IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSIE JAMES, et al.,

Plaintiff(s),

-vs-

TOLEDO METROPOLITAN HOUSING AUTHORITY, et al.,

Defendant(s).

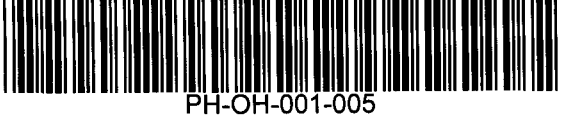
No. C74-68

OPINION AND ORDER

* * * * *

This matter is before the court on a motion by defendant Lucas Metropolitan Housing Authority ["LMHA"] to modify the Affirmative Action Plan ["Plan"] contained in the District Court's Memorandum and Order of December 10, 1985, and a motion by defendant United States Department of Housing and Urban Development ["HUD"] to modify the same Plan in a different manner.

The Plan was ordered by District Judge Don J. Young in his Memorandum and Order of December 10, 1985, to eliminate the unlawful racial segregation of LMHA's housing projects. The Sixth Circuit affirmed the Plan, "with certain changes," as a permissible means of remedying past discrimination. Jaimes v. Lucas Metropolitan Housing Authority, 833 F.2d 1203, 1207 (6th Cir. 1987). On June 6, 1988, LMHA filed this motion to modify the Plan. This court held an evidentiary hearing on October 27, 1988, at which



LMHA argued in favor of the proposed modification and HUD argued against the proposed modification. The sole witness at this hearing was LMHA's Director of Occupancy, Linnie Willis. Following the hearing, both parties submitted post-hearing briefs. HUD also submitted its own motion to modify the Plan.

The Plan currently provides that each applicant for LMHA housing is offered a unit in a location where the applicant's race does not predominate. The Plan also provides that "[i]f the applicant refuses all units offered in locations in which his or her race does not so predominate, other than for good cause, the applicant shall lose his or her place and be placed at the end of the waiting list." Memorandum and Order of December 10, 1985, at 15, ¶ II.F. LMHA's proposal would modify ¶ II.F. so that an applicant who refuses, for other than good cause, a unit offered in a location in which his or her race does not predominate, would be removed from the waiting list. Although the plaintiffs have made no objection to this modification, HUD does object.

HUD's proposed modification concerns ¶ III.C. This paragraph assigns certain priorities to different types of applicants or transferees. Hardship transferees (a transfer necessary to place a tenant family in a dwelling of appropriate size or to meet a compelling medical or employment need) have first priority in the assignment of housing units. Integrative transferees (a transfer to a unit

in a location in which the transferee's race does not predominate) have second priority. Third priority is assigned to new applicants whose assignment will decrease the segregation of the location to which they are assigned. Fourth priority is given to new applicants whose assignment will increase or not affect the segregation of the location to which they are assigned. HUD's proposed modification would strike subparagraphs 3 and 4 of ¶ III.C., eliminating the distinction between third and fourth priorities, and add a new subparagraph 3 as follows: "New applicants for housing shall have third priority in the assignment of dwellings and shall be offered available units in accordance with the provisions of Paragraph II.D-E."

HUD also suggests that the Plan be modified to state that "the Plan should end upon the court's finding that its goal has been accomplished or upon a motion of either party followed by a hearing on the issue."

The reason motivating LMHA's desire to modify the Plan is the difficulty LMHA has had in achieving the objectives of the Plan. As stated in ¶ I.B.1, "[t]he objective of remedying past discrimination shall be achieved and maintained so long as the ratio between minority and non-minority occupants of family housing locations is approximately three to one (3:1) and in elderly locations, one to one (1:1)."

The problem facing LMHA stems, in part, from the racial composition of the waiting list. Minority applicants

comprise two-thirds of the waiting list. Among those applicants waiting for family housing, the racial imbalance is even greater: eighty-nine percent of such applicants are minority persons. In order to work toward the Plan's goal of a three to one ratio of minority to white tenants, LMHA has been preferring white applicants to black applicants. For example, Ms. Willis testified that if a vacancy occurs in a project with a percentage of minority tenants greater than the Plan's goal, LMHA will offer the unit to several non-minority applicants first, even if that requires skipping over minority applicants to reach the next non-minority applicant on the list. After two or three attempts to place a non-minority applicant in the available unit, LMHA will then offer the unit to the person at the top of the waiting list regardless of his or her race. Because the waiting list has been closed for several years, the same non-minority applicants, even when they are moved to the end of the waiting list for refusing a unit without good cause, are being offered and refusing units in projects where their race does not predominate.

