

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEAN MASSIE, SHIRLEY SOWELL,  
DALE PEOPLES, LOUISE BRANDON,  
ZETTA BRANDON, ALINE REID,  
YUGONDA ALICE and YEVORN  
GASKINS on behalf of themselves and all  
others similarly situated, and THIRD EAST  
HILLS PARK, Inc.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT, and its  
Secretary, ALPHONSO JACKSON,

Defendants.

Civil Action No. 06-1004

Class Action

**BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

**Introduction**

Defendants, the U.S. Department of Housing and Urban Development and its Secretary, Alphonso Jackson (hereafter “HUD”), have failed to carry out non-

discretionary duties under the National Housing Act, 12 USC § 1701 *et seq.*, to maintain, fully occupy and preserve as affordable housing the units at Third East Hills Park or contract for adequate management services to accomplish this result. HUD has additionally failed to meet its mandatory duty under the Fair Housing Act, as this has been interpreted, to administer federal housing programs in a manner which affirmatively furthers fair housing. Moreover, Plaintiffs have been displaced or been threatened with displacement from their homes in contravention of their specific rights under the Uniform Relocation Assistance Act, which also has the discriminatory effect of denying Plaintiffs, who are African-American, of existing housing opportunities. The remedy of specific relief to discharge these duties is provided by the Administrative Procedure Act. This remedy will restore the status quo and prevent the further occurrence of irreparable harm.

**Plaintiffs have Demonstrated a Reasonable Probability of Success on the Merits**

HUD has taken the position that the Board of the Third East Hills Park Inc. is dysfunctional and has been since at least 1999. Although mortgage payments were consistently made, adherence to full maintenance requirements was not being attained according to HUD. HUD long-abandoned any attempt to provide technical assistance based on its conclusion that the existing Board lacked the capacity to adequately meet its ownership responsibilities.

As may be predicated under such circumstances, nevertheless allowing the Board to flounder produced a greater degree of failed maintenance and became a self justification for requiring the vacation of units, the abatement of essential subsidy payments and finally foreclosure. Such conduct by HUD is directly contrary to its non-discretionary management and maintenance duties under the National Housing Act, specifically 12 USC § 1701z-11(d).

Regardless of whether justified, HUD assumed mortgagee in possession status in 2004. Well before then, it had concluded that the Board lacked the capacity to function as an owner and meet its contractual and statutory responsibilities. HUD began to exercise fiscal and property management control over the development. It determined what maintenance and capital improvements were to occur or, more importantly, not. It displaced residents, including those in habitable units, thus going well beyond the health and safety needs of these tenants and leaving units effectively unsecured. It determined who and, especially, who could not provide on-site professional management services. It clearly exercised control over the finances and management of this property.

However, once asserting itself as mortgagee in possession, HUD was bound to maintain the properties in a decent, safe and sanitary condition, to the greatest extent possible, occupy these units to the greatest extent possible and do so for the purpose of maintaining these units as rental or cooperative housing. 12 USC §

17012-11(d)(2). It could do so directly or through a comprehensive management contract or by requiring that the owner enter into such a contract. 12 USC § 1701z-11(d)(1) and (2). HUD failed to take any of these actions.

Furthermore, HUD cannot now be heard to claim that it never formally assumed mortgagee in possession status because by direct implication it was required to do so if it could not meet its non discretionary duty to require the Board to directly achieve full maintenance, occupancy and preservation of affordable units. 12 USC § 1701z-11(d)(3).

HUD's failure to act was motivated by its desire to facilitate, through foreclosure, the transfer of ownership for the purpose of redevelopment. However, whether or not HUD's failure to act was motivated by its desire to produce through foreclosure the full implementation of the East Hills Visioning Plan, a plan which it had contemporaneously begun to support, is irrelevant. It lacked the discretion to stand by once it determined ownership incapacity. Instead, it withheld maintenance, capital improvements and the funding for these, coerced the vacation of units through its time limited offer of money, refused to approve professional management and refused to contract for this directly. Rather than preserving affordable rental or cooperative housing, it has acted to achieve the opposite through its foreclosure action. The latter is even more evident in light of its failure to meet its statutory duty to reconvey this development with a project based

Section 8 subsidy or consult with the tenants on an alternative program of rental assistance. 109 P.L. 115, § 311 (2006 Appropriations Act).<sup>1</sup>

HUD has additionally acted contrary to its duty to affirmatively further fair housing in carrying out the housing assistance programs it is responsible for. 42 USC § 3608(e)(5). HUD fully failed to consider the fair housing implications of its actions contrary to this mandatory duty. See Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970). In assisting the redevelopment of the two adjoining East Hills developments, HUD has imposed a requirement to affirmatively market the newly produced units to those families least likely to apply, i.e. non African American families. See 24 CFR § 886.313(b). Yet Third East Hills residents are being denied the benefits of such integrative and other community development activities.

