UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-CV-12311-GAO

BRIGHTON VILLAGE NOMINEE TRUST,
c/o Sentry Property Management Corp.,
Plaintiff

v.

ZYMA MALYSHEV, ITA SCHEGOLEV, LIPA SMOLYAR,
SEMYON CHARNEY,SHEILA DATZ, LEV UMANSKY,
NIKOLAY VIRINE, LEV FILYURIN, LAZAR MERLIS,
LORRAINE MOONEY, LYUBOV SCHMIDT, SEMYON SHUSTER,
LEONID VANINOV, SOLOMON VIKTOR, and NAUM MANDEL,
Defendants and Third-Party Plaintiffs

v.

MEL MARTINEZ, in his capacity as Secretary of the UNITED STATES
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
Third-Party Defendant

MEMORANDUM AND ORDER
March 23, 2004

O'TOOLE, D.J.

Brighton Village Nominee Trust ("Owner") commenced this action in the Boston Housing Court, seeking to evict the defendants ("Tenants") from their apartments. The Tenants filed counterclaims against the Owner and also brought claims against the Secretary of the United States Department of Housing and Urban Development ("HUD"). HUD then removed the action to this Court in November 2000. During the pendency of the action, the Tenants have received increased housing assistance from HUD, and the Owner no longer seeks to evict them. The Tenants' counsel indicated at the hearing that they are no longer pursuing their counterclaims against the Owner. The Tenants continue to prosecute their claims against HUD for various statutory violations, however,



(64)

and both the Tenants and HUD have moved for summary judgment (Docket Nos. 47 and 50). After hearing, I conclude that each motion ought to be granted in part and denied in part.

## I. Factual Background

HUD acquired the Brighton Village property in 1976 and sold it to the Owner in 1980. At the time of the sale, HUD provided a forty-year purchase money mortgage (set to mature in 2020) which, among other things, required the Owner to obtain HUD approval prior to prepaying the mortgage.

HUD and the Owner also entered into a fifteen-year project-based rental assistance contract ("the Contract") that would expire in 1995. The project-based Contract limited occupancy of Brighton Village to low income tenants and provided that the tenants would pay the Owner 30% of their income as rent and HUD would pay the Owner the difference between the tenants' payments and the full rent guaranteed in the Contract.

In connection with the mortgage, HUD and the Owner also entered into a Regulatory Agreement, which provided that the Owner could not transfer the property without HUD's approval. The Regulatory Agreement provided that:

> So long as the mortgage covering the project is insured or held by the Secretary [HUD], the Owner agrees to accept (1) any offer by the Secretary to renew the HAP [Housing Assistance Payments or Section 8] Contract or (2) an offer by the Secretary to provide any other rental housing assistance . . . .

Tenants' Ex. 10, Regulatory Agreement for Insured Multi-Family Housing Projects, App. A, ¶ 3. Accordingly, unless HUD approved a prepayment of the mortgage or a transfer of the property – either of which might result in the termination of the Regulatory Agreement – when the Contract expired in 1995 the Owner was required to either renew the Contract or accept HUD's alternative

offer. This arrangement provided certain benefits to the tenants of Brighton Village as long as the mortgage remained in place.

In 1986, HUD approved the Owner's request to prepay the mortgage, which had the effect of terminating the Regulatory Agreement. The Section 8 Contract, however, did not expire upon the prepayment of the mortgage. The Tenants say that they were unaware that the prepayment occurred in 1986.

In August 1994, the Owner notified HUD that it did not intend to renew the Contract when it expired in August 1995. The Owner explained that it would not renew because the rent the Owner received under the Contract was significantly below market value. HUD asked the Owner to provide documentation to support its claim for increased rent. After an exchange of information and correspondence, the Owners elected not to renew the Contract and it expired as of the end of August 1995. Beginning in September 1995, the Tenants received tenant-based Section 8 rental assistance vouchers. In October 1996, the Owner increased the Tenants' rents. As a result of the increase, the Tenants had to pay more than 30% of their incomes toward rent in order to cover the difference between the rents and the Section 8 vouchers.

