

No. 09-1717

In the
Appellate Court of Illinois
First Judicial District

Keith Landers,

Plaintiff-Appellee,

v.

Chicago Housing Authority, A Municipal Corporation,

Defendant-Appellant.

Appeal from the Circuit Court of Cook County, Illinois,
First Municipal District, No. 09 CH 11724
The Honorable William O. Maki, Judge Presiding.

PLAINTIFF -APPELLEE'S BRIEF

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ISSUES PRESENTED FOR REVIEW

1. Whether the Chicago Housing Authority's decision to deny Mr. Landers admission to public housing based solely on an arrest record in which all criminal charges were dismissed was contrary to the governing federal statute and regulations that permit denial of admission where the authority can demonstrate that the applicant actually engaged in past "criminal activity."

2. Where the only competent evidence adduced at his hearing established that Mr. Landers was innocent of all criminal charges, whether the Chicago Housing Authority's decision denying Keith Landers's application for public housing solely on the basis of an arrest record in which all criminal charges were dismissed was clearly erroneous and contrary to the evidence.

STANDARD OF REVIEW

Issue # 1 presents a question of law that this Court should review *de novo*. *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board, State Panel*, 216 Ill. 2d 569, 577. Respondent-Appellant Chicago Housing Authority ("CHA") agrees that there is no factual dispute for purposes of this issue and that the issue is purely one of law. (CHA Br. 5-6.) Because the CHA relied solely on a record that was inadmissible and incompetent as a matter of law, the trial court correctly reversed CHA's decision

to deny Mr. Landers admission. While the CHA concedes the issue is solely one of law, the CHA consistently mischaracterizes the legal question presented as whether the CHA must consider only *convictions* of criminal activity in determining whether an applicant has engaged in past criminal activity. (See CHA Br. 6.) Of course, Mr. Landers has never taken the position that no evidence other than a conviction will suffice. Rather, Mr. Landers's position is that arrests, *alone*, without more, cannot as a matter of law substitute for or constitute "evidence" sufficient to establish that an applicant engaged in past criminal activity under the governing federal statute and regulation. Under the law, the CHA's decision must be based on evidence that the applicant actually engaged in criminal activity; arrests alone do not suffice.

Issue #2 presents a mixed question of law and fact that the Court should review under the clearly erroneous standard. See *AFM Messenger Serv. v. Dep't of Empl. Sec.*, 198 Ill. 2d 380, 391 (2001). A mixed question of law and fact, for purposes of the "clearly erroneous" standard of review, is one in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or whether the rule of law as applied to the established facts is or is not violated. *Id.* A decision is clearly erroneous where "the reviewing court on the entire evidence is left with

the definite and firm conviction that a mistake has been committed," even if there is some evidence to support the decision. *Id.* at 393, quoting *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). In this case, The CHA concedes that there is no factual dispute; the issue is only whether a history of arrests alone satisfies the statutory requirement of "criminal activity." (See CHA Br. 5-6.) It cannot and does not. Further, not only were all criminal charges dismissed in this case, the uncontradicted testimony established that Mr. Landers was actually innocent of each of those charges. Therefore, this Court should be left with the definite and firm conviction that the CHA erred.¹ This Court should thus affirm the trial court's decision to reverse the decision of the CHA.

¹ In fact, given that *no* competent evidence whatsoever supported the CHA's decision, and that the evidence of Mr. Landers's innocence was unimpeached and unrebutted, CHA's decision may not stand under any standard of review. See, e.g., *Sweilem v. Illinois Dep't of Revenue*, 372 Ill. App. 3d 475, 486 (1st Dist. 2007).

STATUTE AND REGULATION INVOLVED

42 U.S.C. § 13661 Screening of Applicants For Federally Assisted Housing

(c) Authority to deny admission to criminal offenders

Except as provided in subsections (a) and (b) of this section and in addition to any other authority to screen applicants, in selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant's household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees, the public housing agency or owner may –

- (1) deny such applicant admission to the program or to federally assisted housing. . .

24 C.F.R. § 960.203 Standards for PHA tenant selection criteria

(c) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

...

- (3) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants

.....

STATEMENT OF FACTS²

The facts of this case are not in dispute. (CHA Br. 5.) In February 1995, Keith Landers applied for a public housing unit with the CHA. (Supp. C.II. 19-20.)³ Thirteen years later, in November 2008, Mr. Landers reached the top of the CHA's waiting list. The CHA Admissions and Continued Occupancy Policy ("ACOP") provides that the CHA may consider, for purposes of applications for admission, criminal activity in the past three years that involves crimes to persons or property. (C. 40.) The CHA therefore asked Mr. Landers for permission to conduct a criminal background check, which Mr. Landers granted. (Supp. C.II. 21-23.) The CHA obtained two different criminal background reports on Mr. Landers from one of its vendors, Screening Reports, Inc. (Supp. C.II. 29-38.) In December 2008, Mr. Landers requested that the CHA hold a

²In its brief, the CHA failed to prepare its Statement of Facts in compliance with Illinois Supreme Court Rule 341(h)(6). In particular, the CHA failed to provide "appropriate reference to the pages of the record on appeal." *See* Ill. Sup. Ct. R. 341(h)(6). Rather, the CHA cites only to the Brief's Appendix. Moreover, the CHA failed to include in the Appendix "a complete table of contents, with page references, of the record of appeal," as required by Rule 342(a). *See* Ill. Sup. Ct. R. 342(a). Mr. Landers has included such a table of contents in the Appendix of his brief. (*See* A. 36 - 37.)

³The Record On Appeal consists of four volumes. Volume I, the common law record, will be denoted herein as "C.____;" Volume II, consisting of the transcribed report of proceedings in this matter, will be denoted herein as "R.____." Two supplemental volumes of the common law record will be denoted respectively as "Supp. C.I.____" and "Supp. C.II.____."

mitigation hearing so that he could dispute the accuracy of the report which mistakenly indicated that he had been criminally convicted. (CHA Br., App. 4.)

On February 25, 2009, the CHA held a mitigation hearing concerning Mr. Landers's application for public housing. (Supp. C.II. 26.) At the hearing, Mr. Landers provided the CHA with a revised background check report from Screening Reports ("revised report"), which Mr. Landers obtained after disputing the accuracy of the original report. (Supp. C.II. 6, 13-16; A. 3, 10-13.) The revised report showed that, in the previous three years, Mr. Landers had been charged with nine criminal offenses and two civil offenses. (Supp. C.II. 14; A. 11.) All of the charges were ultimately dismissed, however, save one civil offense for drinking in a public way. (Supp. C.II. 14; A. 11.)

Mr. Landers testified at the hearing that Screening Report's first background check report was inaccurate because it contained more than twenty criminal charges directed not at Mr. Landers but at his twin brother, Kenneth. (Supp. C.II. 6; A. 3.) Mr. Landers further explained that Screening Reports issued the revised report after he provided the company with a copy of his fingerprint-based Chicago Police Department rap sheet. (Supp. C.II. 6; A. 3.) A Criminal History Report prepared by the Chicago Police Department on January 12, 2009 indicated that Mr. Landers had no convictions. (Supp. C.II. 39.)

Mr. Landers also testified at the mitigation hearing that he did not commit the criminal acts for which he was charged. (Supp. C.II. 6; A. 3.) He explained that, as a homeless man, he is frequently questioned by Chicago Police officers simply because he is gathered with other homeless people on the street. (Supp. C.II. 6; A. 3.) Mr. Landers further explained that if a police officer decides to arrest one homeless individual for a criminal charge, he or she often arrests other homeless individuals who happen to be nearby. (Supp. C.II. 6; A. 3.) Mr. Landers denied engaging in criminal conduct and noted that nearly all of the criminal charges listed in the background check report were dismissed at the initial court date because the charges lacked merit. (Supp. C.II. 6; A. 3.) Mr. Landers admitted drinking a beer in a park in 2007, but he was not criminally charged for this offense. (Supp. C.II. 6; A. 3.)

On March 2, 2009, the CHA rendered a final administrative decision rejecting Mr. Landers's application for public housing. (Supp. C.II. 40.) The CHA said that it rejected Mr. Landers's application because his background check report showed "a pattern of arrest and/or conviction for certain criminal activity." (Supp. C.II. 40.)

On March 23, 2009, Mr. Landers filed a Petition for Certiorari, asking the Circuit Court to reverse the CHA's decision denying Mr. Landers's application

for an apartment in Trumbull Park Homes. (C. 3-18.) His Petition alleged that the CHA refused him a residence because of a number of prior arrests and criminal charges that did not result in convictions or findings of guilt. (C. 3-18.) He argued that federal law does not allow the CHA to deny applicants public housing based on the mere fact of an arrest or criminal charge. (C. 3-18.) In response, the CHA filed a Section 2-619 motion to dismiss, arguing that Mr. Landers's arrest record provided sufficient reason to support the CHA's decision denying his application. (C. 23-57.) On May 13, 2009, Mr. Landers filed his response to the motion and a supporting brief. (C. 62-73.)

On June 5, 2009, the parties presented their arguments, and the court thereafter granted Mr. Landers's petition and denied CHA's motion to dismiss, concluding that Mr. Landers would pose no threat to other housing residents. (R. 23; A. 33; Supp. C.II. 41.) In reaching this conclusion, the court noted that all the criminal charges lodged against Mr. Landers had been dismissed and that this fact was consistent with Mr. Landers's testimony that he was routinely removed from the streets because he was homeless. (R. 23; A. 33.) The CHA appealed the decision to this Court on July 1, 2009. (C. 92.)

