

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
N.A.A.C.P., BOSTON CHAPTER,	)	
	)	
Plaintiff	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 78-850-DPW
ALPHONSO JACKSON, SECRETARY	)	
OF HOUSING AND URBAN	)	
DEVELOPMENT,	)	
	)	
THE BOSTON HOUSING AUTHORITY,	)	
	)	
THE CITY OF BOSTON	)	
	)	
Defendants	)	
_____	)	

**SUPPLEMENTAL COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

This Supplemental Complaint asserts claims for declaratory and injunctive relief against the original defendant, the Secretary of Housing and Urban Development (“HUD”), for breach of the Consent Decree entered in this action, as modified on February 8, 2000, and against HUD and the added defendants, the Boston Housing Authority (“BHA”) and the City of Boston (“the City”), for breach of an agreement to modify the provisions and implementation of the Consent Decree (“the Modification Agreement”) with respect to subsidies for 400 Section 8 vouchers for family housing (“Litigation Vouchers”).

Through their acts and omissions, the defendants have thwarted the

implementation of the modified Consent Decree and the Modification Agreement and NAACP now seeks declaratory and injunctive relief to rectify the situation and put the administration of the Litigation Vouchers on the right track toward their intended objective – to enhance the opportunity for minority families living in segregated minority neighborhoods of Boston to make an integrative move to predominantly white neighborhoods.

### **The Parties**

1. Plaintiff National Association for the Advancement of Colored People (“NAACP”) is a non-profit membership corporation organized and incorporated under the laws of the State of New York. Its National Headquarters is located at 4805 Mount Hope Drive, Baltimore, Maryland, and its Boston Branch office is located at The Mall of Roxbury, 330 Martin Luther King Boulevard, Boston, Massachusetts. Plaintiff NAACP is dedicated to improving the legal, educational, political and social status of Black persons in the United States, including the Boston metropolitan area.

2. Defendant Alphonso Jackson is the Secretary of HUD and has his principal office in Washington, D.C. He is statutorily charged with the administration of all programs funded by HUD. Defendant Jackson is sued in his official capacity.

3. Defendant City of Boston (“the City”) is a geographical and political subdivision of the Commonwealth of Massachusetts and exists as a charter city organized pursuant to the laws of Massachusetts. Its offices are located at One City Hall Plaza, Boston, Massachusetts.

4. Defendant Boston Housing Authority (“BHA”) is a public agency that provides subsidized housing to low and moderate income individuals and families. It was

established in 1935 by the Mayor and City Council of Boston in accordance with the provisions of M.G.L., c. 121B. It is managed and controlled by an administrator who is appointed by and serves at the pleasure of the Mayor. The BHA receives federal assistance to administer rental assistance programs such as the federal Section 8 voucher program. The BHA is located at 52 Chauncy Street, Boston, Massachusetts.

### **Jurisdiction and Venue**

5. This Court has jurisdiction over the claims against HUD pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* and the Consent Decree entered in the original action, as modified on February 8, 2000 by an Agreement Among the N.A.A.C.P., Boston Chapter, The U.S Department of Housing and Urban Development, and The City of Boston and The Boston Housing Authority (“Modification Agreement”). A copy of the Consent Decree is attached as Exhibit A. A Copy of the Modification Agreement is attached as Exhibit B.

6. This Court has jurisdiction over the claims against the City and the BHA pursuant to 28 U.S.C. § 1367(a) in that the claims are so related to the claims against HUD that they form part of the same case or controversy.

7. Venue of this action is in the District of Massachusetts pursuant to 28 U.S.C. § 1391 (b) and (e), this being the district in which a substantial part of the events or omissions giving rise to the claims occurred.

8. Plaintiff’s prayer for declaratory and injunctive relief is brought pursuant to 28 U.S. C. § 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

**Facts Common to All Counts**

**The Consent Decree and the Modification Agreement**

9. The Consent Decree in the underlying action required, among other things, that HUD “provide subsidies for 500 units having, as an average 3 bedrooms, of Section 8 family housing ... in addition to what any public housing agency operating in Boston may receive under a fair share allocation.” Of the 500 units, 300 were to be funded through project-based subsidies, and 200 through tenant-based certificates or vouchers.

10. HUD awarded the subsidies for 400 units, comprising the 300 project-based units and 100 of the 200 tenant-based units, to the BHA.

