1459 | DATE | 8/12/1998 |
| CASE TITLE | Gautreaux vs. CHA | | |

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

**DOCKET ENTRY:**

(1) ☐ Filed motion of [ use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Receiver's motion for the entry of an order directing the CHA to comply with the 1987 receivership order and our 1988 HOPE VI orders is granted.

(11) ■ [For further detail see order attached to the original minute order.]

| | | | |
|---|---|---|---|
| | No notices required, advised in open court. | | number of notices |
| | No notices required. | | |
| ✓ | Notices mailed by judge's staff. | | date docketed |
| | Notified counsel by telephone. | | |
| | Docketing to mail notices. | | docketing deputy initials |
| | Mail AO 450 form. | | 8/12/1998 |
| | Copy to judge/magistrate judge. | | date mailed notice |
| GL | courtroom deputy's initials | Date/time received in central Clerk's Office | GL mailing deputy initials |

Document Number

A-15

(Reserved for use by the Court)

# ORDER

The Receiver has moved for the entry of an order directing the CHA to comply with the 1987 receivership order and our 1998 HOPE VI orders. The plaintiffs and the City of Chicago support this motion. The CHA contests it.

The receivership order in this case gives the Receiver "all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program." It specifies that these powers include, *inter alia*, "negotiating any contracts or other documents necessary or appropriate to implement the scattered site program." It also provides that the CHA must provide the receiver with "full access to all information, records, documents, [and] files relating to the scattered site program." As we have instructed the CHA previously, compliance with our orders is not optional and we will take every necessary step to ensure the compliance of all parties.

The present dispute arose when the local media reported that the CHA had reached an agreement with representatives of residents of the Cabrini-Green housing development with regard to future development on the Cabrini-Green site. This agreement, if approved, would settle a case brought by the residents against the CHA which is now pending before Judge Coar. The Receiver complains that it was not allowed to participate in the discussions which led to this agreement, and it asks that we enjoin the CHA from further unilateral non-elderly housing development activities and from implementing the Cabrini (and any other similar) deal, and that we compel the CHA to turn over control of such development to the Receiver and to disclose all information about CHA's non-elderly development activities to the Receiver.

The CHA's only meaningful objection to this request is that it has intended all along to seek a waiver of the primary injunction in this case, which, if we consented, would mean that the Receiver would have no role in development at Cabrini-Green. The problem is that *no waiver has been sought*. Without a waiver the CHA lacks the authority to unilaterally negotiate *any* contract or agreement respecting the construction of housing, for the receivership order provides that the scattered site program includes *all* non-elderly housing.

The CHA is hereby enjoined from developing or negotiating or otherwise pursuing any agreement with any person or entity regarding the development of dwelling units (a term defined in the original injunction in this case) without the full participation of the Receiver unless, of course, it has already secured a waiver for the contemplated development. By full participation we mean that the Receiver must have timely and unfettered access to "all information, records, documents, [and] files" relating to the contemplated development and that the Receiver must be given advance notice of all meetings (whether conducted in person or by any other means of communication) related to such development and allowed to attend and give his input. The Receiver, of course, possesses *all* of the CHA's development authority, so the CHA may not come to any agreement regarding development without his written consent.

As for the CHA's agreement with the Cabrini-Green representatives, the parties must now return to the drawing board and renegotiate their agreement with the full participation of the Receiver since the CHA has not yet secured a waiver of the injunction. If the CHA chooses instead to seek a waiver, it should know that we will consult the Receiver on the merits of the proposed waiver (and we will require the CHA to provide "all information, records, documents, [and] files" concerning the Cabrini-Green development and proposed waiver to the Receiver so that he may offer us intelligent and informed comments on the proposed waiver). So, the more prudent, effective, and efficient course will be to negotiate with the Receiver prior to seeking our involvement.

The Receiver's motion is granted. It is so ordered.

Minute Order Form (06/97)

**UNITED STATES DISTRICT COURT**
**FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 2.4**
**Eastern Division**

Dorothy Gautreaux, et al.

Plaintiff,

v.