ARGUMENT

I. THE CHICAGO HOUSING AUTHORITY'S EXCLUSIVE RELIANCE ON MR. LANDERS'S CRIMINAL ARREST RECORD, IN WHICH ALL CHARGES WERE DISMISSED, TO DENY HIS APPLICATION FOR PUBLIC HOUSING WAS CONTRARY TO THE GOVERNING FEDERAL STATUTE AND REGULATIONS PERMITTING DENIAL OF ADMISSION WHERE THE APPLICANT HAS ENGAGED IN PAST "CRIMINAL ACTIVITY."

The federally enacted Quality Housing and Work Responsibility Act of 1998 (QHWRA) grants public housing agencies ("PHAs") the authority to deny a family admission if it "determines that an applicant or any member of the household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, *engaged in any drug-related or violent criminal activity or other criminal activity* which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees." 42 U.S.C. § 13661(c) (emphasis added). Federal regulations promulgated pursuant to QHWRA provide that an applicant may be denied if he or she has a "history of *criminal activity* involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants." 24 C.F.R. § 960.203(c)(3) (emphasis added). Thus, the plain language of both the governing statute and regulation makes clear that the PHA

must determine whether the household member *actually engaged* in prior criminal conduct. *Id.* The law contains no authority permitting denial solely on the basis of an applicant's arrests. *See id.*

The CHA's decision to deny Mr. Landers's application for public housing based solely on an arrest record in which all charges were dismissed, was contrary to the governing federal statute and regulations permitting denial of admission where it can be demonstrated that the applicant engaged in past "criminal activity." Both the letter and the purpose of law require this result.

A. The Governing Statute and Regulations Do Not Permit The CHA to Deny Admission Based Solely on Arrest Records, Because Mere Arrests Do Not Constitute Evidence of Criminal Activity and Have No Probative Value.

Despite the plain language of the statute and regulations, the CHA asserts that it should be permitted to deny an application based not on evidence of actual criminal activity, but on arrests alone. (*See* CHA Br. 6, asserting law permits denial based solely on "arrest records and a pattern of arrest.")

However, such a reading is foreclosed by Supreme Court precedent. The United States Supreme Court has held, in no uncertain terms, that arrests and dismissed criminal charges may not constitute evidence of criminal activity. *See, e.g., Schware v. Bd. of Bar Examiners*, 353 U.S. 232, 241 (1957). In *Schware*, the New Mexico Board of Bar Examiners denied the petitioner's application to sit for the

state bar examination due, in part, to his record of arrests. The Court held that New Mexico violated petitioner's due process rights by denying him admission to the bar because of arrests that did not result in convictions. The Court approvingly cited Professor Wigmore's treatise on evidence, stating that an "arrest, by itself, is not considered competent evidence at either a criminal or civil trial to prove that a person did certain prohibited acts." *Id.* at 242 n. 6. The Court further stated as follows:

The mere fact that a man has been arrested has very little, if any, probative value in showing that he engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed against the arrested person and he is released without trial whatever probative force the arrest may have had is normally dissipated.

Id. at 241.

The D.C. Circuit Court of Appeals, citing *Schware*, underscored this point in *Utz v. Cullinane*, 520 F.2d 467, 479 (D.C. Cir. 1974). In *Utz*, the appellate court criticized the FBI's practice of disseminating arrest-record information to employers, noting that the practice placed considerable barriers on employment opportunities, in likely violation of the Fourteenth Amendment's Due Process protections. *Id.*, 520 F.2d at 480. While the court refrained from basing its holding on the constitutional question and, instead, decided the case on narrower statutory grounds, the court could not have been clearer, that the

government is not permitted to use mere arrests and dismissed criminal charges to deny individuals their liberty or property rights:

[C]harges resulting in acquittal clearly have no legitimate significance. Likewise, other charges which the government fails or refuses to press or which it withdraws are entitled to no greater legitimacy. They lose any tendency to show probable cause and should not be bootstrapped into any unearned and undeserved significance. Actually, a collection of dismissed, abandoned or withdrawn arrest records are no more than gutter rumors when measured against any standards of constitutional fairness to an individual and, along with records resulting in an acquittal are not entitled to any legitimate law enforcement credibility whatsoever.

...

The proper forum for definitively adjudicating an individual's guilt or innocence is a trial that conforms to constitutional strictures; if the government aborts that procedure or if the individual is otherwise vindicated at trial, the Constitution requires that he be treated *as though he engaged in no criminal activity*.

Id. at 479-481 (emphasis added).

Schware and *Utz* must inform the meaning of the phrase "criminal activity" found in 42 U.S.C. § 13661(c) and 24 C.F.R. § 960.203(c)(3). Both cases make clear that federal law prohibits a government agency, like the CHA, from placing any evidentiary weight on an arrest or dismissed criminal charge when determining whether an individual has engaged in criminal acts, and from substituting a showing of arrests for a showing of actual wrongdoing.⁴ Of

⁴

Further, *Schware* and *Utz* make clear that denying a governmental benefit such as public housing on the basis of arrests alone would violate Due Process. See

course, this approach is consistent with the long-standing principle that the criminally accused are innocent until proven guilty.

For the reasons discussed by these courts, the CHA has fallen far short of demonstrating that Mr. Landers has a history of engaging in criminal activity that threatens the health or safety of other residents, as required by federal law. Mr. Landers and the CHA agree that the revised criminal background check Mr. Landers presented at his informal hearing accurately represents Mr. Landers's past arrest record. (*See* Supp. C.II. 6; CHA Br. 2-3.) However, the arrests and criminal charges listed in this revised report carry no evidentiary weight whatsoever, particularly when those arrests and criminal charges stem from Mr. Landers's having to live on the street where Chicago police officers may remove him for reasons unrelated to any suspicion of crime. Because the government

Schwartz, 353 U.S. at 241, 247; *Utz*, 520 F.2d at 479-80. Law governing eligibility for public housing must be interpreted consistent with the basic requirement of due process that public benefits be administered fairly. *See Green v. Department of Public Aid*, 165 Ill. App. 3d 936, 940 (1st Dist. 1988) ("Basic due process requires that any form of public aid be administered in a manner that insures fairness regarding both eligibility and benefits and also remains free of the risk of arbitrary decision making."). The CHA urges an interpretation of the governing statute that would permit denial of an application based on arrests alone—not only is this reading of the statute contrary to its plain language, as set out above, it raises serious constitutional questions. These questions provide an additional basis to reject the CHA's reading. *See Gomez v. U.S.*, 490 U.S. 858, 864 (1989) ("It is our settled policy to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question.").

aborted each and every charge, Mr. Landers must be treated "as though he engaged in no criminal activity." *See Utz*, 520 F.2d at 479. Further, as set out in Argument II, below, the CHA provided no evidence to refute Mr. Landers's testimony that he did not engage in the claimed criminal activity. Therefore, as a matter of law, the CHA was wrong to rely exclusively upon the arrest reports to deny Mr. Landers admission to public housing.⁵

As it must, Congress agrees with the Supreme Court that arrest records may not be used to measure a tenant's propensity for criminal activity. The United States Housing Act of 1937 permits PHAs, like the CHA, to obtain law enforcement records as part of their screening processes, but the statute specifically limits a PHA's request for such records to those arrests resulting in a criminal conviction. 42 U.S.C. § 1437d(q)(1)(A). Congress no doubt prevented PHAs from requesting non-conviction information from law enforcement agencies for the simple and obvious reason that non-conviction information has no relevance or probative value when it comes to a PHA's admission decisions.

5

Moreover, the CHA never even made a finding that Mr. Landers actually engaged in past criminal activity. In its final administrative decision, the CHA's only finding was that it "has determined and can document a pattern of arrest and/or conviction for certain criminal activities." (Supp. C.II. 40.) Therefore, the CHA is not just wrongly using arrests as evidence of criminal activity, but substituting arrests for criminal activity.

After all, if Congress considered non-conviction information to be relevant, it surely would have allowed PHAs to request that information from law enforcement.⁶

Of course, though a PHA is not permitted to rely solely on arrests or dismissed criminal charges to deny an applicant a public housing unit, this rule does not prohibit the PHA from using the fact of an arrest or dismissed criminal charge as the starting point of an investigation into a potential tenant's suitability. If the CHA obtains a background check report showing that an applicant has been arrested on numerous occasions and that the charges have been dismissed, the CHA is perfectly within its rights to ask the applicant about the circumstances of the arrest, interview police officers or other witnesses about the alleged criminal conduct, and then make an informed decision based on evidence about whether the criminal conduct actually occurred.

The CHA wrongly asserts that Mr. Landers contends "that the [federal] regulations require a conviction of crime to deny housing to an applicant." (CHA Br. 6.) The CHA cites to *Perry v. City of Milwaukee Housing Authority*, No. 06-C-

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In this case, the CHA did not request any information from law enforcement pursuant to authority granted under 42 U.S.C. § 1437d(q)(1)(A); rather, the CHA obtained Mr. Landers's arrest records through a private service called Screening Reports, Inc. (Supp. C.II. 29-38.).

0101, 2007 WL 1168733 (E.D. Wis.), for the proposition that a conviction is not necessary to demonstrate that an applicant engaged in past criminal activity. (CHA Br. 7-8.) Again, Mr. Landers has no quarrel with that proposition. Rather, Mr. Landers's argument is that federal law requires the housing authority to make its decision regarding whether there has been past criminal activity on the basis of evidence. The housing authority may *not* deny an applicant based on past criminal activity where there is no evidence of such activity. Arrest records, in and of themselves, do not constitute evidence and have no probative value in determining whether criminal activity actually occurred.

