

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CHRISTIAN COMMUNITY ACTION, INC., et al	:	
	:	
Plaintiffs,	:	No. 3:91 CV 00296 (AVC)
	:	
v.	:	
	:	
ALPHONSO JACKSON, in his official capacity as	:	
Secretary of the United States Department of	:	
Housing and Urban Development,	:	
HOUSING AUTHORITY OF THE CITY OF	:	
NEW HAVEN, et al.,	:	
	:	
Defendants.	:	NOVEMBER 17, 2006

MOTION TO ENFORCE SETTLEMENT AGREEMENT

The plaintiffs move to enforce the parties' 1995 Settlement Agreement, over which this Court retains, jurisdiction, by, *inter alia*, appointment of special master, pursuant to Fed.R.Civ.P.53. A special master is needed to oversee the completion of the process for the acquisition/development and occupancy of 30 units of replacement public housing which has been plagued by delay, incompetence, and gross negligence. In support of this Motion, plaintiffs state the following

I. BACKGROUND

1. This Fair Housing Act litigation, initiated in 1991, challenged the failure of the defendant Housing Authority of the City of New Haven (HANH) to implement the development of 183 scattered site public housing units which HANH was required by federal law to

- develop as replacement for the 360-unit Elm Haven High Rise project. HANH demolished this project in 1988.
2. Funding for these units was provided to HANH by the United States Department of Housing and Urban Development in 1989. Two years later, when this litigation commenced, HANH had approved only one small five-unit project.
 3. By the time the Court approved the parties' Settlement Agreement in July 1995, only 33 units had been acquired or developed. The Agreement extended and the deadline for completion of the remaining 150 units, originally required by federal law to be completed by 1995, for three years, until July 1998. Under the Agreement, all units must be located racially and economically integrated areas of New Haven as defined in the Agreement.
 4. By April 1999, nine months after the July 1998 deadline for completion, HANH had developed and occupied 137 units.
 5. By October 2000, HANH had added another 16-unit development to its scattered site portfolio for a total of 153 units. This still left 30 units to be completed
 6. Over the course of the last six years, HANH has only acquired two additional properties with a total four units. One of those properties is a single family home at 555 Fountain Street and, although it was purchased in 2003, it has yet to be occupied due to HANH negligence in maintaining the property initially and its subsequent inability to make needed repairs to the property in a timely manner. The other property is a 3-family house at 849 Woodward Avenue which was only recently acquired.
 7. Thus, 17 years after HUD allocated funds for these units, and eight years after the deadline set by the 1995 Agreement for completion of the project, HANH still has 30

units remaining to be developed and occupied, 26 of which have not yet even been identified.

II. 2002 MOTION TO ENFORCE CONSENT JUDGMENT

8. In 2002, the plaintiffs filed a similar Motion to Enforce Consent Judgment, seeking to compel defendant HANH to complete the acquisition or development of what was then the remaining 29 units of scattered site housing [the house at 555 Fountain Street having been identified by that time] necessary to develop in accordance with the terms of the 1995 Settlement Agreement. Plaintiffs subsequently withdrew their Motion in accordance with an interim agreement between the parties.
9. That interim agreement, memorialized in a letter from plaintiff's counsel to then Deputy Director Robin Golden, dated October 18, 2002, is attached hereto. It provided that HANH would use its best efforts to identify sites and subsequently acquire or develop the remaining 29 units within the next 12 months. HANH was to publish a Request for Proposals ["RFPs"] for turnkey developments¹, including one for the development of six units on land owned by HANH at 63/75 Fulton Street. HANH also agreed to actively solicit listings for single family and other appropriate existing units in permissible census tracts and blocks.

¹ Turnkey new construction means that a private developer builds units on developer-owned property pursuant to a construction contract with a housing authority and, upon completion of all units, turns those units ("turnkey") over to the housing Authority. In the case of Fulton Street, the turnkey proposal called for developer to build on HANH-owned land which would be temporarily deeded to the developer during the construction phase of the contract.

