

Settlements Advance Integration for Displaced Public Housing Tenants*

Advocates for fair housing achieved victories in two civil rights lawsuits filed on behalf of public housing tenants facing relocation after the demolition of their developments. In Lowell, Massachusetts, attorneys with the Massachusetts Law Reform Institute and Neighborhood Legal Services reached an agreement on behalf of residents relocated after a state public housing development was demolished.¹ In Rockford, Illinois, attorneys with the Sargent Shriver National Center on Poverty Law and Prairie State Legal Services entered a consent decree on behalf of residents of a federally funded public housing development.² Both agreements extend more housing choices to displaced tenants.³

Lowell, Massachusetts

Background

The Julian D. Steele (JDS) development was a 284-unit, state-funded public housing complex for low-income families in Lowell, Massachusetts.⁴ In 2000, the Massachusetts legislature authorized the Lowell Housing Authority (LHA) to demolish the development.⁵ After receiving this authorization, LHA began to relocate JDS residents to other areas of Lowell in preparation for demolition.⁶ On May 7, 2001, two classes of plaintiffs filed suit challenging these moves: (1) low-income families who were on LHA's subsidized housing waiting list; and (2) families who lived at the JDS development.⁷ In their complaint against LHA, the city of Lowell, and the Massachusetts Department of Housing and Community Development (DHCD), the plaintiffs alleged claims under the Fair Housing Act, Title VI of the 1964 Civil Rights Act, the Equal Protection Clause of the Fourteenth Amendment, state and federal relocation laws, and federal community development laws.⁸

The plaintiffs originally sought to enjoin the development's demolition, but the court denied this motion.⁹ The plaintiffs then filed a second motion for summary judgment, arguing that LHA's relocation plan violated federal and state laws.¹⁰ Among other counts, the plaintiffs alleged that the relocation plan: (1) did not provide tenants with relocation benefits as required by Massachusetts law; (2) did not provide a one-for-one replacement of demolished units as required by federal law; and (3) moved tenants to racially segregated neighborhoods in violation of federal fair housing and civil rights laws.¹¹ In a ruling issued by the court in December 2005, the plaintiffs' second motion for summary judgment was granted in part and denied in part.¹²

Subsequent to this ruling, attorneys for the plaintiffs and defendants entered into settlement negotiations, and Judge Paul Troy approved a settlement on August 26, 2008.

Discussion

Massachusetts law requires that tenants displaced by the demolition of public housing be provided with moving expenses and compensation of up to \$4000 for any increases in rent necessary to lease a comparable dwelling.¹³ After LHA denied one JDS tenant funding to cover her increased rent, DHCD issued a ruling stating that the tenant was eligible for replacement housing costs of up to \$4000.¹⁴ The court agreed that LHA failed to comply with state law, and it granted summary judgment to the plaintiffs on this claim.¹⁵

If federal assistance from either Community Development Block Grants or HOME Investment Partnership funds is used for the demolition of low-income housing units, federal laws and regulations require that such housing units be replaced one-for-one with comparable low-income units.¹⁶ Both parties agreed that the use of these funds triggers the "one-for-one" replacement requirement when such funds are used "in connection with a development project."¹⁷ However, the defendants contended that because these funds were used only in the project's preliminary stages, the replacement requirement did not apply.¹⁸ The funds were used by two different development companies for land-use studies and

*The author of this article is John Montague, a J.D. candidate at the University of California, Berkeley School of Law and a fall intern at the National Housing Law Project.

¹Settlement Agreement and Enforcement Order, *Mendonsa v. Lowell Hous. Auth.*, Civil No. 01-2034 C (Mass. Dist. Ct. June 19, 2008), available at <http://www.povertylaw.org/poverty-law-library/case/54200/54284> [hereinafter Lowell Settlement Agreement].

²Consent Decree, *Jones v. HUD*, No. 07 C 50142 (N.D. Ill. Jan. 24, 2008) [hereinafter Rockford Consent Decree]. For a detailed review of the *Jones* case, see NHLP, *Public Housing Residents Gain One-for-One Replacement*, 38 HOUS. LAW BULL. 53 (Feb. 2008).