Case No.: 1:66–cv–01459
Hon. Marvin E. Aspen

Chicago Housing Authority, et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Thursday, May 5, 2005:

MINUTE entry before Judge Marvin E. Aspen dated 5/5/05: Any responses to The Central Advisory Council's motion (85) to amend the June 3, 1996 Gautreaux Order establishing minimum income limits for certain public housing units are to be filed on or before 5/19/05. Any replies to be filed by 5/26/05. Judicial staff mailed notice(gl, )

# United States District Court, Northern District of Illinois

| Name of Assigned Judge or Magistrate Judge | Marvin Aspen | Sitting Judge if Other than Assigned Judge | |
|---|---|---|---|
| CASE NUMBER | 66 C 1459 | DATE | 7/14/2005 |
| CASE TITLE | Gautreaux vs. CHA | | |

**DOCKET ENTRY TEXT:**

CAC's motion to amend/correct (85) is denied without prejudice.

■[ For further details see text below.] Notices mailed by judge's staff.

## STATEMENT

(Reserved for use by the Court)

## ORDER

Presently before us is the Central Advisory Council's ("CAC") motion to amend this court's June 3, 1996 Order. Our June 3, 1996 Order concerned the revitalization and development of public housing in the North Kenwood-Oakland area. Among other provisions, the Order requires that half of the public housing units in the North Kenwood-Oakland area be reserved for families earning between 50-80% of area median income ("ami"). The CAC now requests that this court remove this provision, thereby opening up public housing units at the Lake Park Crescent development to be potentially occupied by public housing families who earn less that 50% ami. We took written submissions from interested parties, and on July 7, 2005, we heard from the parties and others who have an interest in this matter.

Although it would be impractical to provide a full statement here of all of the concerns expressed to us, we will attempt to briefly summarize the main positions on the CAC's motion. The CAC's primary concern is that the number of currently eligible public housing families is not sufficient to fill the group of units restricted by the 50-80% ami provision. Because of this deficiency, the Chicago Housing Authority ("CHA"), along with the property developer at Lake Park Crescent, plans to create a site-based waiting list drawn from the general public to supplement the existing CHA population and waiting lists to fill the 50-80% ami units. The CAC opposes this plan because it will bypass many current and former public housing families who are waiting to exercise their right to return to CHA housing. The U.S. Department of Housing and Urban Development appears to be in general agreement with the CAC's position.

The Receiver, previously appointed to develop public housing on behalf of the CHA, opposes the motion, emphasizing that the 50-80% ami provision was intended to ensure the revitalization of the community and deconcentration of poverty, and that this particular provision was an important factor in securing the support of the community for the June 3, 1996 Order.[1]

The plaintiffs in this case have stated that they support the CAC's proposed removal of the 50-80% ami provision in order to prioritize the placement of current public housing families who are waiting to return, but they have also expressed their appreciation of the Receiver's position and its concerns about the promises made to the residents of North Kenwood-Oakland about the development of public housing in their community.

**STATEMENT**

The CHA has expressed that it is amenable to either the position of the CAC or the Receiver and simply asks that we decide promptly in order to promote the leasing of these units as soon as possible. The CHA has also brought to our attention the fact that it has been able to fill half of the units at Lake Park Crescent subject to the 50-80% ami provision with eligible families from existing CHA residents and CHA waiting lists, and the current number of units at Lake Park Crescent affected by this motion appears to be no more than fifteen. If the 50-80% ami provision remains in place, the CHA will continue to seek out and give priority to those within the current CHA population and waiting lists, but it also wishes to implement the site-based waiting list drawn from income-eligible families in the general public.

Giving due consideration to all of the valid and important public concerns and issues expressed to us on both sides of this motion in the briefs and at the July 7, 2005 hearing, we do not see an extraordinary change in circumstances at this time which suggests we must modify our June 3, 1996 order by removing the 50-80% ami provision. If circumstances do change and suggest that this issue should be revisited, we will openly entertain a motion to do so. Accordingly, we deny the CAC's motion without prejudice.