The Owner continued to raise the rents through the remainder of the 1990s. The Tenants sought relief from HUD. They requested that HUD increase the standard it used to determine the amount of their Section 8 vouchers, and they requested that HUD provide additional financial assistance as an accommodation of their disabilities. In January 2000, HUD approved an increase in the Tenants' vouchers, but the Tenants continued to pay more than 30% of their incomes toward rent. In the summer of 2000, the Owner notified the Tenants that the rents would increase again effective October 2000. The Tenants were unable to agree to another increase in rent, and the Owner began the eviction process.

During the pendency of this action, as a result of new legislation, HUD has provided the Tenants "enhanced vouchers" so that the Tenants no longer pay more than 30% of their incomes toward rent. Although the Owner's claims have not been dismissed, it appears that the Owner is no longer seeking to evict the Tenants and is not pursuing its claims.

## II. Discussion of Issues Presented

The Tenants' amended claims against HUD allege the following violations of law: (1) that HUD violated 12 U.S.C. § 1715z-15(a) when in 1986 it allowed the Owner to prepay the HUD-held mortgage on the property; (2) that HUD violated 42 U.S.C. § 1437f(c)(9) when in 1995 the Owner did not renew its project-based Section 8 Contract; and (3) that HUD discriminated against the Tenants and failed to reasonably accommodate their disabilities by failing to provide adequate housing assistance after the Contract expired. The Tenants seek reimbursement for excess rents they paid from 1995 to 2000 and protection against future adverse housing action.

### A. The 1986 Mortgage Prepayment

In 1986, when HUD permitted the Owner to prepay the mortgage, 12 U.S.C. § 1715z-15(a) provided:

> During any period in which an owner of a multifamily rental housing project is required to obtain the approval of the Secretary for prepayment of the mortgage, the Secretary shall not accept an offer to prepay the mortgage on such project unless –
>
> (1) the Secretary has determined that such project is no longer meeting a need for rental housing for lower income families in the area or that the needs of lower income families in such project can more efficiently and effectively be met through other Federal housing assistance taking into account the remaining time the project could meet such needs;
>
> (2) the Secretary (A) has determined that the tenants have been notified of the owner's request for approval of a prepayment; (B) has provided the tenants with an opportunity to comment on the owner's request; and (C) has taken such comments into consideration; and

> (3) the Secretary has ensured that there is a plan for providing relocation assistance for adequate, comparable housing for any lower income tenant who will be displaced as a result of the prepayment and withdrawal of the project from the program.

It is undisputed that the mortgage required the Owner to obtain HUD's approval prior to prepayment. See Tenants' Ex. 8, Purchase Money Mortgage Note ("This Note may not be prepaid in whole or in part before maturity without the prior written approval of the Secretary of Housing and Urban Development . . . ."). In its response to the Tenants' request for admissions, HUD admitted that prior to approving prepayment it did not comply with the requirements of § 1715z-15(a). HUD defends its non-compliance by arguing that § 1715z-15(a) applied only to "subsidized" projects and did not apply to the Brighton Village project because it was "unsubsidized."

The statute by its terms applied to any "multifamily rental housing project [that] is required to obtain the approval of the Secretary for prepayment of the mortgage," and it provided no expressed exception for "unsubsidized" projects. The term "multifamily rental housing project" as used in other sections of the statute included both subsidized and unsubsidized projects. E.g., 12 U.S.C. § 1701z-11(b)(1), (2), (4). Because the text of the statute is unambiguous, it is not necessary to parse legislative records to divine Congress's intent, as HUD proposes. Moreover, HUD's own interpretation of the statute, found in internal memoranda not subject to public notice and comment, is not entitled to Chevron-type deference. See Christensen v. Harris County, 529 U.S. 576, 587 (2000) ("Interpretations such as those in opinion letters – like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law – do not warrant Chevron-style deference.")

HUD's citation of Walker v. Pierce, 665 F. Supp. 831 (N.D. Cal. 1987), to support its construction of the statute is not convincing. In that decision, the court weighed whether to grant

a preliminary injunction against HUD's sale of several mortgages. It found that the tenants had failed to establish a probability of success on the merits of their claim that § 1715z-15(a) applied to HUD's decision to sell the mortgages, suggesting that it was persuaded by HUD's interpretation that the statute did not apply. Notwithstanding its expressed predilection to agree with HUD, the court granted a preliminary injunction blocking HUD's sale of the mortgages. It reasoned:

> Despite the fact that the plaintiffs have not established a probability of success on the merits of this claim, the court finds that they have raised a serious legal question. Although the court is inclined to accept the defendants' inferences from the language of the statute, there is ambiguity that leaves room for a different interpretation.