³*Id.*; Lowell Settlement Agreement, *supra* note 1.

⁴Lowell Settlement Agreement, *supra* note 1, ¶ 2.

⁵*Id.*

⁶*Id.*

⁷*Id.* ¶¶ 1, 3.

⁸*Id.* ¶ 3.

⁹Pls.' Second Mot. for Partial Summ. J. at 3, *Mendonsa v. Lowell Hous. Auth.*, Civil No. 01-2034 C (Mass. Dist. Ct. Feb. 22, 2005).

¹⁰*Id.*

¹¹*Id.*

¹²Rulings on Pls.' Mot. for Summ. J., Pls.' Mot. to Strike, and Def.'s Mot. to Strike at 2, *Mendonsa v. Lowell Hous. Auth.*, Civil No. 01-2034 C (Mass. Dist. Ct. Dec. 30, 2005).

¹³MASS. GEN. LAWS ANN. ch. 79A, § 7 (West, WESTLAW through Ch. 349 of the 2008 2d Annual Sess.).

¹⁴*Mendonsa*, Rulings on Pls.' Mot. for Summ. J., *supra* note 12, at 8.

¹⁵*Id.* at 7-9.

¹⁶42 U.S.C.A. § 5304(d) (West, WESTLAW through P.L. 108-271 approved 7-7-04); 24 C.F.R. §§ 42.350, 42.375 (2008).

¹⁷*Mendonsa*, Rulings on Pls.' Mot. for Summ. J., *supra* note 12, at 10.

¹⁸*Id.*

“site evaluation, property inspections, cost estimates, preparation of plans and designs, creation of schematics, financial pro formas, engineering, and architectural work.”¹⁹ The plaintiffs alleged that these activities were connected closely enough with the development that they should trigger the replacement requirement.²⁰ The court ruled against the plaintiffs and granted summary judgment to the defendants on this count.²¹ In its decision, the court relied on a 2002 Department of Housing and Urban Development (HUD) ruling which stated that the replacement requirement was triggered only if the federal funds were used for “demolition, rehabilitation, conversion, or similar activities having direct physical consequences.”²² Since the federal funds were not used in conjunction with these activities, the court ruled against the plaintiffs and found that there was no replacement requirement.

The settlement agreement provides more housing options for residents displaced because of the demolition.

Finally, the court ruled that there was a genuine issue of material fact as to whether the defendants had violated federal fair housing and civil rights laws. The plaintiffs alleged that the defendants’ relocation plan discriminated against them by perpetuating segregation; that the defendants did not further anti-discriminatory housing practices as required by Title VIII of the Civil Rights Act of 1964; and that the defendants were intentionally discriminatory and “steered” plaintiffs into racially segregated neighborhoods. To support these claims, plaintiffs submitted a declaration by Harvard University housing policy researcher Nancy McArdle, in which she found that the relocation of JDS families perpetuated racial segregation in Lowell.²³ Further, McArdle found that the city of Lowell planned to site most of the replacement units in areas of high minority concentration.²⁴ According to her declaration, 91% of the proposed units were in “areas of minority concentration,” and 83% of the proposed units were in subdivisions with higher concentrations of minorities than the JDS development.²⁵ In fact, half of the relocation units were planned for the census block group with the single highest minority concentration in the entire city.²⁶

¹⁹*Id.* at 10-11.

²⁰*Id.* at 11.

²¹*Id.* at 12.

²²*Id.* at 11.

²³Decl. of Nancy McArdle at 2, *Mendonsa v. Lowell Hous. Auth.*, Civil No. 01-2034 C (Mass. Dist. Ct. Jan. 2005).

²⁴*Id.* at 3.