11. HUD awarded the other 100 tenant-based units to the Massachusetts Department of Housing and Community Development (“DHCD”), which in turn contracted out their administration to the Metropolitan Boston Housing Partnership (“MBHP”).

12. In late 1999, NAACP, HUD, the BHA, and the City resolved a long-standing disagreement as to the proper use of the above-described subsidies and memorialized the resolution in the Modification Agreement.

13. By its terms, the Modification Agreement required that the Consent Decree be modified in certain respects and provided that the Modification Agreement would not become effective unless and until the Court granted a joint motion to modify the Consent Decree. That motion was granted on February 8, 2000. A copy of the motion is attached as Exhibit C, and a copy of the Court’s ruling is attached as Exhibit D.

14. The Modification Agreement acknowledged that

the purpose of the 500 units of housing created by these Section 8 subsidies is to increase the number of affordable

desegregated housing opportunities available to minority families in order to remedy HUD's failure, as found by [this Court]... affirmatively to further fair housing in the City in that the Court found that [among other things], despite HUD's knowledge that a housing emergency existed which had a disproportionate impact on low income black families, HUD did not ... finance the increase of desegregated housing stock to give minority families meaningful choice of location.

15. The Modification Agreement, and the Consent Decree as modified, required that the project-based subsidies be converted into tenant-based subsidies, thus yielding 400 Litigation Vouchers to be administered by the BHA, and that all of these Litigation Vouchers be made available only to minority families desirous of making an integrative move into a predominantly white neighborhood ("NAACP Families" or "Skinner Families").

16. The Modification Agreement further provided that the issuance and lease-up of the Litigation Vouchers were to be conducted in conjunction with housing search counseling services to the prospective recipients. Such services were to be provided by the Boston Fair Housing Commission (BFHC), one of the program areas of the City's Office of Civil Rights, with the help of a \$640,000.00 grant under HUD's Community Choice Housing Counseling Program (the "Housing Choice Counseling Grant").

17. The Modification Agreement obligated "[t]he BHA and HUD ... to promptly execute [a] contract to fund the housing [search counseling services] and the BHA, HUD and the City ... to promptly take any other steps necessary to expeditiously make this funding available to the BFHC if and when the Court approves the modification of the Consent Decree necessary to permit the use of the 400 Section 8 tenant-based subsidies set forth in this [Modification] Agreement."

18. The Modification Agreement provided that all 400 Litigation Vouchers were to be issued within twenty seven (27) months after the \$640,000.00 Housing Choice Counseling Grant “can be drawn upon by the BFHC.”

19. The \$640,000 Housing Choice Counseling Grant intended for BFHC had already been provided to the BHA in October, 1999 and was thus ready to be made available to BFHC as of February 8, 2000, the day the Court approved the modification of the Consent Decree.

20. Notwithstanding the fact that the Housing Choice Counseling Grant was ready to be made available to BFHC since February 8, 2000, the funds were not made available to BFHC until August 26, 2002, thereby delaying the start up of the implementation of the Modification Agreement by over 2.5 years.

21. Moreover, the BHA did not begin to issue the Litigation Vouchers to NAACP families until June 2003 –when it issued only 15 such vouchers.

22. Between 2001 and 2002, NAACP made numerous inquires to HUD, the BHA, and the City regarding the progress of implementation of the Litigation Vouchers.

23. On July 2, 2003, NAACP requested that HUD transfer the City’s Litigation Vouchers, and the allocation for the related counseling services, to MBHP in light of the inordinately slow pace of the City’s and the BHA’s implementation of the Modification Agreement, in stark contract to the progress MBHP made in issuing and leasing-up the Litigation Vouchers under its administration.

24. Invoking a provision in the Modification Agreement regarding the method by which complaints such as the NAACP’s should be addressed, the BHA submitted a plan on July 25, 2003 to speed up implementation of the Modification Agreement.

25. The BHA and BFHC reports for the two reporting periods following the new plan (July – August 2003 and September – October 2003) showed dramatic improvements in outreach, counseling, issuance of vouchers, lease-up success, and integrative moves.

26. By a letter dated October 21, 2003, however, the BHA informed HUD that between 2001 and 2003 it had “borrowed” the subsidies for the 400 Litigation Vouchers to fund housing vouchers for non-Skinner Families, with the intention of replacing them through attrition. As of October 2003, the rate of attrition was insufficient and the BHA did not have enough money to fund all of the vouchers earmarked for Skinner Families.

