for them please Kathy Leslie

TO: Dick, Mac, Dan, Sue Marsh, Judith Liben, Judy Kelleher

FROM: Barbara Sard

DATE: October 4, 1989

RE: MCH v. Anthony - decision (we lost)

Unfortunately, as I was literally preparing to file the Requests for Rulings of Law and Proposed Order today, the enclosed came in the mail. Also unfortunately, I don't think our requests would have had any effect: Tuttle seems clearly to have understood the issues, and ruled against us on "families" and "leveraging". While I, (of course), still think we're right, Tuttle wrote a clear decision stating the best argument for their side on the merits. (i.e., he ignored their claims of mootness and no private right of action, so there are no bad precedents on these larger issues.) The other consideration, re whether to appeal, I think, is that it is not at all clear now that what we could win is all that different from what they are now trying to do with the LHA's and their Section 8s.

Can each of the lawyers please let me know ASAP what their initial reaction is re appeal, so I can let Sue know. If there is any difference, I'll set a meeting.

N.B. FOR CLERK'S USE ON:

16

JUDGMENT ENTERED ON DOCKET OCT. 3, 1989
PURSUANT TO MASS.R.CIV.P.58(a) AND NOTICE SENT
TO PARTIES PURSUANT TO MASS.R.CIV.P.77(d)
AS FOLLOWS:

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION

No. 89-0835

MASSACHUSETTS COALITION FOR THE HOMELESS ET AL PLAINTIFF(S)

v.

AMY S. ANTHONY DEFENDANT(S)

JUDGMENT
(SUMMARY)

(PURSUANT TO MASS.R.CIV.P.56)

THIS ACTION CAME ON TO BE HEARD BEFORE THE COURT, TUTTLE, J., PRESIDING, UPON MOTION OF THE *PLAINTIFF(S) and - DEFENDANT(S) FOR SUMMARY JUDGMENT PURSUANT TO MASS.R.CIV.P.56 THE PARTIES HAVING BEEN HEARD = AND THE COURT HAVING CONSIDERED THE *PLEADINGS - DEPOSITIONS - ANSWERS TO INTERROGATORIES - ADMISSIONS - AND AFFIDAVITS, FINDS THERE IS NO GENUINE ISSUE AS TO MATERIAL FACT AND THAT THE *~~PLAINTIFF(S)~~ --DEFENDANT(S) AMY S. ANTHONY IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW. IT IS ORDERED AND ADJUDGED THAT:

*COMPLAINT OF PLAINTIFFS BE AND HEREBY IS DISMISSED AGAINST DEFENDANT AMY S. ANTHONY ~~WITH~~ - WITHOUT COSTS.

~~*PLAINTIFF RECOVER OF DEFENDANT SUM OF $ , WITH INTEREST FROM TO IN THE SUM OF $ , AS PROVIDED BY LAW, WITH - WITHOUT COSTS.~~

DATED AT BOSTON, MASSACHUSETTS, THIS 25th DAY OF SEPTEMBER 19 89.

FORM OF JUDGMENT APPROVED:

JUSTICE OF THE SUPERIOR COURT DEPARTMENT

MICHAEL JOSEPH DONOVAN,
CLERK/MAGISTRATE

By: Anna K. Blakeslee
ASSISTANT CLERK

*Strike Inapplicable Words
Form Civ.P.45 (2nd Rev.) 6-88 500

A TRUE COPY OF JUDGEMENT DULY ENTERED ON Oct 3 1989

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 89-0835

MASSACHUSETTS COALITION FOR THE HOMELESS
and another[1/]

vs.

AMY S. ANTHONY[2/]

MEMORANDUM OF DECISION AND ORDER ON
MOTIONS FOR SUMMARY JUDGMENT

To combat the ever-increasing tragedy of homelessness in the Commonwealth, the Legislature has in recent years relied to a great extent on a program of rental subsidies for low-income families. In every fiscal year since 1987, the Legislature has funded roughly 2,000 rental subsidy certificates, known as chapter 707 certificates. These 2,000 chapter 707 certificates are set aside for families living in emergency shelters, and are administered by the Executive Office of Communities and Development (EOCD).

In addition to the 2,000 chapter 707 certificates set aside for the homeless, the Commonwealth provides rental assistance to families who are not currently living in emergency shelters. The federal government also funds rental subsidies, known as Section 8 certificates. These additional sources of housing assistance are

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[1/] Raymond Shaffer. Mr. Shaffer is the father of a family that was in danger of losing their home; he received a rental subsidy certificate after this suit was filed.

[2/] Secretary of the Executive Office of Communities and Development.

administered in part by EOCD, and in part by various local housing authorities created under G.L. c. 121B, § 3. Eligibility for these additional programs is based primarily on a family's income, and is not restricted to the homeless.

For FY1989, the Legislature took a slightly different tack in its approach to low-income housing assistance. Line item 3722-9007 of the FY1989 budget provided for the usual 2,000 chapter 707 certificates targeted at the homeless. It also imposed a new duty on EOCD:

> . . . the executive office of communities and development shall leverage an equal number [2,000] of chapter 707 and Section 8 rental certificates, so called, for use by homeless families and families at risk of homelessness as the use of said certificates currently being utilized by eligible families is discontinued.

It is this second clause of the line item that has given rise to the suit now before the court. The plaintiffs contend that the defendant has not obeyed the mandate of this statutory provision, and seeks to give it effect even though FY1989 is now over. Because no material facts are disputed by the parties, their cross-motions for summary judgment may properly be decided as a matter of law. See Community Nat'l Bank v. Dawes, 369 Mass. 550, 554 (1976).