Thus, the decision in *Perry* does not apply to this case. In *Perry*, the applicant did not dispute the accuracy of the criminal conduct described in the materials contained in the criminal complaint and police records surrounding the applicant's arrests for domestic battery.⁷ *Id.*, 2007 WL 1168733, at *2 & 8. In this case, Mr. Landers does dispute the accuracy of the arrest reports, and submitted un rebutted testimony that he did not commit the criminal acts for which he was charged.

⁷ The *Perry* court noted that the applicant's written submission in opposition to the housing authority's motion for summary judgement did not include a response to the housing authority's proposed findings of fact; therefore, the court concluded that there were no genuine issues of fact, and that the applicant did not dispute the accuracy of materials contained in the criminal complaint and police records. *Id.*, 2007 WL 1168733, at *2.

The CHA makes the remarkable argument that the “regulations do not require proof of actual illegal conduct.” (CHA’s Br. 8.) Implicit in this assertion is that the CHA may instead rely on something less than evidence of actual illegal conduct, such as rumor, suspicion, or speculation. Not surprisingly, the regulation cited by the CHA does not support this proposition. See 24 C.F.R. 960.553(a)(1)(ii)(B). Rather, this regulation specifically provides that a housing authority may prohibit admission if the authority “has reasonable cause to believe that a household member’s *illegal drug use* or a pattern of *illegal drug use* may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents . . .” *Id.* The regulation nowhere, as the CHA appears to suggest, permits the housing authority to forgo evidence that, in fact, the household member *has engaged* in illegal drug use or a pattern thereof. And the regulation nowhere, as the CHA would have it, permits the housing authority to rely in its decision-making on something less than evidence, such as rumor, suspicion or speculation. As discussed above, federal law requires the housing authority to determine whether the applicant “*engaged in* any drug-related or violent criminal activity or other criminal activity.” 42 U.S.C. § 13661(c) (emphasis added). Because federal law also establishes that arrests have no probative value in

determining this question, the CHA may not rely on them alone. *See Schware*, 353 U.S. at 241, 247; *Utz*, 520 F.2d at 479-80.

B. The CHA's Reliance On Arrest Records Has A Discriminatory Impact On Groups Protected Under The Civil Rights Acts.

A policy of denying housing to individuals solely on the basis of arrest records is not only arbitrary, it violates applicable statutes that prohibit race discrimination. Several courts and administrative agencies have recognized that an employer's use of arrest records in employment decisions has a disparate and unjustified impact on African-Americans (like Mr. Landers), who are arrested at a far higher rate than their white counterparts. *See* EEOC Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964 (1990) (hereinafter, "EEOC Policy Guidance"); *Gregory v. Litton Sys.*, 472 F.2d 631, 632 (9th Cir. 1972); *Reynolds v. Sheet Metal Workers Local 102*, 498 F. Supp. 952, 975 (D.D.C. 1980). Title VII is clear that when an employer's hiring policy has a disparate impact on a protected class, it must be justified by business necessity, 42 U.S.C. § 2000e-2(k), and the EEOC has said that when it comes to an employer's use of arrest records, such a showing can rarely be made, "Since business justification rests on issues of job relatedness and credibility, a blanket exclusion of people with arrest records will almost never withstand scrutiny." *See* EEOC Policy Guidance. The Illinois General Assembly

likewise recognized the discriminatory impact of an employer's consideration of arrest records when it prohibited their use in employment decisions some twenty years ago. 775 ILCS § 5/2-103(A).

Of course, these concerns about illegal race discrimination are not unique to the employment context. The use of arrest records in housing decisions also has a disparate impact on African-Americans, and landlords are no more justified in using these unreliable records when excluding African-Americans from a home than employers are justified in using them to exclude African-Americans from the workplace. For this reason, the CHA's use of such records violates the Fair Housing Act, which – like Title VII – prohibits tenant selection policies that disproportionately exclude minorities from housing without sufficient justification. 42 U.S.C. § 3604. *See also Metro. Housing Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977) (holding that the defendant's housing policy, which had a disparate impact on minorities, violated the Fair Housing Act because it was not justified by any compelling interest).

Furthermore, the CHA has a particular statutory duty to “affirmatively further fair housing,” and, accordingly, has a further-reaching duty than a private employer or landlord to combat the discriminatory impact of arrest records and dismissed criminal charges. 42 U.S.C. § 3608(e)(5). In order to live

up to that obligation, it simply cannot justify the use of such unreliable records in its own selection of tenants.

Again, as set out in Argument I(A), above, the CHA is in no way constrained from using arrests and dismissed charges as a starting point to investigate whether an applicant actually engaged in the conduct at issue. When used in this way, PHAs avoid engaging in illegal discrimination by tailoring the use of records to legitimate business concerns. Indeed, the EEOC has made clear that when an employer uses an arrest as a starting point to investigate whether the individual actually engaged in the underlying conduct, concerns about illegal discrimination can be alleviated:

An arrest record does no more than raise a suspicion that an applicant may have engaged in a particular type of conduct. Thus, the investigator must determine whether the applicant is likely to have committed the conduct alleged. This is the most difficult step because it requires the employer either to accept the employee's denial or to attempt to obtain additional information and evaluate his/her credibility. . . . The employer is required to allow the person a meaningful opportunity to explain the circumstances of the arrest(s) and to make a reasonable effort to determine whether the explanation is credible [by, among other things, interviewing other individuals] before eliminating him/her from employment opportunities.

EEOC Policy Guidance. In short, by focusing the inquiry on whether the individual actually engaged in criminal conduct, employers (as well as PHAs)

avoid illegal discrimination that results from the consideration of arrest records alone.

C. The CHA's Admissions and Continued Occupancy Policy and Procedure May Not Be Read to Permit Arrests Alone to Constitute Evidence of Past Criminal Conduct Sufficient to Deny an Applicant Housing.

The CHA argues that its Admissions and Continued Occupancy Policy (ACOP) allows it to reject an applicant based on arrests alone. (CHA Br. 7.)

However, in making that assertion, the CHA misreads its own ACOP, which states,

[T]he CHA will reject applicants if the CHA can document via police arrest and/or conviction documentation that: . . . An applicant *has a criminal history* in the past three years that involves crimes of violence to persons or property as documented by police arrest and/or conviction documentation. 24 CFR § 960.203(c)(3).

(C. 40 (ACOP § II (G)(14)(d)) (emphasis added).) Thus, the CHA's own policy requires the CHA to show an applicant actually has a criminal history in order to reject an applicant on that basis. As discussed in Argument I(A), arrest records alone cannot constitute evidence of criminal history. Further, this reading of the ACOP is supported by another section of the same document:

If the CHA rejects an applicant based upon a police arrest report pending case information, the applicant's name will remain on the wait list until documentation is presented showing the outcome of the case.

(C. 40-41 (ACOP § II (G)(14)(f)).) This section makes clear that arrest information alone has no probative weight if the “outcome” of the case is dismissal of the charges or acquittal. If, as the CHA contends, an arrest alone suffices to deny admission, there would be no need whatsoever to determine the outcome of the arrest. Thus, CHA’s own policy documents recognize that arrests alone, without some evidence that criminal conduct occurred, such as an inculpatory case outcome, may not suffice to deny admission.

At best, CHA’s ACOP is ambiguous as to whether or not arrest records *alone* can serve as sufficient “documentation” of “criminal history” to permit rejection of an applicant. However, any ambiguity must be resolved such that the ACOP is consistent with federal law. *See* 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(c)(3); and Argument I(A). To the extent the CHA ACOP does allow rejection of an applicant based on arrests alone, it violates federal law and, therefore, is unenforceable.

II. THE CHICAGO HOUSING AUTHORITY'S DECISION DENYING MR. LANDERS'S APPLICATION FOR PUBLIC HOUSING SOLELY ON THE BASIS OF AN ARREST RECORD IN WHICH EACH OF THE CHARGES WERE DISMISSED, AND WHERE THE ONLY EVIDENCE ADDUCED ESTABLISHED THAT MR. LANDERS WAS INNOCENT OF EACH OF THE CHARGES, WAS CLEARLY ERRONEOUS.

In order to deny Mr. Landers's public housing application, the CHA was required to demonstrate that he had "engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees." 42 U.S.C. § 13661(c). Well-established principles of law governing administrative agencies require that administrative decisions rest upon competent evidence. *Menning v. Dept. of Reg. and Ed.*, 14 Ill. 2d 553, 558 (1958). Under the ACOP, the CHA bears the burden of establishing a reason for the denial of Mr. Landers's application. (C. 40 (ACOP § II(G)(14)).) The CHA did not meet that burden because it presented only incompetent, non-probative evidence, in the form of an arrest record in which each of the charges was dismissed. (*See* Argument I(A).)

Further, an administrative agency may not reject a witness's unimpeached, unrebutted testimony, where it is not inherently implausible. *See Sweilem v. Illinois Dept. of Revenue*, 372 Ill. App. 3d 475, 485 (1st Dist. 2007) ("Our Supreme Court has clearly indicated that in Illinois a finder of fact may not

simply reject un rebutted testimony.”). This standard applies “even though the witness may be an interested party or an employee of one of the parties.” *Id.* See also *Board of Educ. of City of Chicago v. Cady*, 369 Ill. App. 3d 486, 496-97 (1st Dist. 2006) (administrative agency “cannot arbitrarily or capriciously reject the testimony of an unimpeached witness where the testimony of the witness is ‘neither contradicted, either by positive testimony or by circumstances, nor inherently improbable,’” (quoting *Crabtree v. Illinois Department of Agriculture*, 128 Ill. 2d 510, 518 (1989) (internal quotation marks omitted))). In this case, the only evidence before the agency consisted of Mr. Landers’s unopposed, unimpeached testimony, which established that he was innocent of the conduct on which his arrests were based. (Supp. C.II. 6.) At his administrative hearing, Mr. Landers presented un rebutted testimony that he did not commit the criminal acts for which he was charged, that as a homeless man he was often questioned by Chicago Police Officers, and that when police officers arrest one homeless person, they often arrest other homeless individuals in the same area. (Supp. C.II. 6.) Further, the CHA does not dispute these facts. (CHA Br. 5.) The CHA has provided no basis whatsoever to reject Mr. Landers’s un rebutted testimony.