27. HUD knew or should have known even before October 21, 2003 that the BHA had diverted funding intended for the Litigation Vouchers to other uses.

28. Neither the BHA nor HUD notified NAACP that the BHA used the Litigation Vouchers for purposes unrelated to the implementation of the Consent Decree or that the BHA had insufficient funds on hand to fulfill its obligations under the Modified Agreement.

29. Between October 2003 and October 2004, the rate at which the BHA issued Litigation Vouchers declined and in some reporting periods the BHA did not issue any Litigation Vouchers at all.

**Calendar Year 2005 Renewal Funding for Section 8 Tenant-Based Vouchers**

30. For Calendar Year 2005 (“CY 2005”), Congress changed the method of funding the Section 8 tenant-based voucher program from a unit-based approach where funding was provided based on the total number of vouchers authorized by HUD to a dollar-based or budget-based approach.

31. Congress mandated that HUD renew each housing agency's funding for Section 8 tenant-based vouchers based on actual leasing and cost data, averaged for the months of May, June, and July of 2004 (the "2004 Snapshot"), up to the maximum number of vouchers each housing agency was authorized to administer.

32. Congress further mandated that HUD establish and apply a 2005 Annual Adjustment Factor and that HUD make any necessary adjustments for the costs associated with the first-time renewal of certain types of vouchers, namely tenant protection vouchers and HOPE IV vouchers.

33. Finally, Congress mandated that HUD, to the extent necessary to stay within the amount appropriated by Congress, pro-rate each public housing agency's renewal funding allocation otherwise established pursuant to the funding formula described in paragraphs 31 and 32 above.

34. For CY 2005, HUD applied an across-the-board pro-rata reduction factor of approximately 4% to each housing agency's renewal funding.

35. HUD provided a fixed sum to each housing agency, and each agency was required to manage all of its Section 8 tenant-based voucher programs within that budget.

36. With respect to seeking CY 2005 renewal funding for litigation vouchers, HUD treated litigation vouchers as it did any other voucher; HUD failed to present litigation vouchers to Congress as a separate line item request that evidenced HUD's pre-existing legal obligations under outstanding court orders and settlement agreements that required "unit-based" budgeting and appropriations for the full number of litigation vouchers at the full per-unit amounts mandated by such orders and settlement agreements.



37. HUD made no effort, and thus failed to give Congress the opportunity, to hold Litigation Vouchers “harmless,” i.e., exempt from various measures to freeze and otherwise restrict funding for the Section 8 program, including the dollar-based budget approach based strictly on units under lease, as opposed to units authorized, during the arbitrarily set historic snapshot period that was instituted for CY 2005 and thereafter, as well as the pro-rata reductions in HUD’s allocations to the public housing agencies necessitated by Congress’s appropriating a lower amount for the Section 8 program than was needed to renew even the units under lease during the 2004 Snapshot period.

38. During the 2004 Snapshot period, the BHA reported on average 217 Litigation Vouchers under lease per month, with an average subsidy of \$1264.72 per unit or voucher. This average subsidy was consistent with the subsidy needed for a three bedroom apartment based on HUD’s published list of Fair Market Rents for the Boston metropolitan area.

39. The remaining 183 Litigation Vouchers, which had been “borrowed” by the BHA for other purposes, were reported by the BHA as “All Other Vouchers,” with an average subsidy of \$977.05 per unit or voucher. This average subsidy was consistent with the subsidy needed for a two bedroom apartment based on HUD’s published list of Fair Market Rents for the Boston metropolitan area.

40. Full renewal funding for the 400 Litigation Vouchers for CY 2005, had they been held “harmless,” would have been not less than \$6,025,032. The actual renewal funding for the 400 Litigation Vouchers was \$4,770,096, leaving a shortfall of \$1,254,936.

41. Under the funding formula mandated by Congress for CY 2005, including

the 4% pro-rata reduction factor applied by HUD, had all 400 Litigation Vouchers been leased-up and reported to HUD as Litigation Vouchers at the time of the 2004 Snapshot, instead of 183 Litigation Vouchers being leased-up and reported as “All Other Vouchers,” the BHA would have been entitled to an additional \$627,976 in CY 2005.

