Public Housing Disposition Case Settled with Substantial Tenant Protections

Arroyo Vista Tenants Association v. City of Dublin,[1] filed in October 2007, challenged the proposed disposition and redevelopment of a 150-unit public housing development in California.[2] The tenants' claims included that the public housing agency (PHA) violated federal public housing and fair housing laws and state relocation and redevelopment statutes. During the litigation, the Department of Housing and Urban Development (HUD) approved the PHA's disposition application. Prior to amending their complaint to challenge HUD's May 2009 approval, the tenants commenced settlement negotiations with the PHA and developers in June 2009. A settlement agreement was approved by all parties and HUD (as a potential party) in December 2009.

The settlement permits redevelopment of Arroyo Vista to go forward, but with significant modifications to the affordability, accessibility and unit sizes of the new rental development. It also calls for a detailed rehousing policy that would enable Arroyo Vista residents to return to the new development without arbitrary screening; an amended relocation plan that would provide for actual relocation expenses, increased notice and advisory services; an extended period for completion of relocation through June 2010; and a goal of making the rental units available for occupancy by the summers of 2013 and 2014.

Key provisions of the agreement, as measured against the proposed disposition, are discussed below.

Affordability

The new rental development will include 178 units, of which at least 81 will be affordable to the lowest-income families. There will be 49 one-bedroom senior units and 129 family units. All of the senior units and 25% of the family units (32) will be subject to a Section 8 project-based contract with Alameda County Housing Authority for the longest term permitted by HUD (currently 15 years plus an option to renew for 15 years as long as the developer is in compliance with its project-based contract). The developer also will be subject to recorded affordability covenants for 55 years requiring it to accept Section 8 vouchers (or any successor tenant-based subsidy) for all non-project-based units. As a result of project-basing and the requirement to accept Section 8 vouchers, a majority of new rental units will be affordable to the lowest-income seniors and families at 30% of their household income. Previously, the proposed "mixed income" rental development would have resulted in only three "family" units that would have been affordable to extremely low-income families.

Accessibility

Three of the senior units and eight of the family units will be developed as fully accessible units. Another 92 units (46 senior units and 46 family units) will be adaptable, and the developer, at its expense, will make the adaptable units fully accessible to accommodate persons with disabilities as needed. As originally proposed, redevelopment of Arroyo Vista did not address accessibility of units even though 30% of Arroyo Vista's households included members with disabilities.

Unit Size

All of the senior units will be one-bedroom units. The family units will include a range of bedroom sizes that address the housing needs of both Arroyo Vista residents and families on the public housing waiting list. The agreement provides that there will be 12 one-bedroom, 66 two-bedroom, 36 three-bedroom and 16 four-bedroom units. The settlement agreement increased the number of three- and four-bedroom units, and a rehousing policy incorporated into the settlement agreement provides for remedies in the event of a "shortfall" of appropriately sized family units for returning Arroyo Vista residents.

Rehousing Policy

All Arroyo Vista residents will have a first preference for the new units, subject only to household needs with respect to unit size and accessibility. Returning residents and/or new family members may be subject only to certain criminal background checks not already performed by the PHA. They will not be subject to arbitrary and vague eligibility and tenant selection criteria imposed by the developer such as "behavioral standards expected in the private rental market," as the proposed disposition would have permitted.

The original disposition agreement was silent as to any policy or procedure for implementing residents' "right to return." The settlement agreement contains a detailed plan to implement the rehousing policy, including that the PHA will maintain and update a contact list of all residents. The PHA will also provide the following: periodic status reports to tenants and their counsel as the development proceeds; advance notice of at least six

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[1]No. 07cv5794 (N.D. Cal. filed Nov. 14, 2007). The tenants are represented by Lisa Greif and Naomi Young of Bay Area Legal Aid and Deborah Collins, Michael Rawson and Craig Castellanet of the Public Interest Law Project.

[2]For additional background information on this case, see NHLP, *Arroyo Vista Tenants Continue Challenge to Proposed Public Housing Disposition*, 39 Hous. Law Bull. (Jan. 2009) and NHLP, *Tenants Can Sue for Violation of Public Housing Demolition Law*, 38 Hous. Law Bull. (June 2008). Pleadings and other documents from the case are available to Housing Justice Network members at http://nhlp.org/resourcecenter?tid=38.

months before units become available; an advance opportunity to apply for the new units and assistance in the application process; and the right to turn down a unit up to three times and remain on the Arroyo Vista "first preference" waiting list for the next available unit that meets the household's needs. Residents on the current public housing waiting list will be given second preference for the new rental units.

Arroyo Vista residents also will receive advance notice and will have a preference for 14 "moderate-income" "for-sale" units that will be included in the redevelopment. In addition, the city will provide funds of up to $40,000 for any necessary features to make these units fully accessible for eligible Arroyo Vista residents with disabilities.