Walker, 665 F. Supp. at 837. Accordingly, that court left open the question that I now resolve in the Tenants' favor.

HUD argues, in the alternative, that even if the statute did apply, it did not forbid prepayment, and HUD could have approved the mortgage prepayment after complying with the statute. HUD therefore suggests that its non-compliance should be excused because, had it complied with the statute, the outcome might have been the same. This is an unattractive invitation to speculate in favor of the party that defaulted on its obligation to follow what the statute mandated. At the very least, it would have to be shown convincingly that the outcome likely would have been the same, not just that it might have been. On the other hand, no speculation is required to conclude that HUD's approval of the prepayment without complying with the requirements of the statute was improper.[1]

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[1] The Tenants have also argued that, independent of the requirements of § 1715z-15(a), HUD's acceptance of the mortgage prepayment violated its obligation to further the national housing goals. While I have doubts about the merits of that claim, I need not reach it because I have already found that HUD's acceptance of the prepayment was improper because HUD did not comply with § 1715z-15(a).

The Tenants did not object to the prepayment in 1986 – they say that they had no knowledge of it until much later – and, significantly, now they do not seek to rescind it. Instead, they complain that the prepayment had repercussions in later years that affected their legal rights. In particular, they argue that the improper mortgage prepayment lead to the improper non-renewal of the project-based Section 8 Contract in 1995.

B. **The 1995 Non-Renewal of the Contract**

1. **The Regulatory Agreement**

As noted above, the Regulatory Agreement between HUD and the Owner provided that "[s]o long as the mortgage covering the project is insured or held by the Secretary [HUD], the Owner agrees to accept (1) any offer by the Secretary to renew the HAP [Section 8] Contract or (2) an offer by the Secretary to provide any other rental housing assistance . . . ." Tenants' Ex. 10, Regulatory Agreement for Insured Multi-family Housing Projects, App. A, ¶ 3. Also as noted, the Regulatory Agreement terminated when the Owner prepaid the mortgage.

In 1994, one year before the Section 8 Contract expired, the Owner notified HUD that it did not intend to renew the Contract. HUD offered to renew the Contract for a four-year term, but the Owner declined the offer. If the Regulatory Agreement had still been in effect, (that is, if HUD had not improperly approved the mortgage prepayment), the Owner would have been required to accept HUD's renewal offer, and the Contract would have been extended until September 1999.

HUD points out that the Regulatory Agreement did not require renewal, but rather required that the Owner accept either HUD's offer of contract renewal or an offer of "any other rental housing assistance." Thus, according to HUD, it could have offered the Owner other housing assistance rather than renewal. Again, speculating about what might have been is not a reason to resolve the matter against the Tenants. It falls to HUD to show at minimum that it was likely, not

just possible, that there would have been no harmful consequence to the Tenants from HUD's error or default. On the record presented, it is clear that but for HUD's failure to follow the statutory mandate regarding prepayment of the mortgage and the consequent termination of the Regulatory Agreement, the Owner in 1995 could have been compelled to renew the Contract through 1999. HUD's failure thus deprived the Tenants of benefits they would, and should, have had under the Contract, specifically including rental assistance payments by HUD that would have capped the Tenants' share of their rents at 30% of their incomes.

2. **42 U.S.C. § 1437f(c)(9)**

The Tenants also argue that, apart from the requirements of the Regulatory Agreement, HUD failed to comply with 42 U.S.C. § 1437f(c)(9) when the Owner indicated its intent to not renew the Contract.[2] In 1994 and 1995, when the Contract was up for renewal, § 1437f(c)(9) stated:

> Not less than 1 year prior to terminating any contract under which assistance payments are received under this section . . ., an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination, specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate

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[2] HUD argues that § 1437f(c)(9) did not apply to the Contract because it was enacted in 1988, eight years after the Contract was executed. This is incorrect. In the first place, the Supreme Court has held that Congress has the power to amend a statute in a manner that imposes new requirements on an existing government contract. In Bowen v. Pub. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41 (1986), the Supreme Court considered an amendment to the Social Security Act that affected previously executed contracts between the federal government and California and found that "contractual arrangements, including those to which a sovereign itself is party, remain subject to subsequent legislation by the sovereign." Id. at 52 (citation and internal quotations omitted); see also Woodstock Assocs. v. Kemp, 796 F. Supp. 898, 904 n.18 (E.D. Va. 1992) (discussing whether the enactment of § 1437f(c)(9) affected an existing HUD contract and stating in dicta that "[i]t is well-settled that absent a clear waiver by the sovereign of its sovereign power, subsequently enacted statutes amend a contract to which the sovereign is a party.") (citing Bowen, 477 U.S. at 52; Merrion v. Jicarilla Apache Indian Tribe, 455 U.S. 130, 148 (1982)).

Furthermore, the evidence shows that when the Contract expired, HUD acted as if §1437f(c)(9) applied. For example, correspondence between the Owner and HUD and internal HUD memoranda from 1994 and 1995 reflect that HUD responded to the Owner's notice of non-renewal as if the statute applied. See, e.g., HUD's Exs. 13, 14, 16.

> whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid the termination. . . . The Secretary shall review the owner's notice, shall consider whether there are additional actions that can be taken by the Secretary to avoid the termination, and shall ensure a proper adjustment of the contract rents for the project in conformity with the requirements of paragraph (2). The Secretary shall issue a written finding of the legality of the termination and the reasons for the termination, including the actions considered or taken to avoid the termination. Within 30 days of the Secretary's finding, the owner shall provide written notice to each tenant of the Secretary's decision. . . .

HUD failed to comply with this statute at least to the extent that it did not "issue a written finding of the legality of the termination and the reasons for the termination." The parties dispute whether HUD properly considered "whether there are additional actions that can be taken by the Secretary to avoid the termination" or "ensure[d] a proper adjustment of the contract rents for the project." The record reflects that HUD probably did not comply with these provisions, but it is not necessary to resolve the dispute because, as indicated in the previous section, HUD improperly permitted the owner to not renew the Contract.

C. **Failure to Accommodate the Tenants' Disabilities**

After the Contract expired in 1995, the Tenants at Brighton Village began receiving tenant-based Section 8 vouchers. Beginning in 1996 and continuing through 2000, the Owner raised the rents, and the vouchers were not adequate to cover the difference between the Tenants' rents and 30% of their incomes. In 1999, the Tenants requested that HUD increase their vouchers as a reasonable accommodation of their claimed disabilities. In 2000, HUD increased the vouchers, but not to the extent that the Tenants had requested. In 2001 new legislation permitted HUD to offer the Tenants "enhanced vouchers." With the enhanced vouchers the Tenants no longer had to spend more than 30% of their incomes on rent, and the Owner no longer sought to evict them.

The Tenants argue that HUD's refusal to grant the requested accommodations in 1999 and 2000 violated federal anti-discrimination laws. HUD argues that the requested accommodations

were unreasonable, not permitted by law, and too burdensome. HUD's motion for summary judgment on this claim is granted.

The parties do not dispute that the Tenants are disabled, and for purposes of the pending motions I assume, without deciding, that they are. Notwithstanding, summary judgment in HUD's favor is proper because it did not deny the Tenants "reasonable accommodations" of their disabilities.

It cannot be said that what the Tenants sought were accommodations of their disabilities. Instead, what they sought, quite simply, was increased economic assistance. Although the Tenants framed their request for increased vouchers as accommodations – they asked HUD to waive its rules, policies, or practices that it would otherwise apply to determine the amount of the vouchers – the requested accommodations find no ready analogy in disability discrimination law, and the Tenants have not cited any case where a court viewed direct financial assistance as an accommodation of a disability. On the contrary, the cases that come closest to addressing this issue squarely reject the theory the Tenants advance here.