**Calendar Year 2006 Renewal Funding for Section 8 Tenant-Based Vouchers**

42. For Calendar Year 2006 (“CY 2006”), Congress mandated that HUD use each housing agency’s CY 2005 Funding Eligibility, prior to the pro-rata reduction, as the starting point for renewal funding. Congress then mandated that HUD establish and apply a 2006 Annual Adjustment Factor and that HUD take into account any necessary adjustments for the costs associated with the first-time renewal of certain types of vouchers, namely tenant protection vouchers, HOPE IV vouchers, or vouchers added to an agency’s base allocation.

43. As in CY 2005, Congress further mandated that HUD, to the extent necessary to stay within the amount appropriated by Congress, pro-rate each public housing agency’s renewal funding allocation otherwise established pursuant to the funding formula described in paragraph 42 above.

44. For CY 2006, HUD applied an across-the-board pro-rata reduction factor of approximately 5.4% to each housing agency’s renewal funding.

45. HUD provided a fixed sum to each housing agency, and each agency was required to manage all of its Section 8 tenant-based voucher programs within that budget.

46. Under the funding formula mandated by Congress for CY 2006, including the pro-rata reduction, had all 400 Litigation Vouchers been leased-up and reported to HUD as Litigation Vouchers at the time of the 2004 Snapshot, instead of 183 Litigation

Vouchers being leased-up and reported as “All Other Vouchers,” the BHA would have been entitled to an additional \$640,119 in CY 2006.

**First Cause of Action –NAACP v. HUD**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing  
Under the Consent Decree)**

47. NAACP restates the allegations in paragraphs 1 through 46 as if separately set forth fully herein.

48. Every consent decree has an implied covenant of good faith and fair dealing.

49. HUD breached its obligation of good faith and fair dealing under the consent decree by failing to request renewal funding for litigation vouchers in a separate line item that evidenced HUD’s pre-existing legal obligations under outstanding court orders and settlement agreements that required “unit-based” budgeting and appropriations for the full number of litigation vouchers at the full per-unit amounts mandated by such orders and settlement agreements.

50. HUD’s failure to give Congress the opportunity to hold litigation vouchers harmless from the 2004 Snapshot and pro-rata funding reductions resulted in a shortfall in the funding for Litigation Vouchers in CY 2005 and CY 2006.

**Second Cause of Action –NAACP v. HUD**  
**(Declaratory Judgment)**

51. NAACP restates the allegations in paragraphs 1 through 50 as if separately set forth fully herein.

52. There exists between the parties an actual controversy as to whether HUD is obligated to make a separate line item request for an appropriation for the renewal of Litigation Vouchers sufficient for 500 units of housing having as an average 3 bedrooms.

Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has the authority to enter a judgment declaring the rights and obligation of the parties in order to resolve the controversy between them.

53. NAACP is entitled to a judgment declaring that in all appropriation requests submitted to the United States Congress, HUD is obligated to make a separate line item request for the renewal of Litigation Vouchers, to designate the subsidies for the 500 NAACP Litigation Vouchers as court-required, and to seek an appropriation for renewing all of them, regardless of whether all were under lease during any period, and in an amount sufficient to assure that the housing for which the subsidies are to be used has as an average three bedrooms

**Third Cause of Action –NAACP v. HUD**  
**(Breach of the Consent Decree)**

54. NAACP restates the allegations in paragraphs 1 through 53 as if separately set forth fully herein.

55. NAACP has fulfilled all of its obligations under the Consent Decree.

56. HUD was obligated under the Consent Decree, as modified on February 8, 2000, to ensure that the Litigation Vouchers were issued only to Skinner Families.

57. Through its acts and omissions, HUD breached its obligation to ensure that the Litigation Vouchers were issued only to Skinner Families.

58. HUD's breach has caused, among other things, a delay in the start up of the implementation of the Modification Agreement and the issuance of Litigation Vouchers to Skinner Families, adversely affecting the number of Litigation Voucher leased to Skinner Families and reported as such during the 2004 Snapshot, and causing a shortfall in funding for the Litigation Vouchers in CY 2005 and CY 2006.