Because there is no evidence that meets the statutory standard for denying Mr. Landers's public housing application, CHA's decision was clearly erroneous.⁸

The CHA wrongly asserts that Mr. Landers's status as a homeless person may not be considered in reviewing his application. (CHA Br. 9-10.) However, Mr. Landers's testimony that he was homeless was appropriate, relevant and admissible. To support its argument, the CHA cites 24 C.F.R. § 960.203(a) which states,

The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member.

24 C.F.R. § 960.203(a). Of course, this Section does not preclude consideration of Mr. Landers's status as a homeless person. First, Section 960.203(a) explicitly goes on to state, "The PHA may use local preferences as provided in § 960.206." Section 960.206, in turn, provides that the housing authority may establish a "local preference" for single persons who are "homeless." 24 C.F.R. § 960.206. Thus, it is not improper for the CHA to consider the fact that Mr. Landers was and continues to be homeless. Further, the fact that Mr. Landers is homeless is relevant in that it highlights his obvious need for housing. It therefore

⁸ Further, because there was *no* evidence to support CHA's decision, it would not pass muster under any standard of review. See *Sweilem*, 372 Ill. App. 3d at 486.

constitutes an "individual attribute," not an assumption based on his membership in a "group." The CHA is required to consider such relevant factors. See CHA Mitigating Hearings Procedure at 2, 3 ("The applicant is allowed to present information about unique circumstances in an attempt to change the determination made by CHA or property management staff," and "[t]he Mitigating Hearing Panel considers all evidence and explanations presented by the applicant."). Finally, the fact Mr. Landers is homeless helps explain why he was routinely arrested and removed by police from the streets when innocent of wrongdoing, a point highlighted in the Circuit Court's decision. (See Supp. C.II. 6., R. 22)

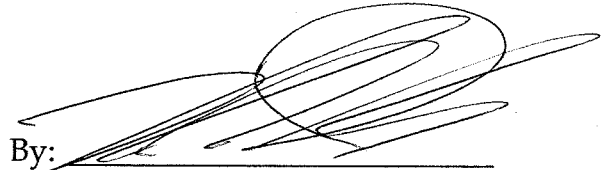
Mr. Landers's testimony that he was homeless was thus relevant and admissible. Further, even putting aside Mr. Landers's testimony regarding his homelessness, any decision that he engaged in past criminal activity would still be clearly erroneous, as the only evidence before the agency established Mr. Landers's innocence.⁹

⁹Mr. Landers's record does indicate a conviction for "drinking on the public way," a municipal violation. The CHA has never taken the position that ordinance violations are criminal matters that could disqualify an applicant, nor could it. "[P]rosecutions for municipal ordinance violations are civil in nature, and are tried and reviewed as civil proceedings." *City of Chicago v. Pudlo*, 271 Ill. App. 3d 107, 109-110 (1st Dist. 1995). Therefore, Mr. Landers's ordinance conviction is not evidence of "criminal activity." And, even if it could be considered criminal activity, the ordinance violation is not a "[c]rime[] of

CONCLUSION

For the reasons set forth above, Mr. Landers respectfully requests that this Honorable Court affirm the Circuit Court's decision overturning the CHA's administrative decision denying his public housing application.

Respectfully submitted,

By: 

Attorney for Plaintiff-Appellee

Richard M. Wheelock
Plaintiff-Appellee's Attorney
Legal Assistance Foundation of Metropolitan Chicago
111 W. Jackson, 3rd floor
Chicago, Illinois 60604
Tel.: 312/341-1070, Fax: 312/341-1041
Attorney No. 91017

violence to persons or property" as required under CHA's own ACOP and federal law. (See C. 53.)

APPENDIX

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

KEITH LANDERS,

Petitioner,

v.

CHICAGO HOUSING AUTHORITY,

Respondent.

No. 09 CH 11724

STIPULATION CONCERNING THE THE MITIGATION HEARING FOR
PETITIONER KEITH LANDERS

Pursuant to Section 108 of the Illinois Administrative Review Act, the parties stipulate that the following statements truly and accurately summarize the parties' discussions at the February 25, 2009 Mitigation Hearing in this matter.

1. On February 25, 2009, the Chicago Housing Authority ("CHA") held a mitigation hearing concerning Petitioner Keith Landers's application for public housing. Keith Landers attended the hearing with his attorney Christopher Wilmes. CHA was represented at the hearing by Tonya Conditt, Maria Sewell-Joseph, Brittany Zomaya, Miriam Arambula, Michelle Griffith.
2. Mr. Landers requested the hearing, pursuant to 42 U.S.C. § 1437d(q)(2), because he disputed the relevance and accuracy of a background check report that CHA obtained from a company named Screening Reports, Inc. See Exhibit A.

09 MAY 13 PM 3:39
FILED-1
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIV.
DOROTHY E. MORAN, CLERK

3. At the hearing, Mr. Landers provided CHA a revised background check report from Screening Reports, which Mr. Landers obtained after disputing the accuracy of the original report. *See Exhibit B.*
4. Mr. Landers explained that Screening Report's first background check report was inaccurate because it contained over twenty criminal charges that involved Mr. Landers's twin brother, Kenneth. Mr. Landers further explained that Screening Reports issued the revised report after he provided the company a copy of his fingerprint-based Chicago Police Department criminal history report.
5. CHA's representatives then asked Mr. Landers whether he committed the criminal offenses listed in the revised report. Mr. Landers responded that he did not commit the criminal acts for which he was charged. He explained that, as a homeless man, he often congregates with other homeless individuals on the street and is frequently questioned by Chicago Police officers. Mr. Landers further explained that when police officers arrest one homeless individual for a criminal charge, they often arrest other homeless individuals in the same vicinity. Mr. Landers also noted that nearly all of the criminal charges listed in the revised background check report were dismissed at the initial court date.
6. Mr. Landers admitted drinking a beer in a park in 2007 but pointed out that he was not criminally charged for this offense.

So stipulated:

By 
Attorney for Keith Landers

By 
Attorney for the Chicago Housing Authority



Phone (866) 388-4042
Fax (866) 388-4043

Property: Trumbull Park Homes

Agent: Vivian Allen

(previous / next) (Search)

Property: Trumbull Park Homes
Property ID: 6384A
Phone: 773-375-5538
Fax: 0
Submitted by: Vivian Allen
Other ID: 0
Received: 11/10/2008 5:02 PM
Completed: 11/13/2008 9:13 AM

Toll Free: 866-389-4042
Phone: 630-694-1670
Fax Toll Free: 866-389-4043
Fax: 630-694-1672
Fico Risk [\(view\)](#)
Graphic [\(view\)](#)
Applicant Letter [\(view\)](#)
Supporting Docs [\(view\)](#)
Application [\(view\)](#)
View Notes [\(view\)](#)
View Input

Woodlawn Community Development

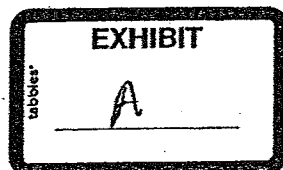
Management Scoring Model

Monthly Rent: \$ 0

 Denial	Applicant(s) (add / remove)	Report ID	Report Name	Decision
	1 KEITH LANDERO	691467	Standard - Full	Denial

Property Criteria		
1	Criteria Description	Override
<input type="radio"/>	No outstanding landlord debt evident within 36 months	
<input type="radio"/>	No outstanding utility collections evident within 36 months	Δ N/A
<input type="radio"/>	No evictions filed within 36 months	
<input type="radio"/>	Must have no collections by SRI within 36 months	
<input type="radio"/>	Must pass social security number verification	Δ N/A
<input type="radio"/>	Must not be listed in sex offender registry	
<input checked="" type="radio"/>	Must pass criminal criteria model	

Information submitted by Vivian Allen	
KEITH LANDERO Date of Birth: 05/09/XXXX SSN: 349-62-XXXX	Current Address: 4150 W 13TH ST CHICAGO, IL 60623



Rent to Income Summary					
Applicant(s)	Score	Rent	Mo Income	Rent to Income	Min Income
1 KEITH LANDERO	501	\$ 0	\$ 0	0.0%	\$ 0

Fraud Protection	
Social Security Number	Comments
Provided: 349-62-5141	ALERT: Address Alert; Current Address does not match credit file
Status: Issued SSN	
State Issued: Illinois	
*** Social Security Numbers can only be validated to being issued or not issued. They may be valid numbers but issued to a different person. If no credit report is found please request to see the applicant's social security card and State ID.	