For example, in Salute v. Stratford Greens Garden Apartments, 136 F.3d 293 (2d Cir. 1998), disabled tenants brought discrimination claims against the owners of an apartment complex, arguing that the owners' refusal to accept the tenants' Section 8 vouchers was a refusal to reasonably accommodate their disabilities. The Second Circuit upheld summary judgment in the owners' favor, saying:

> Plaintiffs' claim is a novel one because they do not contend that they require an accommodation that meets and fits their particular handicaps. Rather, they claim an entitlement to an accommodation that remedies their economic status, on the ground that this economic status results from their being handicapped. We think it is fundamental that the law addresses the accommodation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps.

Id. at 301.

The court briefly reviewed other disability discrimination cases where the plaintiffs' disabilities required accommodations, such as a deaf tenant's need for a hearing dog or a disabled tenant's need for parking space preference. Id. at 301-02. Distinguishing the tenants' claim from established precedent, the court found that the "[p]laintiffs seek to use this statute [the Fair Housing Amendments Act, 42 U.S.C. § 3604] to remedy economic discrimination of a kind that is practiced without regard to handicap," and ultimately concluded that "[e]conomic discrimination . . . is not cognizable as a failure to make reasonable accommodations, in violation of § 3604(f)(3)(B)." Id. at 302; see also Giebeler v. M&B Assocs., 343 F.3d 1143, 1154 (9th Cir. 2003) (questioning some of the reasoning in Salute, but stating that "mandating lower rents for disabled individuals would fail the kind of reasonableness inquiry" that the law requires); Hemisphere Bldg. Co. v. Village of Richton Park, 171 F.3d 437, 441 (7th Cir. 1999) ("It could be argued . . . that if handicaps cause poverty, financial concessions to the handicapped are accommodations. But that would mean that handicapped people, in the name of reasonable accommodation, could claim a real estate tax rebate under the Fair Housing Amendments Act.") (citation omitted).

Similarly here, the Tenants seek financial assistance to remedy their economic condition. While there may be a connection between their finances and the difficulties they face as a result of their disabilities, it cannot fairly be said that the voucher increases they requested would have been a reasonable accommodation of their disabilities.

The Tenants further argue that HUD has authorized exceptions to its standards for determining the amount of vouchers as accommodations to disabled tenants in other projects. See Tenants' Opp'n to Third-Party Def.'s Mot. for Summ. J. at 17 n.21. It may be that HUD has the authority to grant exceptions to its policies and that it has granted exceptions in the past based on disabilities. That does not mean, however, that HUD was required by law to grant the exceptions

that these Tenants requested as reasonable accommodations of their disabilities. Further, as the Tenants recognize, HUD responded to their request and increased the voucher standard effective January 2000. The Tenants complain, however, that HUD should have granted a greater exception and made it retroactive to October 1999. Those actions were not mandatory but were within HUD's discretion, and the Tenants will be unable to prove that HUD abused its discretion in failing to grant the greater exception that the Tenants had requested or that the greater exception was required as a reasonable accommodation.

D. **Remedy**

As explained previously, the Tenants are entitled to summary judgment on their claims that HUD improperly permitted the mortgage prepayment in 1986 and the non-renewal of the Contract in 1995. After the termination of the Contract, the Tenants were required to pay toward rent a greater portion of their incomes than they would have paid if the Contract had been renewed. Also, as beneficiaries of Section 8 vouchers, the Tenants enjoyed fewer protections against adverse housing action than they would have if the project-based contract had continued. Consequently, the Tenants seek reimbursement for the amount of rent they paid after September 1995 that exceeded 30% of their incomes and prospective relief ensuring them the protections they would have had if the project-based contract was renewed. I find that the Tenants are entitled to reimbursement but not to prospective relief.

Initially it is necessary to address the parties' dispute concerning the extent to which I have the authority to grant any of the relief requested. Under the Administrative Procedures Act ("APA"), 5 U.S.C. § 702, a person aggrieved by an agency's action may seek judicial review of that action, and the federal government has waived its sovereign immunity against suits "seeking relief other than money damages." Section 706 empowers a court to "compel agency action unlawfully withheld or

unreasonably delayed" or "hold unlawful and set aside agency action, findings, and conclusions." HUD argues that the APA narrowly circumscribes my authority to grant the Tenants relief, and because the Tenants do not seek to set aside the mortgage prepayment or to compel HUD to enter into a new project-based contract, they are not entitled to any relief. I find these arguments unpersuasive.[3]

First, the APA has not been construed as narrowly as HUD would like. It has been held that a court has discretion to equitably tailor a remedy to fit the occasion. E.g., NAACP v. Secretary of Hous. and Urban Dev., 817 F.2d 149, 160-61 (1st Cir. 1987). Accordingly, I have the authority to order equitable relief, if necessary to remedy improper HUD action.

