IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

THE HOUSING AUTHORITY OF THE CITY OF ALBANY, GEORGIA, et al.,

Defendants

CIVIL ACTION NO. 1007

ELLIOTT, District Judge.

This is an action brought by the United States contending that the operation of the defendant Housing Authority is racially discriminatory and prohibited by the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, et seq.; the regulations of the Department of Housing and Urban Development pursuant to that Act, 24 C.F.R. 1.4(b)(2)(ii); the contractual obligations of the Defendants; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601, et seq.; the Civil Rights Act of 1866, 42 U.S.C. §1982; and the Fourteenth Amendment to the United States Constitution.

The complaint alleges that the Defendants originally developed and continue to operate federally financed low rent public housing projects on a racially segregated basis. It is also contended that the Defendants assigned persons to dwelling

units on the basis of race; that they have refused to submit a plan of tenant selection and assignment as required by the regulations of the Department of Housing and Urban Development, hereinafter "HUD"; and that they have engaged in discriminatory employment practices contrary to contractual agreements with HUD and in violation of the Fourteenth Amendment.

The Plaintiff seeks an order of the Court enjoining the Defendants from continuing to engage in the alleged racially discriminatory practices referred to in the complaint and to require the Defendants to file with HUD an appropriate plan for tenant assignment.

The Defendants have denied the Plaintiff's allegations of discrimination and have challenged the validity of the regulation of HUD, specifically the regulation referred to as 24 C.F.R. 1.4(b)(2)(ii).

The case came on for trial before the Court, and the Court having considered the evidence and the contentions of counsel now files this opinion which is intended as compliance with the requirements of Rule 52 of the Federal Rules of Civil Procedure.

The Defendants are the Housing Authority of the City of Albany, Georgia, hereinafter "AHA", a public corporation organized in 1940 under the provisions of Chapter 99-11 of the Code of Georgia, the individual members of its Board of Commissioners, and its Executive Director. All of the members of the Board of Commissioners serve without compensation as a public service and

their actions are controlled by applicable Georgia law and the contract for financial assistance with HUD. The defendant Authority's relationship with HUD is a contractual one, the Authority not being an instrumentality or agency of HUD. The AHA receives financial assistance and technical advice from HUD.

The AHA was created, among other reasons, for the purpose of developing and administering low income public housing to be financed by the Federal Government. The AHA presently operates eight low rent public housing projects containing a total of 736 family rental units. One of the projects, Ga. 23-6 (William Binns Homes), was built by the Federal Government as a war relief housing project and was conveyed to the AHA by the Public Housing Administration (hereinafter PHA) in June, 1952. The seven remaining projects were developed and built by the AHA pursuant to successive Annual Contributions Contracts during the period 1942 to 1962, these contracts providing for federal financial assistance in the development and operation of these projects. These seven projects are identified as Ga. 23-1 (Thomasteeska Homes), Ga. 23-2 (O. B. Hines Homes), Ga. 23-3 (MacIntosh Homes), Ga. 23-4 (Holly Homes), Ga. 23-5 (Washington Homes), Ga. 23-7 (Golden Age Homes), and Ga. 23-8 (William Dennis Homes).

At the time of their development Ga. 23-1, Ga. 23-3, Ga. 23-6, and Ga. 23-7 were intended by the defendant Authority to be used for occupancy by white citizens only, and Ga. 23-2, Ga. 23-4, Ga. 23-5, and Ga. 23-8 were intended to be used for occupancy by non-white citizens only. At the time of the

development of these projects the federal agencies PHA and HUD were aware of the intended location and use of these projects. The racial identities of these projects remained as originally intended at the time of trial of this matter.

The AHA operated its projects under the policy of racial segregation originally employed until July, 1964, the units in the projects being rented to applicants on the basis of race, which meant that white applicants rented units in projects numbered Ga. 23-1, Ga. 23-3, Ga. 23-6 and Ga. 23-7, and black applicants rented units in projects numbered Ga. 23-2, Ga. 23-4, Ga. 23-5, and Ga. 23-8.

After the enactment of Title VI of the Civil Rights Act of 1964 the Board of Commissioners by resolution dated July 30, 1965 agreed to comply with the Act and to afford each applicant the opportunity to live in the project of his choice. This resolution was approved by PHA. Under the freedom of choice system which then came into effect each application contained a statement of choice as to project by the applicant, the applicant stating his first choice and his second choice, and stating whether he would accept housing in "any other project available".

Under the application procedures as described to the Court the application forms and choice forms were taken at the central office of the Authority and filled out by office personnel and signed by the applicants. Once completed, each application and choice form was sent to the project office for the project of first choice. The management of the project of the applicant's

second choice was not informed as to the second choice. When a vacancy occurred in a project the person in charge of that project selected a tenant from among the applications. If no applications were pending for that project he would then telephone another project and assign the vacant unit to an applicant whose application was pending at the other project. As we have heretofore noted, under this freedom of choice plan, which was still in effect at the time of the trial of this matter, the four projects designated for white tenants have continued to be occupied by white tenants only, and the four projects designated for black tenants have continued to be occupied by black tenants only. The four white occupied projects except Ga. 23-7, Golden Age Houses, designated for elderly white tenants, have rarely been filled to capacity and seldom have waiting lists. The four projects occupied by blacks on the other hand have always been occupied to capacity with substantial backlogs of applications pending.