The Sixth Circuit affirmed the Plan, noting that the race consciousness of the Plan does not involve reverse discrimination. Jaimes, 833 F.2d at 1207. Because the Plan, as written, is facially neutral, it neither prefers blacks over whites nor whites over blacks. Applying the strict scrutiny test of Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986), the court concluded that the Plan imposes a minimal

burden on the parties involved and is, therefore, narrowly tailored to achieve its purpose. Jaimes, 833 F.2d at 1207. The Sixth Circuit cautioned, however, that the Plan's three to one ratio may not be used to prefer either whites or blacks in obtaining public housing. A ratio is permissible and desirable as a goal for integration, but it should not be interpreted as a strict racial quota. Id. See also City of Richmond v. J.A. Croson Co., 109 S. Ct. 706 (1989)(rejecting, except in extreme cases, racial preferences or quotas). It is therefore improper for LMHA to use the Plan's three to one ratio to prefer white applicants over black applicants.

The difficulty in meeting the Plan's goal of a three to one ratio in family projects will, in part, be alleviated by the reopening of the waiting list. The waiting list has been closed because of the limited number of units available and the high number of applicants already on the list. It is understandable that LMHA is reluctant to reopen the waiting list without reducing the number of applicants already on the list. LMHA's proposal, therefore, to remove a person from the waiting list who refuses a unit for other than good cause in a project in which his or her race does not predominate, is a reasonable modification. In view of the fact that the plaintiffs, who represent those persons seeking unsegregated public housing in Lucas County, do not oppose LMHA's proposed modification, the court therefore accepts LMHA's proposal and will so modify the Plan.

HUD, LMHA's co-defendant in this case, opposes LMHA's proposed modification. HUD correctly points out that LMHA has been violating both the letter and the spirit of the Plan by preferring white applicants to black applicants in attempting to meet the Plan's goal of a three to one ratio in family projects. HUD's counter-proposal that LMHA simply administer the Plan according to its terms, however, does not go far enough to solve LMHA's dilemma. If applicants face the choice of either accepting a unit in a project in which their race does not predominate or being removed from the waiting list, they will be encouraged to accept such a unit, and thus, help in achieving the Plan's goal of a three to one ratio.

The court notes that the Plan currently calls for affirmative action to market segregated locations to persons whose race does not predominate. See ¶ IV.A-E. The court expects that LMHA will seriously pursue such marketing techniques in order to achieve the goals of the Plan.

The Sixth Circuit has suggested to this court that the Plan be amended in two ways. First, the Plan should terminate "upon the court's finding that its goal has been accomplished or upon a motion of either party followed by a hearing on the issue." Jaimes, 833 F.2d at 1207. Second, the Sixth Circuit suggested that this court order "an annual review of the racial composition of all the housing projects, as well as a review of the family composition within the projects, in order to determine which families were in units

of appropriate size and which projects were ripe for further integrative transfers." Id. This court concludes that both of these modifications would further the goals of the Plan.

It is therefore

ORDERED that the Affirmative Action Plan contained in the Memorandum and Order of December 10, 1985, is modified as follows:

> ¶ II.F. will now state: "If the applicant refuses all units offered in locations in which his or her race does not so predominate, other than for good cause, the applicant shall lose his or her place and be removed from the waiting list. . . . "
>
> ¶ I.C. will now state: "The Plan shall continue until the court finds that its goal has been accomplished or upon a motion of either party followed by a hearing on the issue."
>
> A new ¶ VI.D. will be added and will state: "LMHA shall provide the court with an annual review of the racial composition of all the housing projects administered by LMHA."

FURTHER ORDERED that LMHA will file with the court on or before August 1, 1989, the first annual report referred

to in new ¶ VI.D., showing the racial composition of all LMHA housing projects as of June 30, 1989.

RICHARD B. MCQUADE, JR.
UNITED STATES DISTRICT JUDGE

Toledo, Ohio
June 6, 1989