²⁵*Id.*

²⁶*Id.*

In response, the defendants submitted a rebuttal from their own expert.²⁷ Because of this factual dispute, the court denied summary judgment on plaintiffs’ disparate impact and perpetuation of segregation claims.²⁸ As to whether defendants acted intentionally and steered plaintiffs into segregated neighborhoods, the court noted that summary judgment is usually inappropriate for questions of intent, and it reserved the question for trial.²⁹

The Settlement

The settlement agreement provides more housing options for residents displaced because of the demolition.³⁰ The agreement creates a mobility counseling program to advise and assist displaced tenants with the logistics of finding new housing and moving.³¹ The program’s goal is to facilitate the mobility of residents who were slotted into segregated areas. The settlement also requires the city to create thirty-five more replication housing units than the 122 it had previously planned. It also mandates that these units be created in designated “opportunity areas,” defined as neighborhoods that do not have high concentrations of minorities or that have beneficial qualities.³² The city must make “all reasonable efforts” to complete the thirty-five units within four years, and the agreement specifies steps the city must take to comply with “reasonable efforts.”³³ Finally, the settlement agreement requires semiannual progress reports. As part of the settlement, the plaintiffs were awarded \$215,000 in attorneys’ fees.

Rockford, Illinois

Background

In June 2006, the Rockford Housing Authority (RHA) submitted a plan to demolish eighty-four units of Jane Addams Village in the city of Rockford, Illinois.³⁴ RHA

²⁷*Mendonsa*, Rulings on Pls.’ Mot. for Summ. J., *supra* note 12, at 14.

²⁸*Id.*

²⁹*Id.* at 15.

³⁰*See* Lowell Settlement Agreement, *supra* note 1.

³¹*Id.* ¶ 44.

³²*Id.* ¶ 45.

³³*See id.* ¶ 46. According to the settlement agreement, “reasonable efforts” may be assessed by actions such as promptly requesting Section 8 vouchers when housing units are identified for replication; communicating with LHA and private developers to identify units for replication in opportunity areas; monitoring foreclosures to look for possible replication units; encouraging nonprofit organizations to develop replication units; promptly viewing all replication opportunities brought by the mobility counselor; communicating frequently with the mobility counselor; communicating with private developers in opportunity areas to make replication units available; promptly reviewing all suggested replication units brought by the plaintiffs’ counsel; contacting landlord groups to find replication units; promptly assessing whether HOME funds are being used appropriately for replication; encouraging landlords who are developing properties in opportunity areas to apply for vouchers from LHA; asking neighborhood groups for information about landlords who should be notified about voucher programs; and working with LHA to educate landlords about voucher programs.

³⁴Compl. ¶ 32, *Jones v. HUD*, No. 07 C 50142 (N.D. Ill. July 27, 2007).

listed a number of factors in support of its plan, including deteriorating buildings and area crime rates.³⁵ In fact, the area around the development had recently started to gentrify.³⁶ The plaintiffs, tenants living in Jane Addams Village, filed suit against HUD and RHA in July 2007, alleging that the development was not obsolete and that RHA exaggerated the repair costs.³⁷ The complaint also alleged that RHA's replacement housing plan perpetuated segregation because it did not provide mobility counseling, and most of its proposed relocation units were in high-crime areas with large minority populations.³⁸ Attorneys for the tenants and defendants reached a settlement agreement, which was finalized in a consent decree signed by a federal district court judge in January 2008.

Discussion

In October 2006, HUD approved RHA's application to demolish a portion of the Jane Addams Village. Federal law permits the secretary of HUD to approve demolition of a portion of a public housing project only if the property is physically obsolete *and* the demolition will help ensure the viability of the remaining units.³⁹ The test for physical obsolescence requires that (1) the property be "obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes," and (2) that there be no cost-effective way to restore the project.⁴⁰ The tenants' attorneys initially challenged HUD's determination by submitting a report prepared by a structural engineer. The report found that Jane Addams Village was not obsolete within the meaning of the federal regulations and that RHA had exaggerated the rehabilitation costs.⁴¹ HUD responded with a letter stating that it had determined that "RHA failed to show that the development met the 2-part obsolescence test of 24 C.F.R. 970.15(a)(1)."⁴² RHA then met with HUD and submitted a revised application for partial demolition, which justified the demolition solely upon the viability criterion and failed to address the obsolescence requirement.⁴³ Nonetheless, HUD approved the new application.⁴⁴

The tenants filed suit, asserting a number of claims in addition to RHA's failure to satisfy the obsolescence requirements. The tenants alleged that RHA failed to provide comparable replacement dwellings, that its actions had an adverse disparate impact on African Americans,

women, and families with children, and that it failed to affirmatively further fair housing.