Certain practices which were employed by the office personnel handling the tenant applications had the practical effect of perpetuating the segregation which had existed prior to the adoption of the 1965 resolution by the Commission: (a) The choice form which permitted the applicant to choose a project of first choice, a project of second choice, and "any other project available" if the first two choices were unavailable was interpreted by the office personnel as meaning "any other project available which was occupied by the race of the applicant making the choice." The result was that black applicants were denied time of application priority and were, therefore, passed over for

available units in white projects in favor of white tenants who applied after they did. (b) It was the customary practice of those accepting applications that when a person inquired concerning the name and location of projects if the applicant was a white person to name only the white projects, and if the applicant was a black person to name only the black projects, the office personnel simply presuming that a person would choose a project racially identified as being occupied by persons of his own race. (c) When the manager of a project with a vacancy, but without a pending application, would contact the manager of another project in order to select an application from that other project, none of the managers of the white occupied projects ever called the managers of the black occupied projects and none of the managers of the black occupied projects ever called the managers of the white occupied projects. As has been heretofore noted, there are usually long waiting periods for black occupied projects and this created a practical advantage for the lesser number of white applicants because of shorter waiting lists for the white occupied projects.

In 1967 HUD changed its tenant selection and assignment requirements under Title VI by Regulation 24 C.F.R. 1.4(b)(2)(ii). The ANA was notified of this change and was told that it would be required to submit a new plan in accordance with the new regulation. The basic change made by the new regulation was that all local authorities were required to adopt a plan for tenant assignment based on the principle of first-come first-served.

Specifically, the new regulation required each Authority to date and time-stamp all applications and refer them to a central tenant selection and assignment office. Each applicant was to be assigned an appropriate size unit on a communitywide basis in sequence based on the date and time his application was stamped. The local Authorities were permitted to apply factors affecting preference or priority not inconsistent with Title VI. Under the Regulation, therefore, the criteria to be applied in making assignments were the size of the unit required and the date and time the application was filed in comparison with those pending by other applicants. Each local Authority was required to submit an appropriate plan to HUD within ninety days. The Defendants declined to adopt a plan in the exact language required by HUD, contending that such would be self-defeating. At time of trial the Defendants contended that the adoption of such plan would mean that most of the white tenants in the projects would move out and that there would be a substantial loss of revenue to the Authority and that such a plan would deprive the tenant applicants of the opportunity of living in that section of the town in which they preferred to live.

The tenant selection and assignment practices which have been referred to above have had the effect of excluding black persons from white occupied projects and white persons from black occupied projects. A look at some of the statistics requires that conclusion. The evidence shows that during the period of time from 1965 to 1969 when the freedom of choice plan was in effect at least 346 units were newly rented and at least 136

applications were filed by black families. Some of these black families indicated a willingness to accept any project available and some one or more stated a preference for white occupied projects. All of them were admitted to black projects. Thus, the inference is compelling that the racial identity of Defendants' projects is the result of application of discriminatory practices.

The controlling law applicable to this case prohibits racial discrimination in all aspects of the Housing Authority operation. As a public agency the AHA is required to comply with the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. Hayward v. Public Housing Administration, et al., 233 F.2d 689 (5 Cir. 1956). Moreover, as recipients of federal funds the Defendants are required to operate their federally assisted programs so that "[n]o person . . . [is] excluded from participation in [such programs], . . . denied the benefits of [such programs], or . . . subjected to discrimination . . . " on the ground of race, color, or national origin. 42 U.S.C. §2000d. Also, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604, prohibits racial discrimination in the rental of housing.

It is well settled by a long series of Supreme Court decisions that racial discrimination may be shown by proof of either discriminatory purpose or discriminatory effect. Griggs v. Duke Power Co., 401 U.S. 424 (1971). So, evidence in this case

that the AHA's freedom of choice plan as administered has had the effect of perpetuating segregation which admittedly existed prior to the implementation of the freedom of choice plan would be sufficient to establish discrimination regardless of any subjective intent on the part of the Defendants. Griggs v. Duke Power Co., supra, Hawkins v. Town of Shaw, Mississippi, et al., 437 F.2d 1286 (5 Cir. 1971), aff. en banc 461 F.2d 1171 (5 Cir. 1972).