III. THE PROBLEMS SINCE 2002

10. In October, 2002, HANH published the agreed-upon RFPs for turnkey proposals for 29 units, including an RFP for a turnkey proposal to develop 6 units on property which HANH owned at 63/75 Fulton Street. Two proposals, one for a 20-unit development at 110 Dell Drive and one to develop 6 units on the Fulton Street site, resulted in contracts between the developers and HANH which were approved by HUD. Sites for three additional units were still left to be identified and pursued.
11. Since 2002, no ground has been broken on either proposal. One contract was has been abandoned and the other is in legal limbo. HANH made no effort until late 2005 to locate sites for the 3 units remaining after acceptance of the two proposals.

A. 63/75 FULTON STREET

12. HANH initially acquired 75 Fulton Street in 1993 with the intention of building nine units on the site. HUD approved this plan in 1996.
13. After that approval, HANH decided to acquire the adjacent property at 63 Fulton Street and expand the number of units on the combined site to 11. This proposal was approved by HUD in October 1997. However, the private developer who had been designated by HANH to develop the 11 units withdrew its proposal.

14. After the private developer withdrew his proposal to build the designated 11 units, HANH hired an architect to design a 10-unit conventional development.² Those plans were submitted to HUD in July 2000.³
15. HANH subsequently decided to build only six units on the combined site because of neighborhood opposition and, in October 2002, published an RFP for a private developer to build a turnkey development.
16. In response to the 2002 RFP, Waterford Construction (“Waterford”) submitted a proposal to construct 6 units at 63/75 Fulton Street. That proposal was approved by HUD in August 2003.
17. Waterford then prepared plans and specifications and signed a contract with HANH on May 25, 2005. The contract, which was subject to HUD approval, provided for construction to commence 30 days after issuance of a Notice To Proceed by HANH and to be completed within 365 days after issuance of such Notice.
18. HUD approved the contract with Waterford in December, 2005.
19. Instead of then issuing a Notice to Proceed, in January, 2005 HANH’s Board of Commissioners approved Resolution calling a \$260,000 increase in the amount of Waterford’s contract. This increase, requested by Waterford, was based on construction cost increases between October 2002 and December 2005.

² A conventional development is one developed by a housing authority directly.

³ It is not clear if HUD ever approved HANH’s construction plans.

20. HUD would be required to approve any increase in the amount of Waterford's contract. HANH has never provided HUD with the documentation necessary for it to issue such approval.
21. Upon information and belief, HANH has already delivered the deed for 63/75 Fulton Street to the property to Waterford and the contract between the parties has been assigned to a bank to secure financing for the developer's construction costs.
22. At this point, it is unclear if HANH intends to issue a Notice to Proceed. However, as a result of HANH's delay in developing this property since HANH first acquired it in 1993, the census tract in which the property is located has become increasingly racially and economically concentrated such that the property is no longer even complies with the 1995 Settlement Agreement between the parties.

B. 110 DELL DRIVE

23. In response to HANH's 2002 Request for Proposal, Nutmeg Developers ("Nutmeg") submitted a proposal for 20 single family homes at 110 Dell Drive, New Haven.
24. Nutmeg's proposal was approved by HUD in August, 2003 and thereafter by HANH in March, 2004 after a series of contentious public hearings at which the neighbors spoke in opposition to the proposal. A turnkey construction contract between the developer and HANH was approved by HUD in September, 2004 and signed shortly thereafter.
25. 110 Dell Drive is within a neighborhood of single family homes in one of the relatively few areas of New Haven which is considered to be "outside of an area of racial concentration" as required by the Settlement Agreement. Dell Drive directly abuts the East Haven border in a census tract, which is overwhelmingly white.