Criminal Records				
Name Offense	Level Disposition	Date	County	Docket
KEITH LANDERO BURGLARY	FELONY GUILTY-AKA MATCH KENNETH LANDERS	01/09/1986	COOK	86CR0018601
KEITH LANDERO THEFT	FELONY GUILTY-AKA MATCH KENNETH LANDERS	06/22/1992	COOK	92CR1427701
KEITH LANDERO BURGLARY	FELONY GUILTY-AKA MATCH KENNETH LANDERS	07/06/1998	COOK	98CR1833301
KEITH LANDERO POSSESSION OF A CONTROLLED SUBSTANCE	FELONY DISMISSED-AKA MATCH KEITH LANDERS	04/11/2004	COOK	04112020301
KEITH LANDERO POSSESSION OF A CONTROLLED SUB	FELONY DISMISSED - AKA MATCH KEITH LANDERS	12/21/2004	COOK	04115556401
KEITH LANDERO POSSESSION OF CONTROLLED SUBSTANCE	FELONY DISMISSED-IR # MATCH	04/26/2008	COOK	08111646201
KEITH LANDERO FUGITIVE FROM JUSTICE	FELONY DIPOSITION UNKNOWN	10/14/2008	COOK	08113536501
KEITH LANDERO BURGLARY	FELONY GUILTY-IR # MATCH	06/07/1994	COOK	94CR1503901
KEITH LANDERO POSSESSION OF DRUG PARA	MISD STRICKEN OFF WITH LEAVE TO REINSTATE -AKA MATCH	06/11/2007	COOK	07123984101
KEITH LANDERO ATTEMPT BATTERY	MISD GUILTY-AKA MATCH KENNETH LANDERS	06/26/2001	COOK	01125595901

KEITH LANDERO	MISD	03/17/2003	COOK	03121393501
BATTERY	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND			
KEITH LANDERO	MISD	07/29/2004	COOK	04124702301
ASSAULT	GUILTY-AKA KENNETH LANDERS			
KEITH LANDERO	MISD	10/24/2008	COOK	08125919801
BATTERY-CAUSE BODILY HARM	ACTIVE NEXT COURT DATE 11/21/08-AKA KENNETH LANDER			
KEITH LANDERO	MISD	10/21/2004	COOK	04129180801
THEFT	STRICKEN OFF W/LEAVE TO REINSTATE - AKA MATCH			
KEITH LANDERO	MISD	06/13/2005	COOK	05124748401
POSSESSION OF DRUG PARA	STRICKEN OFF WITH LEAVE TO REINSTATE - AKA MATCH			
KEITH LANDERO	MISD	12/11/2006	COOK	06130839701
ASSAULT	STRICKEN OFF WITH LEAVE TO REINSTATE - AKA MATCH			
KEITH LANDERO	MISD	02/21/2007	COOK	07121532001
POSSESSION OF DRUG PARA	STRICKEN OFF WITH LEAVE TO REINSTATE - AKA MATCH			
KEITH LANDERO	MISD	09/01/2006	COOK	06128646601
BATTERY CAUSE BODILY HARM	STRICKEN OFF WITH LEAVE TO REINSTATE - AKA MATCH			
KEITH LANDERO	MISD	02/20/2007	COOK	07121525601
POSSESSION OF CANNABIS	STRICKEN OFF WITH LEAVE TO REINSTATE - AKA MATCH			
KEITH LANDERO	MISD	07/24/2002	COOK	02125806401
POSSESSION OF CANNABIS	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND			
KEITH LANDERO	MISD	10/03/2002	COOK	02129575001
CRIMINAL DAMAGE TO PROPERTY	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND			
KEITH LANDERO	MISD	05/28/2003	COOK	03125414201
ASSAULT-SIMPLE	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND			
KEITH LANDERO	MISD	07/06/2004	COOK	04124587501
ASSAULT	GUILTY-AKA MATCH KENNETH LANDERS			
KEITH LANDERO	MISD	05/07/2005	COOK	05119811701
THEFT	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND			
KEITH LANDERO	MISD	02/24/2005	COOK	05120302901
BATTERY	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND			
KEITH LANDERO	MISD	03/01/2005	COOK	05120326601
CRIMINAL TRESPASS TO STATE LAND	GUILTY-AKA MATCH			
KEITH LANDERO	MISD	03/01/2005	COOK	05120326601

ASSAULT	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND
KEITH LANDERO	MISD 06/13/2005 COOK 05124723601
BATTERY	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND
KEITH LANDERO	MISD 09/30/2005 COOK 05127315601
POSSESSION OF DRUG PARAPHERNALIA	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND
KEITH LANDERO	MISD 02/15/2006 COOK 06120836301
POSSESSION OF CANNABIS	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND
KEITH LANDERO	MISD 09/17/2007 COOK 07128171001
CRIMINAL TRESPASS TO REAL PROPERTY	STRICKEN OFF W/LEAVE TO REINSTATE-AKA KENNETH LAND
KEITH LANDERO	MISD 09/26/1991 COOK 91137151201
THEFT	GUILTY-IR # MATCH
KEITH LANDERO	ORDINANCE 01/31/2005 COOK 05120457301
DRINKING ALCOHOL ON THE PUBLIC WAY	NOT PROSECUTED - AKA MATCH KEITH LANDERS
KEITH LANDERO	ORDINANCE 04/20/2007 COOK 07121846801
DRINKING ALCOHOL ON THE PUBLIC WAY	NOT PROSECUTED - AKA MATCH KEITH LANDERS
KEITH LANDERO	ORDINANCE 05/01/2007 COOK 07121898901
DRINKING ALCOHOL ON THE PUBLIC WAY	GUILTY - AKA MATCH
KEITH LANDERO	ORDINANCE 06/30/2008 COOK 08123010101
DRINKING ALCOHOL ON THE PUBLIC WAY	NOT PROSECUTED - AKA MATCH

****Criminal records are gathered at National, State and County levels.
Cross reference duplicates by Date, Docket, and Offense.****

Court Eviction
NO EVICTION MATCH WAS MADE BY SCREENING REPORTS, INC

Rental Verifications			
Address City, State, Zip Verified By / Management Co.	Move Out Move In Phone #	Rent Amount Lease Terms Deposit Withheld	Roommates Proper Notice

4150 W 13TH ST CHICAGO, IL 60623 /	\$0.00 N/A	0 N/A
1304 S TRIPP AV 2 CHICAGO, IL 60623 /	\$0.00 N/A	0 N/A
915 W WILSON AV 309 CHICAGO, IL 60640 /Wilson Windsor Apartments	\$0.00 N/A	0 N/A
447 FILLMORE ST GARY, IN 46402 /	\$0.00 N/A	0 N/A

Credit Report Summary (Trans Union)			
Public Records:	0	Collections:	9
Revolving Accts:	0	Installation Accts:	0
Credit Score:	501	Total Trade Lines:	1
(350 low - 850 high)		Negative Trade Lines:	1
		Mortgages:	0
		Inquiries:	6

	High Credit	Credit Limit	Current Balance	Past Due	Monthly Payments	Available
Revolving	\$0	\$0	\$0	\$0	\$0	0%
Installation	\$0	\$0	\$0	\$0	\$0	0%
Mortgage	\$0	\$0	\$0	\$0	\$0	0%
Open	\$0	\$0	\$0	\$0	\$0	0%
TOTALS	\$0	\$0	\$0	\$0	\$0	0%

Collections (Trans Union)					
Collection Agency Name Original Creditor	Opened Last Reported	Closed	Placed Amount	Balance Owed	Comments
COLLECTION U S CELLULAR CR	09/09 10/08		\$350	\$426	049XV002 PLACED FOR COLLECTION
AFNI 10 MCI	04/08 07/09		\$422	\$422	056ER009 PLACED FOR COLLECTION
NCO FIN/22 NCO ASSIGNEE OF SPRINT PC	07/05 04/08		\$249	\$249	073CJ010 PLACED FOR COLLECTION
CDM/PONTIAC MEDICAL	02/03 10/07		\$281	\$281	031F2002 PLACED FOR COLLECTION
CDM/PONTIAC MEDICAL	10/02 10/07		\$538	\$539	031F2002 PLACED FOR COLLECTION
CDM/PONTIAC MEDICAL	04/02 10/07		\$181	\$181	031F2002 PLACED FOR COLLECTION
ASSET ACCEPT AT T	11/06 07/07		\$324	\$324	01FJ3001 PLACED FOR COLLECTION
I G SYSTEM 10 IQ TELECOM	03/06 01/07		\$115	\$116	02834001 PLACED FOR COLLECTION
CORPORATE 11 RCN 14 CHICAGO	09/05 10/06	10/06	\$98	\$98	02AYV001 PLACED FOR COLLECTION

Public Records (Trans Union)

C 11

NO PUBLIC RECORDS FOUND

Credit Information (Trans Union)

**** CLOSED ACCOUNTS ****

1. Creditor: PEOPLES ENGY Type: OPEN (UTILITY COMPANY)
 Opened: 07/08 Last Reported: 10/08 Last Late: MOP; 099 30/60/90: 0/0/0
 High Credit: \$1,808 Balance: \$0 Mo Pymt: \$0 Past Due: \$0
ACCOUNT CLOSED BY CONSUMER

Credit Inquiries (Trans Union)

Date	Name	Type of Inquiry	Date	Name	Type of Inquiry
11/2008	SCRMS RPTS	MISCELLANEOU	02/2008	1ST BK DE/CF	FINANCE
07/2008	COLLECTCORP	COLLECTION	09/2007	1ST PREMIER	BANKS
05/2008	VITAL REC SR	COLLECTION	05/2007	FIRST USA NA	BANKS

(previous / next) (Search)

Status: Issued SSN file
 State Issued: Illinois

*** Social Security Numbers can only be validated to being issued or not issued. They may be valid numbers but issued to a different person. If no credit report is found please request to see the applicant's social security card and State ID.