**Fourth Cause of Action –NAACP v. HUD, the BHA, and the City**  
**(Breach of the Modification Agreement)**

59. NAACP restates the allegations in paragraphs 1 through 58 as if separately set forth fully herein.

60. NAACP has fulfilled all of its obligations under the Modification Agreement.

61. HUD and the BHA were obligated under the Modification Agreement to promptly execute a contract to fund the housing search counseling services, and HUD, the BHA, and the City were obligated to promptly take any other steps necessary to expeditiously make the funding available to the BHFC if and when the Court approved the modification of the Consent Decree.

62. HUD, the BHA, and the City breached their obligations to promptly take steps necessary to expeditiously make funding for the housing search counseling services available to the BHFC.

63. HUD, the BHA, and the City were also obligated under the Modification Agreement to ensure that the Litigation Vouchers were issued only to Skinner Families.

64. Through their acts and omissions, HUD, the BHA, and the City breached their obligations to ensure that the Litigation Vouchers were issued only to Skinner Families.

65. The breaches by HUD, the BHA, and the City have caused, among other things, a delay in the start up of the implementation of the Modification Agreement and the issuance of Litigation Vouchers to Skinner Families, adversely affecting the number of Litigation Voucher leased to Skinner Families and reported as such during the 2004 Snapshot, and causing a shortfall in funding for the Litigation Vouchers in CY 2005 and

CY 2006.

**REQUEST FOR RELIEF**

WHEREFORE, NAACP respectfully requests that this Court:

- A. Assume jurisdiction over all claims in this Supplemental Complaint and retain jurisdiction of this action for all purposes, including the entry of such additional orders as the Court deems necessary and proper;
- B. Enter judgment in favor of NAACP on all counts of this Supplemental Complaint;
- C. Enter a final judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, declaring that in all appropriation requests submitted to the United States Congress, HUD is obligated to make a separate line item request for the renewal of Litigation Vouchers, to designate the subsidies for the 500 NAACP Litigation Vouchers as court-required, and to seek an appropriation for renewing all of them, regardless of whether all were under lease during any period, and in an amount sufficient to assure that the housing for which the subsidies are to be used has as an average three bedrooms.
- D. Enter an order requiring the following:
  1. HUD shall promptly rescind the award to the BHA of the subsidies provided by HUD in accordance with Section II.C.2 of the Consent Decree (as modified on February 8, 2000) and the Agreement Among the N.A.A.C.P., Boston Chapter, the U.S. Department of Housing and Urban Development, and the City of Boston and the Boston Housing

Authority, executed on or about December 15, 1999, for 400 out of 500 units of family housing, having as an average three bedrooms, for use by minority families wishing to make an integrative move to a predominantly white neighborhood (“Litigation Vouchers”).

2. Immediately thereafter, HUD shall award the subsidies for the 400 Litigation Vouchers to the Massachusetts Department of Housing and Community Development (“DHCD”), with the condition that DHCD contract with the Metropolitan Boston Housing Partnership (“MBHP”) to administer the 400 Litigation Vouchers in accordance with exactly the same terms, standards and conditions that govern MBHP’s administration of 100 Litigation Vouchers under the Agreement Among N.A.A.C.P., Boston Chapter, Metropolitan Boston Housing Partnership, and the United States Department of Housing and Urban Development, executed on or about September 30, 1999.
3. If the funds for the 400 Litigation Vouchers transferred from the BHA to MBHP are insufficient to fully fund them at HUD’s Fair Market Rent rates in effect for the Boston metropolitan area, HUD shall provide additional funding from HUD’s Section 8 and/or other legally available appropriations, reserves and other resources to make up the shortfall;
4. If HUD’s Section 8 and/or other legally available appropriations, reserves and other resources are, or become, insufficient to fully renew the funding for the Litigation Vouchers at HUD’s Fair Market Rent

rates in effect for the Boston metropolitan area for the relevant budget period, HUD shall provide the maximum funding available and use its best efforts to obtain an appropriation for the shortfall.

5. HUD, the BHA, and the City shall, jointly or severally, provide \$ 295,000.00 to MBHP to fund housing search counseling services in conjunction with its administration of the 400 Litigation Vouchers transferred from the BHA.

E. Award such other relief as the Court deems just, proper, and equitable.

Plaintiff, N.A.A.C.P., BOSTON CHAPTER,

/s/ Natasha C. Lisman

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DATED: November 15, 2006

**CERTIFICATE OF SERVICE**

I, Natasha C. Lisman, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on November 15, 2006.

/s/ Natasha C. Lisman

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