Though this Court should never have had to review HUD's failure to carry out the specific requirements of the Uniform Relocation Assistance Act, 42 USC §

---

<sup>1</sup> In its entirety this section provides:

SEC. 311. Notwithstanding any other provision of law, in fiscal year 2006, in managing and disposing of any multifamily property that is owned or held by the Secretary of Housing and Urban Development, the Secretary shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 that are attached to any dwelling units in the property. To the extent the Secretary determines that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8, based on consideration of the costs of maintaining such payments for that property or other factors, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties, or provide other rental assistance.

4601 *et seq.* and implementing regulations (Plaintiffs should not be subject to displacement in the first place), the disregard of these specific responsibilities also supports preliminary injunctive relief.<sup>2</sup>

### **Plaintiffs Have Been and Continue to be Threatened with Irreparable Harm**

Courts have consistently recognized the irreparable harm suffered by families who lose their homes or who are threatened with this loss. See e.g., Johnson v. U.S. Dept. of Agriculture, 734 F.2d 774, 788-89 (11th Cir. 1984), McNeil v. NYCHA, 719 F. Supp. 233, 254-55 (S.D. NY 1989), Mitchell v. HUD, 569 F. Supp. 701, 704-05 (N.D. Cal. 1983) and Tenants for Justice v. Hills, 413 F. Supp. 389, 393 (E.D. Pa. 1975).

The loss in the present case additionally includes the substantial financial and emotional investment the Plaintiff families have made in their homes over many years. Congress has expressly encouraged the development of economic independence, self sufficiency and homeownership among lower income, assisted families. See 42 USC §§ 1437s and 1437u. HUD's actions in the present case are at cross purposes with such Congressional objectives.

Moreover, once foreclosure has occurred the deed restrictions which ensure that the Third East Hills units will be preserved as one hundred and forty (140)

---

<sup>2</sup> This Court is requested to review the specific Relocation Act duties HUD has failed to carry out as previously set out in paragraphs 51 through 80 of the Complaint.

units of affordable housing will be forever lost. Such action is contrary to the conclusion HUD reached regarding the viability of these units as an affordable housing resource to the Plaintiffs as recently as 2001.

**HUD will Suffer no Harm and the Public Interest Will be Served by the Issuance of a Preliminary Injunction.**

HUD has refused to honor its statutory duties under the National Housing Act for years and has delayed foreclosure since 2004. It has always had the means (and duty) to cure whatever deficiencies had cropped up, particularly management deficiencies. Doing so at this time is in the public interest as expressly determined by Congress. 12 USC § 1701z-11(d).

**Conclusion**

For the above reasons this Court is requested to enter an order preserving the status quo as that existed prior to HUD's failure to meet its mandatory duties. Specifically, this Court is requested to enjoin foreclosure at this time, order HUD to contract for professional management services and order HUD to restore the Section 8 funding for these units as required to maintain these units in accordance with the requirements of 12 USC § 1701z-11(d)(2). In the alternative, this Court is requested to enjoin the foreclosure sale until such time as HUD requires, in the terms of the foreclosure sale, that any redevelopment pursuant to conveyance of

the property be carried out with the provision of project-based Section 8 rental assistance and that the entity to which HUD conveys the property guarantee Plaintiffs priority to return to the redevelopment, providing the wherewithal for returning shareholders to purchase or rent (at their option) any redevelopment unit.

Respectfully submitted,

/s/ Kevin Quisenberry  
Kevin Quisenberry, Esq.  
Pa. I.D. #90499

Date: 8/4/2006

Donald Driscoll, Esq.  
Pa I.D. #21548

Community Justice Project  
1705 Allegheny Building  
429 Forbes Avenue  
Pittsburgh, PA 15219  
(412) 434-6002

Attorneys for Plaintiffs