Relocation

The PHA amended its relocation plan as part of the settlement agreement to provide for all necessary relocation assistance and benefits for tenants. This assistance includes referrals to Section 8 units located in Dublin and the neighboring area; increased assistance with security deposits, credit check fees, pet deposits and accessibility costs as necessary to assist residents in relocating; a relocation claims and grievance procedure; and a series of informational, eligibility, relocation and determination notices in addition to the single 90-day notice of displacement provided for in the disposition application and pursuant to Section 18, the public housing disposition and demolition statute.[3]

Timeline for Relocation and Redevelopment

Although originally notified that they were required to relocate by November 2008, Arroyo Vista residents will have until June 30, 2010, to relocate. The affordable rental development will proceed in advance of or on the same timeline as the market rate development, with a goal of producing the new family units by summer 2013 and the new senior units by summer 2014.

The court retains jurisdiction to enforce the terms of the settlement agreement.

Conclusion

This case is representative of the diligence that is necessary to obtain a favorable result in cases proposing to demolish or dispose of public housing. It also demonstrates that it is possible to obtain a result that provides meaningful assistance to residents who are required to relocate, and that something closer to a one-for-one replacement is possible. Unfortunately, drawn-out litigation was required to obtain the results in *Arroyo Vista*, even though the elements of the settlement were all offered early on in writing and at meetings with the parties. Perhaps some of the initial foot-dragging may be attributed to a prior Administration that was not committed to the preservation of public housing.

For other developments facing demolition and disposition, it is critical for the current Administration to stop, or at least slow down, the process so that similar agreements can be reached. In June 2009, congressional leaders Maxine Waters (D-CA) and Barney Frank (D-MA) renewed a request for a moratorium on all demolition and disposition applications. HUD Secretary Shaun Donovan rejected the request, stating that any changes may put at risk redevelopment opportunities that are already underway, that there are some residents living in public housing that is no longer physically viable, and that HUD does not want to jeopardize any opportunity to create affordable housing built to today's building and quality standards.

The Secretary also stated the following:

> [D]iscussions are already underway within Public and Indian Housing to review more closely the decisions that will be made regarding the approval of any demolition or disposition. Specifically, we believe that such activities need to be viewed through the lens of the number, location, and affordability of units returning to the inventory. No approvals will be forthcoming without such a close review. This approach is being taken because we acknowledge both the unintended consequences demolition and disposition may have had on the lives of public housing residents in the past, as well as a decrease in the number of long-term affordable units that has resulted in some cases.

There are many unanswered questions regarding HUD's commitment to more closely review demolition and disposition applications. Advocates await answers to the following questions:

- What new guidance is HUD providing to PHAs that are seeking to dispose of or demolish public housing?
- What kind of data is HUD requesting from PHAs regarding the impact on residents? What information is HUD seeking from PHAs regarding the condition of the existing units?
- What kind of input is the Administration requesting from residents? What substantive information is HUD seeking or reviewing regarding PHAs' consultations with residents?
- What kind of data is HUD requesting from PHAs regarding the impact on the number of long-term affordable units in the community?
- Is HUD conditioning any approvals? If so, what is the nature of those conditions?

[3] 42 U.S.C. § 1437p(a)(4) (West 2003).

- Is HUD demanding that any replacement units have project-based vouchers attached and that housing choice vouchers be accepted for any units that do not receive other rental assistance?
- What long-term preservation policies are requested for any replacement units?
- What kind of best practices is HUD highlighting regarding demolition and disposition applications?
- What steps is HUD taking to ensure that disposition or demolition does not proceed prior to actual HUD approval, including preventing the relocation of residents prior to HUD approval? ■

The Impact of *Ashcroft v. Iqbal* on Housing Cases*

Decided May 18, 2009, *Ashcroft v. Iqbal*[1] is the most recent decision from the United States Supreme Court on the pleading standards under Rule 8 of the Federal Rules of Civil Procedure (FRCP 8). This article briefly summarizes the *Iqbal* decision and then examines several housing-related cases in which courts have applied *Iqbal*. Because *Iqbal* was decided less than a year ago, it is difficult to make generalizations regarding its impact upon housing cases. However, even at this early stage it appears that courts have been inconsistent in their application of *Iqbal*.

Background

Javaid Iqbal, a Pakistani Muslim, was arrested and detained in the wake of September 11, 2001. He claimed that former Attorney General John Ashcroft and FBI Director Robert Mueller adopted an unconstitutional policy that subjected him to harsh conditions of confinement on account of his race, religion or national origin. The issue before the Court was whether Iqbal pleaded facts sufficient to state a claim for purposeful and unlawful discrimination. Under FRCP 8, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Citing its recent opinion in *Bell Atlantic Corp. v. Twombly*,[2] the Supreme Court identified two working principles underlying the pleading standards under FRCP 8:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. … Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense.[3]

Applying this two-pronged approach, the Court held that *Iqbal* failed to plead facts sufficient to state a claim for purposeful and unlawful discrimination.

Iqbal has been widely criticized for fundamentally changing the pleading standards by erecting new barriers for plaintiffs during the initial stages of

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*The author of this article is Heejin Yi, a graduate of Boston College Law School and a volunteer with the National Housing Law Project.

[1] __ U.S .__, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

[2] 550 U.S. 544 (2007).

[3] *Iqbal*, 129 S. Ct. at 1949-50 (citations omitted).