Criminal Records

Name Offense	Level Disposition	Date	County	Docket
KEITH LANDERO	FELONY	04/11/2004	COOK	04112020501
POSSESSION OF A CONTROLLED SUBSTANCE	DISMISSED-AKA MATCH KEITH LANDERS			
KEITH LANDERO	FELONY	12/21/2004	COOK	04115356401
POSSESSION OF A CONTROLLED SUB	DISMISSED - AKA MATCH KEITH LANDERS			
KEITH LANDERO	FELONY	10/14/2008	COOK	08113536501
FUGITIVE FROM JUSTICE	DISMISSED			
KEITH LANDERO	FELONY	04/26/2008	COOK	08111646201
POSSESSION OF CONTROLLED SUBSTANCE	DISMISSED-IR # MATCH			
KEITH LANDERO	MISD	10/14/2008	COOK	08111646201
POSSESS DRUG PARAPHERNALIA	DISMISSED			
KEITH LANDERO	MISD	01/22/2008	COOK	07131914101
CRIMINAL TRESPASS	DISMISSED/STRICKEN OFF W/LEAVE TO REINSTATE			
KEITH LANDERO	MISD	06/11/2007	COOK	07123984101
POSSESSION OF DRUG PARA	DISMISSED/STRICKEN OFF WITH LEAVE TO REINSTATE			
KEITH LANDERO	MISD	10/21/2004	COOK	04129180801
THEFT	DISMISSED/STRICKEN OFF W/LEAVE TO REINSTATE			
KEITH LANDERO	MISD	06/13/2005	COOK	05124748401
POSSESSION OF DRUG PARA	DISMISSED/STRICKEN OFF WITH LEAVE TO REINSTATE			
KEITH LANDERO	MISD	12/11/2006	COOK	06130839701
ASSAULT	DISMISSED/STRICKEN OFF WITH LEAVE TO REINSTATE			
KEITH LANDERO	MISD	02/21/2007	COOK	07121532001
POSSESSION OF DRUG PARA	DISMISSED/STRICKEN OFF WITH LEAVE TO REINSTATE			
KEITH LANDERO	MISD	09/01/2006	COOK	06128646601
BATTERY CAUSE BODILY HARM	DISMISSED/STRICKEN OFF WITH LEAVE TO REINSTATE			
KEITH LANDERO	MISD	02/20/2007	COOK	07121525601
POSSESSION OF CANNABIS	DISMISSED/STRICKEN OFF WITH LEAVE TO REINSTATE			
KEITH LANDERO	ORDINANCE	01/31/2005	COOK	05120457301
DRINKING ALCOHOL ON THE PUBLIC WAY	DISMISSED/NOT PROSECUTED - AKA MATCH KEITH LANDERS			
KEITH LANDERO	ORDINANCE	04/20/2007	COOK	07121846801
DRINKING ALCOHOL ON THE PUBLIC WAY	DISMISSED/NOT PROSECUTED - AKA MATCH KEITH LANDERS			
KEITH LANDERO	ORDINANCE	05/01/2007	COOK	07121898901
DRINKING ALCOHOL ON THE PUBLIC WAY	GUILTY - AKA MATCH			

KEITHLANDERO ORDINANCE 06/30/2008 COOK 08123010101
 DRINKING ALCOHOL ON THE NOT PROSECUTED - AKA MATCH
 PUBLIC WAY

****Criminal records are gathered at National, State and County levels.
 Cross reference duplicates by Date, Docket, and Offense.****

Court Eviction

NO EVICTION MATCH WAS MADE BY SCREENING REPORTS, INC

Rental Verifications

Address City, State, Zip Verified By / Management Co.	Move Out Move In Phone #	Rent Amount Lease Terms Deposit Withheld	Roommates Proper Notice
4150 W 13TH ST CHICAGO, IL 60623 /		\$0.00 N/A	0 N/A
1304 S TRIPP AV 2 CHICAGO, IL 60623 /		\$0.00 N/A	0 N/A
915 W WILSON AV 309 CHICAGO, IL 60640 / Wilson Windsor Apartments	773-728-3000	\$0.00 N/A	0 N/A
447 FILLMORE ST GARY, IN 46402 /		\$0.00 N/A	0 N/A

Credit Report Summary (Trans Union)

Public Records:	0	Collections:	9	Negative Trade Lines:	1
Revolving Accts:	0	Installment Accts:	0	Mortgages:	0
Credit Score:	501	Total Trade Lines:	1	Inquiries:	8
(350 low - 850 high)					

	High Credit	Credit Limit	Current Balance	Past Due	Monthly Payments	Available
Revolving	\$0	\$0	\$0	\$0	\$0	0 %
Installment	\$0	\$0	\$0	\$0	\$0	0 %
Mortgage	\$0	\$0	\$0	\$0	\$0	0 %
Open	\$0	\$0	\$0	\$0	\$0	0 %
TOTALS	\$0	\$0	\$0	\$0	\$0	0 %

Collections (Trans Union)

Collection Agency Name Original Creditor	Opened Last Reported	Closed	Placed Amount	Balance Owed	Comments
COLLECTION	09/08				049XV002
U S CELLULAR CR	10/08		\$350	\$426	PLACED FOR COLLECTION
AFNI	04/08				098ER009
10 MCI	07/08		\$422	\$422	PLACED FOR COLLECTION
NCO FIN/22	07/05				073CJ010
NCO ASSIGNEE OF SPRINT PC	04/08		\$249	\$249	PLACED FOR COLLECTION
CD/ANTONAC	02/03				031FZ002

Screening Reports, Inc. 1111 W. Randolph, Suite 1111

MEDICAL	10/07	\$281	\$281	PLACED FOR COLLECTION
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MEDICAL	10/07	\$539	\$539	PLACED FOR COLLECTION
CDA/PONTIAC	04/02			031FZ02
MEDICAL	10/07	\$151	\$161	PLACED FOR COLLECTION
ASSET ACCEPT	11/05			01FJ301
AT T	07/07	\$324	\$324	PLACED FOR COLLECTION
I C SYSTEM	03/05			02034001
18 IQ TELECOM	01/07	\$115	\$115	PLACED FOR COLLECTION
CORPORATE	08/05			02AYV001
11 RCN 14 CHICAGO	10/06	\$95	\$95	PLACED FOR COLLECTION

Public Records (Trans Union)

NO PUBLIC RECORDS FOUND

Credit Information (Trans Union)

***** CLOSED ACCOUNTS *****

1. Creditor: PEOPLES ENGY Type: OPEN (UTILITY COMPANY)
 Opened: 07/08 Last Reported: 10/08 Last Late: MOP: 009 30/60/90: 0/0/0
 High Credit: \$1,808 Balance: \$0 Mo Pymt: \$0 Past Due: \$0
 ACCOUNT CLOSED BY CONSUMER

Credit Inquiries (Trans Union)

Date	Name	Type of Inquiry	Date	Name	Type of Inquiry
11/2008	SCRNG RPTS	MISCELLANEOU	02/2008	1ST BK DECF	FINANCE
07/2008	COLLECTCORP	COLLECTION	09/2007	1ST PREMIER	BANKS
05/2008	VITAL REC SR	COLLECTION	05/2007	FIRST USANA	BANKS

(previous / next) (Search)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT, CHANCERY DIVISION

6 KEITH LANDERS,)
7)
8) Petitioner,)
9)
10) v.)
11) CHICAGO HOUSING AUTHORITY, a)
12) Municipal Corporation,)
13)
14) Respondent.)

No. 09 CH 11724

2008 JUL 9 PM 4:05
REGISTERED

12 TRANSCRIPT OF PROCEEDINGS had at the
13 Hearing of the above-entitled cause at the Richard
14 J. Daley Center, Room 2302, Chicago, Illinois, on
15 the 5th day of June, 2008, at 2:00 o'clock p.m.
16
17 BEFORE HONORABLE WILLIAM O. MAKI.
18
19
20
21
22
23
24

1 APPEARANCES:

2 LEGAL ASSISTANCE FOUNDATION OF
3 METROPOLITAN CHICAGO, by
4 MR. CHRISTOPHER J. WILMES 347-8371
5 111 West Jackson Boulevard, Suite 300
6 Chicago, Illinois 60604-3528
7 (312) 341-1070

8 on behalf of the Petitioner;

9 OFFICE OF THE GENERAL COUNSEL,
10 CHICAGO HOUSING AUTHORITY, by
11 MS. PAMELA COTTEN
12 60 East Van Buren Street, 12th Floor
13 Chicago, Illinois 60605
14 (312) 913-7102

15 on behalf of the Respondent.

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23 REPORTED BY: DEBORAH A. MINNICH, CSR, RPR
24 LICENSE NO.: 084-003487

MINNICH COURT REPORTING
(312) 357-2539

1 THE COURT: Why don't you come up. Good
2 afternoon.

3 MS. COTTEN: Good afternoon, Your Honor, Pamela
4 Cotten for the Chicago Housing Authority.

5 MR. WILMES: Good afternoon, Your Honor.
6 Christopher Wilmes, W-i-l-m-e-s.

7 THE COURT: Your client is here today?

8 MR. WILMES: Mr. Landers is here, yes.

9 THE COURT: Okay. As a preliminary matter, I
10 have to inquire. How are we proceeding? Are we
11 proceeding on a 619 motion to dismiss, or are we
12 proceeding on administrative review?

13 Let me preface by saying this. I agree
14 with the petitioner's argument that this is not a 619
15 motion. I don't think any affirmative matter has
16 been filed outside of the record.