[1] Although not parties to these proceedings, with the acquiescence of the other parties, we also heard from Alderman Toni Preckwinkle of the Fourth Ward, and Shirley Newsome, chair of the North Kenwood-Oakland Conservation Community Council. They represented that the 50-80% ami provision was and continues to be a necessary component for the revitalization of the North Kenwood-Oakland community and for the continued support for public housing in the area.

Marvin E. Aspen

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---|---|---|
| DOROTHY GAUTREAUX, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| v. | ) | 66 C 1459 |
| | ) | |
| | ) | |
| CHICAGO HOUSING AUTHORITY, et al., | ) | |
| | ) | |
| Defendants. | ) | |

ORDER

IT IS HEREBY ORDERED THAT:

1. The Chicago Housing Authority Tenant Selection and Assignment Plan, originally approved by Order of this Court on November 24, 1969, and amended pursuant to Orders of this Court dated September 12, 1983, June 9, 1989, October 1, 1990, October 6, 1994, August 14, 1995, July 20, 2001, August 29, 2002, and March 24, 2003 is hereby further amended to permit the creation of an on-site waiting list at the Lake Park Crescent mixed income development ("the Development") for households earning between 50% and 60% of the area median income to rent the public housing units at the Development which have been reserved for such households (the "50%-60% Units").

2. Effective with the date of this Order, CHA shall be authorized to permit the Lake Park Crescent development owner, Lake Park Crescent Associates I L.P., through its Management Agent, Draper and Kramer, Incorporated, to maintain an on-site waiting list of households eligible for the 50%-60% units located at the Development. This Waiting List ("the Lake Park Crescent 50%-60% waiting list") shall be comprised of income-eligible: (A) households responding to a direct marketing campaign

by Draper and Kramer soliciting tenants from the general public; (B) households identified through further outreach by CHA and Draper and Kramer to the CHA community area scattered-site and CHA general waiting lists; and (C) households currently in CHA housing. The on-site waiting list shall be maintained in accordance with federal regulations concerning the maintenance of public housing unit waiting lists, 24 C.F.R. §960.206, including the prohibition against discrimination.

3. Effective with the date of this Order, CHA shall be authorized to permit the Lake Park Crescent development owner, Lake Park Crescent Associates, I L.P., through its Management Agent, Draper and Kramer, Incorporated, to begin leasing from the Lake Park Crescent waiting list. Priority shall be accorded to any person on the waiting list, who otherwise meets the leasing requirements of the Development, who previously was listed either on the CHA community area scattered-site waiting list, the CHA general waiting list, or is living in CHA housing.

4. While leasing can occur immediately upon entry of this Order, CHA shall be required to continue mailing notice of the availability of 50%-60% units to each member of CHA's community area scattered-site waiting list and CHA's general waiting list. The Court authorizes CHA to conduct these mailings by sending notice to 1,200 families at a time, recognizing that administratively it is not practical to respond to inquiries from more than 1,200 families at one time. The content of the notice and timing of the mailings will be left to the discretion of the CHA.

5. Further, to insure that the Lake Park Crescent waiting list is utilized in a proper manner, Draper and Kramer will report quarterly to the CHA Occupancy Department and the plaintiffs on the utilization of the Lake Park Crescent waiting list, including identification of all information necessary to assess compliance with the federal requirement that selection of households form the Lake Park Crescent waiting list, given appropriate unit size, must be based on date and time of application, 24

C.F.R. §960.206(e). Such reports will be done in a manner agreeable to the CHA and plaintiffs' counsel. This information will be reviewed by the CHA and plaintiffs to determine what, if any, corrective action should be taken.

Marvin E. Aspen
United States District Court Judge

Dated: July 14, 2005

**UNITED STATES DISTRICT COURT**
**FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 2.5**
**Eastern Division**

Dorothy Gautreaux, et al.

Plaintiff,

v.

Case No.: 1:66–cv–01459
Hon. Marvin E. Aspen

Chicago Housing Authority, et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, September 9, 2005:

MINUTE entry before Judge Marvin E. Aspen dated 9/9/05Central Advisory Council's motions for clarification of the court's 7/14/05 order (137) and to amend the Court's 7/27/05 order [140] are denied.Judicial staff mailed notice(gl, )

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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