In this case the evidence shows that of the eight projects operated by the AHA at the time of the hearing in this matter no black had ever occupied Ga. 23-1, Ga. 23-3, Ga. 23-6, and Ga. 23-7, and no white had ever occupied Ga. 23-2, Ga. 23-4, Ga. 23-5, and Ga. 23-8. This evidence makes out a prima facie case of racial discrimination. United States v. Real Estate Development Corporation and Carl H. Leach, 347 F. Supp. 776 (N.D.Miss. 1972). The fact that a freedom of choice plan was in effect can hardly be regarded as an answer to this situation because, as we have observed, the manner in which the choices were allowed to be made and the information supplied to the applicants could hardly be expected to have resulted in any substantial integration.

The Court concludes from the evidence that neither the individual members of the Board of Commissioners of the AHA nor its Executive Director have consciously and deliberately discriminated against any person in the rental of units within the projects under their supervision because of race, but the Court further finds that the methods and practices employed by

the Authority's personnel in the accepting and handling of tenant applications has constituted a pattern and practice of racial discrimination, and, absent any compelling reason dictating the contrary, it would be the duty of this Court to enter an appropriate decree requiring a correction of the practice.[1]

The Defendants contend that to require the assignment of tenants on a "first-come first-served" basis is an uneconomical method of operating the Housing Authority and is likely to result in a large number of vacancies, and the Court has no doubt that the implementation of such a procedure will have an adverse financial effect on the Housing Authority. However, defenses of this nature have been uniformly rejected in civil rights cases. Griffin v. County School Board of Prince Edward County, et al., 377 U.S. 218 (1964); Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); United States v. Hinds County School Board, et al., 417 F.2d 852 (5 Cir. 1969). Being bound by the decisions of the higher courts, it is the duty of this Court to likewise disregard this contention and grant the relief sought to the extent deemed appropriate.

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[1] The Court finds that the contention that the Defendants have engaged in discriminatory employment practices is not supported by the evidence. The AHA has 19 employees, and 9 of them are white and 10 of them are black. It is probably true some blacks might have been available for employment in some jobs held by whites and that some whites might have been available for employment in jobs held by blacks, but this is not tantamount to saying that any prospective employee has been discriminated against because of his race, and the Court declines to so speculate.

Accordingly, upon the basis of the foregoing the Court enters the following

D E C R E E

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I.

That the Defendants, their employees, agents, successors, and all those acting in concert or participation with any of them, be and they are permanently enjoined from:

A. refusing to rent after the making of a bona fide offer, or refusing to negotiate for the rental of, or otherwise making unavailable or denying any dwelling to any person because of race, color, religion or national origin;

B. discriminating against any person in the terms, conditions, or privileges of rental of any dwelling, or the provision of services in connection therewith, because of race, color, religion or national origin;

C. making, printing, publishing, or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of any dwelling that indicates any preference limitation or discrimination based on race, color, religion or national origin, or an intention to make any such preference;

D. representing to any person, directly or by implication, because of race, color, religion or national origin, that any

dwelling is not available for rent when such dwelling is in fact so available;

E. on the grounds of race, color, religion or national origin, excluding any person from participation in, denying any person the benefits of, or subjecting any person to discrimination in their programs or activities receiving federal financial assistance.

Provided, however, the Defendants in determining the qualification or lack of qualification of persons applying for the rental of dwellings are not prohibited from applying factors affecting qualification, preference or priority which do not involve considerations of race, color, religion or national origin.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in order to avoid the continuation of segregation the Defendants shall take the following affirmative steps within thirty days from entry of this order to achieve compliance with Part I of this order:

A. assign all approved applicants for public housing on a racially non-discriminatory first-come first-served basis and revise their active application files accordingly so as to facilitate first-come first-served assignment;

B. post in every office in which applications are taken in a prominent place clearly visible to all applicants and potential applicants a list of all Defendants' housing projects, their locations, formal designations and popular names;

C. post prominently in all offices in all projects a sign indicating that all projects are open to eligible persons without regard to race, color, religion or national origin;

D. mail to every person on the waiting list for housing and to every tenant in each of the projects a letter explaining the portions of this order relating to tenant assignment and the fact that the HHA will be operated in the future as a unitary system without discrimination based on race, color, religion or national origin;

E. make provision in every office in which applications are taken for dating and time-stamping all applications received thereafter, when the applicant has furnished all the information he is required to furnish, this time and date to be used for purposes of determining the time priority of the applicant, regardless of when the application is approved;

F. mail to every person on the waiting list for housing a notice advising them of their right to now reapply. If such persons reapply within ten days of receipt of such notification their priority shall be computed from the date of their original application.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants shall keep records of the actions taken by them as required by Parts I and II of this order, including copies of letters and notices required to be sent and lists of persons to whom sent open for inspection by representatives of the

Department of Justice and/or the Department of Housing and Urban Development, provided, however, that the United States shall endeavor to minimize any inconvenience such possible inspection may cause the Defendants.

IV.

The Court will retain jurisdiction of this action for all purposes.

IT IS SO ORDERED this 15th day of January, 1973.

/s/ ROBERT ELLIOTT
UNITED STATES DISTRICT JUDGE