17 And as a procedural matter, just so that
18 the record is clear, I would suggest that I deny the
19 619 motion to dismiss, and if you wish we could
20 proceed today considering your motion as your
21 response to the administrative review. And proceed
22 on administrative review, unless you are not prepared
23 for that.

24 MS. COTTEN: I am prepared to proceed with my

1 arguments. We can proceed as if it is our response
2 to his petition for served.

3 THE COURT: Do you agree with that?

4 MR. WILMES: We are prepared to proceed, Your
5 Honor. And I would state, of course, that we have
6 not had the opportunity to file a reply brief. And
7 we are willing to waive that right, unless you think
8 that there are further legal issues that need
9 fleshing out.

10 THE COURT: I think the briefs that have been
11 filed in this case are very complete.

12 MR. WILMES: I agree.

13 THE COURT: I believe all the arguments that are
14 about to be made are presented before the court.

15 MR. WILMES: We are willing to proceed, Your
16 Honor.

17 THE COURT: Okay. Who is going to proceed
18 first?

19 MS. COTTEN: Your Honor, also as a preliminary
20 matter, I just wanted to make sure that the first set
21 of documents that were filed as the mitigation
22 documents for the hearing be removed from the file,
23 because they have -- and I believe I explained this
24 in my cover letter to you, they have the petitioner's

1 social security number in there. And so I would like
2 to request that that file be removed.

3 THE COURT: For that purpose only. Is that what
4 you are saying?

5 MS. COTTEN: Yes.

6 THE COURT: Are we talking about evidence he
7 presented at the administrative hearing showing that
8 certain things were deleted from his criminal
9 history?

10 MS. COTTEN: The police records contained his --

11 THE COURT: He submitted a fingerprint for
12 purposes of submitting a new criminal background
13 history, correct?

14 MS. COTTEN: Exactly. As part of our
15 requirement to file the record, that was part of the
16 record that I filed was the police report. I
17 redacted all his social security numbers from other
18 documents but missed on the police report the social
19 security number.

20 So I am asking that that whole file or that
21 whole filing be taken out of his file. I have since
22 then filed the amended mitigation documents that have
23 all the redactions.

24 THE COURT: So you are making a motion to

1 substitute the record.

2 MS. COTTEN: Yes.

3 THE COURT: I am going to allow that, that's
4 fine.

5 MS. COTTEN: Logistically, Your Honor, how is
6 that done to make sure it is taken out of the public
7 file folder?

8 THE COURT: I have to have an order. The clerk
9 of the circuit court is very -- I'm talking about the
10 clerk of the circuit court -- is very protective
11 about removing anything from the file without a court
12 order. And in order for them to do that, they like
13 an order with as much specificity as possible.

14 So the best you can, if you can describe
15 exactly what you are asking leave to withdraw and
16 what you are asking leave to file as a substitute, it
17 would help you when you go down to the clerk's
18 office.

19 MS. COTTEN: Thank you.

20 THE COURT: All right.

21 MR. WILMES: It's our petition.

22 THE COURT: Go ahead.

23 MR. WILMES: Your Honor, 14 years ago Keith
24 Landers, my client, was having a difficult time

1 finding affordable housing, and he applied for an
2 apartment with the Chicago Housing Authority.

3 He waited for a response on his application
4 but for years he heard nothing from the agency. As a
5 result, there were long stretches of time, including
6 the past four years, in which Mr. Landers had no roof
7 over his head because he could simply not afford to
8 pay market rent.

9 Then in November 2008 CHA finally reached
10 out to him and said that they had an apartment for
11 him in Trumbull Park Homes provided that he
12 successfully pass a credit criminal background check
13 report.

14 When the criminal background check report
15 came back, it showed that he had been arrested
16 several times. I don't even know if it is worth it
17 to get into the whole mistaken identity thing, but
18 bottom line is everybody agrees now that over the
19 past three years there were several arrests, none of
20 which resulted in convictions. They were all
21 dismissed.

22 THE COURT: With the exception of drinking in a
23 public --

24 MR. WILMES: Which is not a criminal offense.

1 THE COURT: What is that, an ordinance
2 violation?

3 MR. WILMES: It is an ordinance violation, and
4 there is appellate court case law that says those are
5 civil cases.

6 I will submit to you that despite this
7 criminal record showing no convictions, all dismissed
8 criminal charges, CHA denied his application.

9 Mr. Landers insisted that all of the
10 charges were dismissed and insisted that he was
11 innocent of those charges and insisted that it was
12 nearly impossible to live as a homeless man in
13 Chicago without getting picked up by the police on
14 occasion. The CHA denied his application.

15 Incredibly after keeping him on their wait
16 list for 14 years, they subsequently denied his
17 application due to dismissed criminal charges that
18 were a direct result of his homelessness.

19 Your Honor, we ask that you reverse this
20 position because it is patently unsupported by the
21 governing law. Federal regulations are clear that a
22 public housing agency or PHA may deny admission to an
23 applicant if it offers evidence that the individual
24 has a history of criminal activity that would

1 adversely affect the health, safety, and welfare of
2 other tenants.

3 This regulation does not provide an
4 evidentiary standard that the PHA must meet before
5 denying admission to an applicant, but in the
6 eviction context, PHAs are routinely required to
7 satisfy the preponderance of the evidence standard.

8 And in any event, the CHA in its briefing
9 has not offered an alternative evidentiary standard
10 which we think makes a lot of sense. It is used in
11 every other civil proceeding.

12 There are three reasons why dismissed
13 criminal charges are not evidence, let alone the
14 preponderance of the evidence that the individual has
15 a history of criminal activity. The first and most
16 important reason is that the United States Supreme
17 Court has said so, and it is binding on this court
18 when it is interpreting federal law.

19 The supreme court has said that the mere
20 fact that a man has been arrested has very little if
21 any probative value. It said that in the case in
22 which the New Mexico bar examiners were denying a man
23 admission to a bar based on the mere fact of
24 dismissed criminal charges.

1 In addition the D.C. Circuit Court of
2 Appeals has said that a collection of dismissed,
3 abandoned, or withdrawn arrest records are no more
4 than gutter rumors when measured against any
5 standards of constitutional fairness.

6 And of course that makes sense, Your Honor.
7 We live in a society where fundamentally if the
8 government is going to accuse somebody of criminal
9 conduct, they must prove it beyond a reasonable doubt
10 or otherwise the person is presumed innocent. It is
11 a fundamental cornerstone of our criminal justice
12 system. That is my first and foremost argument to
13 your Honor.

14 Secondly, the housing act also I think
15 supports our position. The housing act controls a
16 PHA's admissions decisions. Though it does not state
17 explicitly that a PHA may not consider the fact of an
18 arrest or a dismissed criminal charge when denying
19 admission to an applicant, it certainly suggests as
20 much.

21 It provides that PHAs may request law
22 enforcement records to make admission decisions but
23 specifically restricts those requests to conviction
24 records.

1 The CHA contends that this is splitting
2 hairs. But I submit to you, Your Honor, that
3 congress made a deliberate decision when it used the
4 word "conviction" in the housing act. It was
5 certainly no mistake. The reason is that
6 nonconvictions are simply not a reliable predictor of
7 criminal activity.

8 Finally, Your Honor, the EEOC has said as
9 well as other federal courts that the use of arrest
10 records in employment decisions has a disparate and
11 unjustified impact on African-Americans like my
12 client in violation of Title 7. And there is no
13 reason to believe the courts would hold any
14 differently when it comes to housing decisions.

15 I briefed this argument pretty well in my
16 brief. I am not going to go into it any further.
17 The bottom line is the CHA's use of arrest records
18 likely violates the Fair Housing Act for the same
19 reason that the policy would violate Title 7.

20 For those reasons, Your Honor, we would ask
21 that you reverse the CHA's decision and instruct it
22 to grant Mr. Landers the affordable housing he has
23 been seeking now for 14 years.

24 THE COURT: Okay.

1 MS. COTTEN: Your Honor, the goal of the Public
2 Housing Act is to provide safe and affordable housing
3 to low income residents of the city. And one of
4 those ways to make sure that the housing that we
5 provide is safe is by screening applicants.

6 And HUD allows us to use our discretion by
7 using criminal records, not only criminal records but
8 looking at criminal activity, record of disturbance,
9 poor housekeeping habits, lack of meeting financial
10 obligations, destruction of property to determine
11 whether or not an applicant is a suitable tenant.

12 Now, as to the criminal activity which is
13 at issue in this case, the act -- the HUD regulations
14 allow us to look at arrest records, police or police
15 records, which include an arrest, convictions, and of
16 course any dispositions. I guess what is at issue
17 here is whether or not a conviction is what is
18 required in order to deny housing, and that is
19 patently not the case.

20 The HUD regulations do not require a
21 conviction in order to deny an applicant. He could
22 have been denied for any of these reasons, record of
23 disturbance, poor housekeeping, lack of meeting
24 financial obligations, a history of destruction of

1 property. He could have been denied for any of those
2 reasons, and HUD gives us, the regs give us the
3 discretion based on the information we get from the
4 applicant on whether or not this person is suitable
5 for housing.

6 It does not require conviction, but we have
7 to look at, and this is clear in the regulations,
8 whether the applicant's habits or practices
9 reasonably may be expected to have a detrimental
10 effect on the residents or the environment.

11 Now, counsel wants to say he had a few
12 arrests. Originally the first set of documents that
13 were produced that set forth the criminal record was
14 like 35 arrests and convictions for various offenses.