All parties agree that the second clause of line item 3722-9007 did not create any new rental subsidy certificates. Instead, it instructed the EOCD how to distribute certain "turn-over" certificates. Turn-over certificates are those that have previously been funded and issued, and are later surrendered by a

family for one reason or another. Prior to FY1989, these turn-over certificates would be reissued by EOCD or a local housing authority based on existing broad eligibility criteria. Thus, they would not necessarily go to a homeless family. The FY1989 line item changes the criteria for reissuing 2,000 of the turn-over certificates that are administered by EOCD, but the parties have different views of what the new criteria must be.

After reviewing the legislative history of line item 3722-9007, the plaintiffs correctly state that there is "a clear legislative purpose to reduce the number of homeless families in emergency shelter and to prevent more families from entering emergency shelter. [sic]" From this uncontroversial premise, the plaintiffs then conclude that "the legislative purpose could only be fulfilled if the 2,000 leveraged turnover subsidies went to families with children under the age of 21, as opposed to single individuals or childless couples, and if such families had income within the emergency assistance eligibility limits, which are significantly lower than the general income limits for eligibility for subsidies."[3/] Under the guise of a syllogism, the plaintiffs have completely rewritten the line item in question.

Had the legislature wanted to incorporate the strict eligibility criteria advanced by the plaintiffs into clause 2 of the line item, it easily could have done so. In fact, it is clear

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[3/] The age and income criteria to which the plaintiffs refer are taken from the Department of Public Welfare standards for emergency shelter eligibility. 106 C.M.R. § 309 et seq.

that they did not want to incorporate any extant criteria. Clause 4 of the line item requires that the EOCD report back to the legislature on exactly what eligibility criteria the agency ultimately decides to adopt to distribute the 2,000 turn-over certificates. The EOCD is thus given wide discretion as it attempts to fulfill the broad legislative purpose of both reducing and preventing homelessness. As a policy matter, it may be that eligibility criteria somewhat broader than the emergency shelter standards of the D.P.W. will be more effective in preventing homelessness; certainly, the EOCD is better equipped than the courts to make that determination.

The plaintiffs' conclusion that fewer than 2,000 turn-over certificates were issued by the EOCD in accordance with clause 2 of the line item rests largely on their erroneous interpretation of the statute. The other grounds that the plaintiffs advance in an effort to discount the turn-over certificates issued by EOCD are also unfounded. The plaintiffs contend that the word "families" as used in clause 2 only refers to households with children. According to the plaintiffs, any turn-over certificates issued to individuals or childless couples cannot be counted toward the 2,000 mandated by the line item.

The definition of "family" from Black's Law Dictionary relied on by the plaintiffs is not dispositive. It points out that the word sometimes refers only to a household, without regard to children. In any event, the defendant cites a state and federal regulatory scheme that considers individuals and childless couples

alike to be "families" for the purpose of housing assistance. See 24 C.F.R. § 812.2; 760 C.M.R. § 5.04. Interpreted against this regulatory backdrop, the plaintiffs' narrow interpretation of the word "families" in the line item is unwarranted.

The plaintiffs also seek to exclude from the tally of turn-over certificates any that would have been issued to "homeless families and families at risk of homelessness" even in the absence of clause 2 of the line item. According to the plaintiffs, the Legislature's mandate would be rendered superfluous to the extent that such certificates are counted towards the required 2,000 figure. A Legislature may indeed desire to induce affirmative actions by the statutes it enacts; however, clause 2 might also have been designed to prevent EOCD from reducing the number of turnover certificates that are distributed to the designated class of beneficiaries. Thus, clause 2 has real significance whether it is viewed as an affirmative command or a negative injunction.

The plaintiffs' final conclusion that only 714 turn-over certificates were issued pursuant to clause 2 of the line item is incorrect, since it is based on erroneous interpretations of the statutory language. They have thus failed to establish that the defendant is liable for a breach of statutory duty, and are not entitled to summary judgment. By contrast, the defendant has proven that EOCD took clause 2 seriously, and issued 2,000 turn-over certificates in accordance with its terms.

For the first time in FY1989, EOCD implemented revised selection criteria for the distribution of Section 8 turn-over

certificates. These new criteria incorporated a preference for the homeless and those in imminent danger of losing their homes. At least 1,000 certificates turned over in FY1989 will be issued under these new criteria, consistent with the intent of clause 2 of the line item.

In addition, between 800-1,000 chapter 707 turn-over certificates were issued in FY1989 in accordance with eligibility criteria promulaged by EOCD in 1986. These criteria are also narrower than the previous eligibility standards for housing assistance, and they are directed primarily at the homeless and those at risk of homelessness. Thus, these certificates were also issued in accordance with the line item directive. As already discussed, the fact that the narrower eligibility criteria predated the line item does not mean that these certificates must be discounted.

Although the parties contest the status of other marginal categories of certificates, enough evidence has already been considered to warrant the conclusion that EOCD complied with clause 2 of the line item. Meeting the needs of the homeless is a difficult, if not impossible task. Although plaintiffs' intentions are excellent, they are essentially asking the court to gainsay EOCD's interpretation of a broad legislative mandate. Such judicial intervention is unwarranted on the facts presented.

**ORDER**

The plaintiffs' motion for summary judgment is **DENIED**. The defendant's motion for summary judgment is **ALLOWED**.

Elbert Tuttle
Justice of the Superior Court

**DATED:** September 25, 1989