Second, an award of relief may include an order for monetary payment of funds that HUD was otherwise obligated to make, so long as that award is not in the nature of monetary damages. See Zellous v. Broadhead Assocs., 906 F.2d 94, 98-99 (3d Cir. 1990) (Section 8 tenants were entitled to reimbursement for utility payments; rejecting HUD's characterization of the requested reimbursement as money damages because the "[r]eimbursement merely requires [HUD] to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it [implemented timely utility allowance adjustments].") (citation and internal quotations omitted); Bowen v. Massachusetts, 487 U.S. 879, 900-01 (1988) (discussing relief under the APA in "a suit seeking to enforce the statutory mandate itself, which happens to be one for the payment of money. The fact that the mandate is one for the payment of money must not be confused with the question

[3] It is important to note that the Tenants do not seek to rescind the mortgage prepayment or the non-renewal of the Contract. I therefore pass no judgment on whether such relief would be available or warranted; that determination would likely require consideration of facts and circumstances not discussed in this memorandum.

whether such payment, in these circumstances, is a payment of money as damages or as specific relief.")

Turning to the Tenants' claims, I find that they are entitled to reimbursement for the excess rent payments. HUD offered to renew the Contract for an additional four-year term, from September 1995 to September 1999, and the Owner should have been required to accept that offer. As a result of the Contract not being renewed, the Tenants were required to incur additional out-of-pocket rent expenses that they should not have had to incur. Under a renewed contract, it would have been HUD's obligation, not the Tenants', to pay the difference between 30% of the Tenants' incomes and the contract rents. HUD should therefore be required to reimburse the Tenants for the excess rent that they paid because HUD improperly did not, i.e., the amount of rent expense the Tenants incurred from September 1995 to September 1999 in excess of 30% of their incomes.

The Tenants are not entitled however to any monetary or injunctive relief after September 1999. They seek an injunction guaranteeing them the protections against adverse housing action that they would have had if the project-based Contract had been renewed until the mortgage matured in 2020. That request is premised on the theory that HUD would have been required to offer to renew the Contract each time it was set to expire, and so long as the Regulatory Agreement was in place, the Owner would have been required to accept HUD's offer. The Tenants' theory, however, is based on considerable speculation, and there were no guarantees that the Contract would have been renewed through 2020. The known facts and the conclusions discussed above indicate only that the Contract should have been renewed through September 1999. It is impossible to reach any conclusions concerning what may have or should have happened after that date. For example, HUD may have accepted prepayment of the mortgage after complying with the appropriate statutes, thereby eliminating the requirement that the Owner accept an offer to renew the Contract. Or, even

if the mortgage remained in place, HUD may have offered, as permitted under the statute, an alternative form of housing assistance rather than renewal of the Contract. Finally, as is evident from the history of the housing statutes discussed above, Congress has and may continue to change the laws so as to affect the Tenants' rights. Consequently, the Tenants are not entitled to any prospective relief because it would necessarily be based upon facts and events that are too remote from those presented in the record.

## III. Conclusion

The Tenants' motion for summary judgment is GRANTED as to Claims Two and Three of their amended claims against HUD and DENIED as to Claim One. HUD's motion for summary judgment is GRANTED as to Claim One and DENIED as to Claims Two and Three. HUD shall reimburse the Tenants for the excess rent they paid from September 1995 to September 1999. The Tenants' request for prospective relief is DENIED.

To consider the implications of these rulings on any remaining claims, counsel for all parties are directed to appear for a conference at 11:00 a.m. on Monday, March 29, 2004, in Courtroom 9, John Joseph Moakley United States Courthouse. All counsel shall be prepared to address the resolution of any remaining claims, and the Tenants' counsel shall be prepared to substantiate their claims for reimbursement for excess rent payments in accordance with the relief granted above.

It is SO ORDERED.

March 23, 2004
DATE

DISTRICT JUDGE.