The tenants alleged that RHA's relocation plan had the effect of steering residents away from racially integrated or predominantly white neighborhoods and into predominantly minority areas.⁴⁵ RHA gave residents the option of either moving to another RHA property or taking a Section 8 voucher.⁴⁶ However, the RHA-supplied lists of potential rental units predominantly consisted of units in poor neighborhoods with large minority populations.⁴⁷ RHA did not provide housing counseling services to the displaced residents, and did not inform them of the benefits available in some of the more integrated areas of Rockford.⁴⁸

Federal law requires that each family displaced by a public housing demolition be offered comparable housing that meets quality standards and is "in an area that is generally not less desirable than the location of the displaced person's housing."⁴⁹ The tenants contended that the RHA steered them toward areas that were generally less desirable than Jane Addams Village.⁵⁰ Because approximately two-thirds of the families on RHA's public housing waiting list are African American, and because Rockford's public housing residents are also predominantly African American, the tenants alleged that the demolition of the Jane Addams Village would have an adverse disparate impact on the city's African-American residents, who compose only 17.4% of the city's total population.⁵¹

The Settlement

In January, the parties entered into a consent decree permitting the demolition of Jane Addams Village, but requiring RHA to provide seventy-seven new units of housing for displaced families by December 1, 2012.⁵² Similar to the Lowell, Massachusetts settlement agreement, RHA also must provide a mobility program to enable displaced tenants to make educated decisions about where to move, including the opportunity to move to more prosperous and integrated neighborhoods.⁵³ As in the Lowell agreement, the goal of the housing mobility program is to facilitate the movement of displaced residents into more integrated areas of the city, and the housing authority must make regular compliance reports.⁵⁴ The program will provide mobility counseling, assistance in accessing moving

³⁵*Id.* ¶ 34.

³⁶*Id.* ¶ 40.

³⁷*Id.* ¶¶ 42-43.

³⁸*Id.* ¶¶ 44-45.

³⁹42 U.S.C.A. § 1437p(a)(1) (West, WESTLAW through P.L. 110-390 (excluding P.L. 110-329, 110-343, 110-344, 110-351, 110-355, 110-356, 110-360, 110-369, 110-372 to 374, 110-376 to 382, 110-384 to 389 approved 10-10-08)); 24 C.F.R. § 970.15 (2008).

⁴⁰§ 1437p(a)(1)(A).

⁴¹*Jones, Compl.*, *supra* note 34, ¶¶ 41, 43.

⁴²*Id.* ¶ 49.

⁴³*Id.* ¶ 51.

⁴⁴*Id.* ¶¶ 51-52, 56.

⁴⁵*Id.* ¶ 38.

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸*Id.*

⁴⁹42 U.S.C.A. § 1437p(a)(4) (West, WESTLAW through P.L. 110-390 (excluding P.L. 110-329, 110-343, 110-344, 110-351, 110-355, 110-356, 110-360, 110-369, 110-372 to 374, 110-376 to 382, 110-384 to 389 (End) approved 10-10-08)).

⁵⁰*Jones, Compl.*, *supra* note 34, ¶¶ 47, 60.

⁵¹*Id.* ¶¶ 61-63.

⁵²Rockford Consent Decree, *supra* note 2, at 4-5.

⁵³*Id.* at 3.

⁵⁴*Id.*

services, counseling on housing vouchers, and funding for moving expenses.⁵⁵ Shortly after reaching settlement, RHA demolished Jane Addams Village, replacing it with green space.⁵⁶ RHA plans to apply for HOPE VI funding to redevelop the site.⁵⁷ Additionally, RHA has hired a housing mobility consultant, is seeking an increase in the fair market rents from HUD to provide more housing opportunities, and has issued a request for proposals to redevelop the housing units with project-based vouchers or as public housing.⁵⁸ Attorneys' fees litigation in the case is ongoing.⁵⁹

Conclusion

Both of these cases illustrate housing authorities' efforts to "clean up" cities by removing affordable housing from gentrifying neighborhoods. In both cases, the housing authorities attempted to ignore state or federal laws and sought to further segregate marginalized communities by pushing them continually further away from areas populated by wealthier citizens. To cynics, these cases may be viewed as more evidence of the failure of federal and state housing policies to end de facto segregation in American cities. As has been documented by several legal scholars, federally funded housing programs have failed to achieve widespread integration.⁶⁰ However, the fact that advocates in both cases obtained agreements mandating the creation of affordable housing opportunities in desirable neighborhoods demonstrates the benefits that can be reaped from carefully monitoring demolition applications and relocation plans. ■

⁵⁵*Id.* at 5-6.