15 He came in and said those were not all his,
16 those were his 20 brothers. Okay. In mitigation he
17 came back with documents showing his correct record,
18 which showed, okay, half of them were his. And these
19 arrests were not just -- were not related to
20 homelessness. He wasn't arrested for failure to move
21 along on the public way or failure to obey the police
22 or to vacate the premises. He was arrested for very
23 serious offenses.

24 Now, his status as a homeless person is

1 something else that can't be used, and it is not
2 allowed by the regulations to be used as mitigation.
3 What the HUD regs allow is that we look at the
4 individual's pattern and practice of behavior. And
5 it gives us the discretion to look at that record and
6 make the decision whether or not this person would
7 make a suitable tenant.

8 And based on his record of criminal
9 activity which includes various arrests and an
10 ordinance violation, whether civil or criminal for
11 drinking on the public way, could reasonably be
12 considered as someone who may not make a suitable
13 tenant.

14 So based on this, we don't believe that the
15 CHA abused any discretion, which we believe is the
16 standard here because the HUD violations say we may
17 deny someone. So it gives us that discretion.

18 As far as his analogy to the federal
19 statutes, Your Honor, we believe these are just red
20 herrings. They weren't brought up in his petition.
21 We believe they are red herrings to distract you from
22 what the real issue is. And that is the HUD regs
23 don't require us to find that he has been convicted
24 of any crime.

1 Title 6 Act that he refers to says of
2 course that you can't use or promulgate practices
3 that are not related to a legitimate purpose. The
4 Fair Housing Act says you can't deny someone from
5 housing without sufficient justification.

6 We believe the use of the criminal records
7 and looking at his criminal history with all those
8 arrests, 12 arrests within the last three years, is
9 related to HUD's legitimate purpose of providing safe
10 and affordable housing. It does not exclude
11 minorities, but it excludes all people who have
12 engaged in a pattern of behavior that would be
13 detrimental to other residents, and that is
14 sufficient justification.

15 THE COURT: Do you want to add anything else?
16 Let me comment for one moment. In your brief you
17 state that you feel that the question presented here
18 is a mixed question of law and fact and therefore the
19 standard of review is clearly erroneous. Do you want
20 to elaborate upon that a little bit?

21 MR. WILMES: Judge, I think that that is
22 absolutely correct. Even under the clearly erroneous
23 standard, if the CHA has made a fundamental mistake
24 of law, then you don't have to give it any

1 discretion.

2 We are submitting that you are analyzing in
3 particular whether or not the CHA has offered
4 evidence or a preponderance of the evidence that
5 Mr. Landers engaged in criminal activity. But it
6 doesn't matter what the standard is, whether it is
7 clearly erroneous or de novo, because they offered no
8 evidence, nothing. He has been arrested which is
9 consistent with police harassment, with illegal
10 arrest. Many of these cases may very well have been
11 dismissed for lack of probable cause.

12 There is nothing in the record to show that
13 these arrests were legal. So whether clearly
14 erroneous or de novo or anything else, there is
15 simply no evidence that can support this decision on
16 any standard of review.

17 MS. COTTEN: Your Honor, if I may, I want to go
18 back. He referred earlier to -- first of all, I will
19 respond to the lack of evidence. It was not
20 incumbent upon the CHA to look outside his police
21 report. It was incumbent upon the petitioner to
22 provide other evidence of background of what happened
23 with his cases. So that argument fails.

24 As far as him bootstrapping other

1 regulations, for example, he mentioned the eviction
2 cases with someone getting evicted, that standard,
3 you only need to have been arrested for a criminal
4 activity in order to get evicted. You do not have to
5 have been convicted in order to get evicted. So that
6 is patently untrue.

7 He speaks also about how arrest records are
8 not -- are rumor mills, et cetera. He was well aware
9 that this was one of the criteria that he had to meet
10 in order to apply for housing. If he disagreed with
11 that criteria, it was up to him not to apply for
12 housing. There is no right to public housing. It is
13 his discretion to apply or not apply based on what he
14 knows the criteria are.

15 THE COURT: I find that the CHA is within
16 acceptable boundaries in setting these standards as
17 has been argued for safe and affordable housing. And
18 I do believe that the various regulatory acts that
19 have been cited in this case are designed for that
20 purpose, including the United States Housing Act and
21 the public housing program, the PHAS that have been
22 cited in this particular case.

23 And in that context, it is proper for the
24 CHA to review the arrest record of an individual and

1 take that into consideration.

2 However, I do believe in applying the
3 standard that has been suggested here, a mixed
4 question of law and fact, so I'm going to apply a
5 clearly erroneous standard, I am reviewing in terms
6 of a question of fact. And I do believe that the
7 petitioner at his administrative hearing did present
8 facts to demonstrate what his arrest history is.

9 But that history has to be looked in the
10 totality of the circumstances. The circumstances
11 that were suggested here, and is uncontested and
12 un rebutted, is that the petitioner is a homeless
13 person.

14 The petitioner suggested in his
15 presentation that as a homeless person he was subject
16 to being removed from the streets of Cook County or
17 more specifically the City of Chicago.

18 When we review that arrest history, we have
19 to look at not only the offenses that have been
20 charged, but we also have to look at the dispositions
21 that have been reflected. We have a history here,
22 and I believe -- let me count them one more time.
23 Seventeen arrests in the period from April 11, '04,
24 through October 14, '08. A variety of charges. But

1 what is interesting -- which range from felonies to
2 misdemeanors to ordinance violations.

3 I might add that some of the felonies that
4 have been charged here are drug related, possession
5 of a controlled substance. In that particular
6 criminal offense, any amount of a controlled
7 substance, even as minute as it may be, is a felony.
8 So we should not be misled by that.

9 But what is consistent with the
10 petitioner's position and argument is the disposition
11 of these cases. Dismissed, dismissed, dismissed,
12 dismissed, not prosecuted, dismissed, dismissed,
13 dismissed, dismissed, dismissed, dismissed,
14 dismissed, dismissed, dismissed, not prosecuted,
15 dismissed, dismissed. In looking in that context, it
16 is consistent with and corroborates his position that
17 he was routinely removed from the streets as a
18 homeless person.

19 It does not lend itself to the criteria of
20 putting the CHA or public housing in a position of
21 less than a safe environment or safe and affordable
22 housing; therefore, I find that the hearing officer
23 or the administrative hearing misapplied the criminal
24 history in their consideration of the criteria.

1 I am making no findings in terms of the
2 validity of the various acts of congress and/or the
3 State of Illinois or local public housing acts. I am
4 making no finding that the CHA is entitled to apply
5 this criteria, because I believe they are.

6 I also believe the CHA is entitled to
7 consider the arrest history; however, I do find that
8 the facts that were presented at this administrative
9 hearing contradict that this person would be an
10 unsafe person for the purposes of public housing, and
11 therefore, I am going to reverse the findings of the
12 administrative hearing.

13 MR. WILMES: Thank you, Your Honor.

14 MS. COTTEN: Your Honor, in terms of us
15 appealing your decision, do I have to make that for
16 the record?

17 THE COURT: Yes. I was going to ask counsel to
18 draw up an order. I think you are able to do that.
19 It is a final order, final and appealable order.

20 MS. COTTEN: Thank you.

21 MR. WILMES: Your Honor, I have no idea if the
22 CHA intends to seek a stay, but we would certainly
23 oppose such a stay if they do seek one just for the
24 record.

1 THE COURT: Well, I don't want to rule on things
2 that aren't before me, but just as a comment, if they
3 do appeal, they may be entitled to a stay.

4 MS. COTTEN: Thank you, Your Honor.

5 THE COURT: Thank you very much.

6 I guess I really need two orders. I need
7 your order in reference to the record that you wanted
8 to substitute. And then I need your order as to the
9 results of this hearing. If you could preface it by
10 what we did with the 619 motion, and that we did
11 proceed on administrative review.

12 (Which were all the proceedings had in
13 the above-entitled case this date.)

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 I, Deborah A. Minnich, a Certified
5 Shorthand reporter of the State of Illinois, do
6 hereby certify that I reported in shorthand the
7 proceedings had at the hearing aforesaid and that
8 the foregoing is a true, complete, and correct
9 transcript of the proceedings of said hearing as
10 appears from my stenographic notes so taken and
11 transcribed by me.

12 IN WITNESS WHEREOF, I do hereunto set my
13 hand at Chicago, Illinois, this 16th day of June,
14 2009.

15
16
17 *Deborah A. Minnich*

18 _____
19 Certified Shorthand Reporter
20 State of Illinois
21 CSR License No. 084-003487
22
23
24

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CERTIFICATE OF COMPLIANCE

I, Richard M. Wheelock, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages.

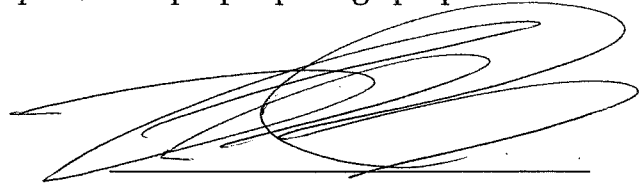
By: 

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Attorney No. 91017

CERTIFICATE OF SERVICE

I, Richard M. Wheelock, certify under penalties as provided by law pursuant to Sec. 1-109 of the Illinois Code of Civil Procedure, that I served three copies of **PLAINTIFF -APPELLEE'S BRIEF** upon Pamela Cotton, Assistant General Counsel, Chicago Housing Authority, 60 E. Van Buren, 12th floor, Chicago, IL 60605, by depositing same in the U.S. Mail at 111 W. Jackson, Chicago, IL on March 4, 2010 before 5:00 p.m., with proper postage prepaid.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned above the printed name.

Richard M. Wheelock