⁵⁶Sean F. Driscoll, *Demolition Starts on Jane Addams Housing Development*, WASH. TIMES-REP., Feb. 26, 2008, <http://www.washingtontimesreporter.com/archive/x1382803728>.

⁵⁷Cathy Bayer, *Rockford Housing Authority OKs Pursuit of HOPE VI Grant*, ROCKFORD REGISTER STAR, Oct. 24, 2008, <http://www.rstar.com/homepage/x1157495762/Rockford-Housing-Authority-OKs-pursuit-of-HOPE-VI-grant>.

⁵⁸Email from Kate Walz, Sargent Shriver National Center on Poverty Law, to Meliah Schultzman, National Housing Law Project (Dec. 2, 2008) (on file with NHLP).

⁵⁹*Id.*

⁶⁰See, e.g., NGAI PINDELL, *Is There Hope for HOPE VI?: Community Economic Development and Localism*, 35 CONN. L. REV. 385 (2003) (arguing that HUD's implementation of the HOPE VI program has failed to decrease segregation); FLORENCE WAGMAN ROISMAN, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Financed Housing*, 48 HOW. L.J. 913 (2005) (discussing the history of segregation in HUD housing); KRISTINE L. ZEABART, Note, *Requiring a True Choice in Housing Choice Voucher Programs*, 79 IND. L.J. 767 (2004) (arguing that current housing choice voucher programs are not successfully achieving integration).

Recent Cases

The following are brief summaries of recently reported federal and state cases that should be of interest to housing advocates. Copies of the opinions can be obtained from a number of sources including the cited reporter, Westlaw,¹ Lexis,² or, in some instances, the court's website.³ Copies of the cases are *not* available from NHLP.

Public Housing: Eviction and Criminal Activity

Portage Metro. Hous. Auth. v. Brumley, 2008 WL 4693200 (Ohio Ct. App. Oct. 24, 2008) (slip op.). The tenant and her son appealed from a final judgment of eviction due to the son's criminal activity, which included an assault of another public housing resident on the premises. The court affirmed the eviction based upon *HUD v. Rucker*, 535 U.S. 125 (2002). Until the last moment, the mother had refused an offer to exclude the son and remain.

Public Housing: Eviction for Chronic Late Payment and Other Lease Violations

Scott County Hous. and Redevel. Auth. v. Phongsavat, 2008 WL 4552386 (unreported) (Minn.App. 2008). Affirming the lower court, the appellate court upheld this public housing eviction for various lease violations, including repeated late payment of rent, dual occupation of primary residences during prolonged move-in, and misrepresentation of income. The court also rejected the *pro se* tenant's reasonable accommodation claim, finding that she was not disabled and that the requested accommodations were unreasonable and unrelated to any disability.

Public Housing: Eviction for Chronic Late Payment

Bobian v. New York City Hous. Auth., 55 A.D.3d 396, 865 N.Y.S.2d 216, 2008 N.Y. Slip Op. 07797 (N.Y. App. Div. 2008). The appellate court, reversing the trial court, held that the trial court exceeded its authority in vacating a PHA's decision to terminate a public housing tenancy for alleged chronic rent delinquency. The PHA had already obtained eviction judgment for nonpayment when the tenant's judicial review petition was filed, thus depriving the trial court of jurisdiction to hear a collateral attack on the judgment.

¹<http://www.westlaw.com>.

²<http://www.lexis.com>.

³For a list of courts that are accessible online, see <http://www.uscourts.gov/links.html> (federal courts) and <http://www.ncsc.dni.us/COURT/SITES/courts.htm#state> (for state courts). See also <http://www.courts.net>.