26. After signing the turnkey contract, the developer applied for building permit in October, 2004 which the City of New Haven refused because of pending zoning issues caused by neighborhood opposition. Those issues were resolved a year later, and in October, 2005, the City authorized the issuance of building permits for the 20 units at Dell Drive.
27. After issuance of the building permits, the developer sought an increase of over \$865,000 based on cost increases since it first submitted its proposal in 2002.
28. In January, 2006, HANH's Board of Commissioners approved a Resolution calling for the requested increase in the contract amount for 110 Dell Drive of over \$865,000, representing an increase in costs between October 2002 when the proposal was first submitted and October 2005 when building permits were finally issued by the City to Nutmeg. This amount includes both the increased costs for the unforeseen one-year delay in obtaining building permits, and increased costs for two years prior to Nutmeg signing the contract in 2004.
29. HANH has taken the position that the 2004 contract between itself and the developer is no longer legally enforceable.
30. In March, 2006, HANH submitted the Board Resolution for the additional \$865,000 to HUD for approval along with the Fulton Street Resolution.
31. In August, 2006, while the contract increase request was pending at HUD, before it was officially denied, Nutmeg⁴ withdrew its proposal for 110 Dell Drive. The property is now being developed as single family homes

⁴ Nutmeg Developers subsequently changed the name of the company to Salem Turnpike Housing Corporation.

32. Upon information and belief, HUD would never have approved the requested contract increase for 110 Dell Drive because the supporting documentation provided to HUD by HANH was insufficient to justify the amount of the requested increase for a project that was the result of a competitive bidding process.

C. 555 FOUNTAIN STREET

33. In 2002 a non-profit subsidiary of HANH purchased a single family home at 555 Fountain Street, in the Westville area of New Haven. In May, 2003, that property was sold to HANH and, on September 12, 2003, HUD approved that acquisition.
34. HANH did not properly secure or maintain the property after acquisition. Indeed, it did not seek any proposals to make necessary renovations to the property until January, 2004 when HOME Inc., a private property management company, submitted a proposal for the renovation of the house which it described as being in generally good condition. The work was estimated at \$49,470 and expected to take approximately 4 months to complete, at which point the property would be ready for occupancy.
35. Shortly thereafter, as a result of HANH's negligence in failing to properly maintain the property, water pipes burst causing extensive damage to the interior of the property.
36. Between January 2004 and March 2005, the property sat idle with HANH doing nothing to repair the property. Originally, HANH intended to hire an architect/general contractor to oversee the considerable repairs required to repair the damage caused by the burst pipes.

37. In February, 2005, that plan was scrapped when HANH could not develop a scope of work for one comprehensive package that would meet HUD standards. Thus, HANH was left having to solicit bids for numerous individual repair contracts.
38. In February, 2005, HANH finally solicited bids to repair the roof of the property.
39. HANH then waited until December, 2005 to solicit bids for a new boiler and heating system. That work did not begin until March, 2006.
40. Thereafter, bids for plumbing, siding, interior work, and landscaping were be solicited. In May and June, 2006. To date, work on the house has not been completed; indeed, work on the windows and siding did not even commence until August, and September, 2006. The house has yet to be occupied, over 3 years after the single family home was acquired.

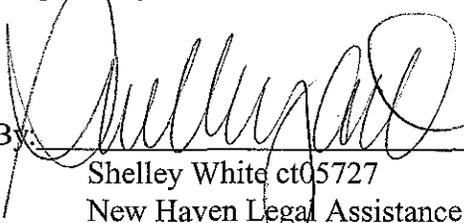
D. RECENT DEVELOPMENTS

41. In late 2005, HANH finally contacted local brokers in an effort to acquire a 3-unit multi-family property in reasonably good condition. A property at 849 Woodward Avenue was identified and a purchase and sale agreement was signed in April, 2006 and approved by HUD in October, 2006. HANH has since purchased that property but the property will require certain renovations before it can be occupied.
42. In light of the loss of 110 Dell Drive and the growing concern about Fulton Street, HANH will shortly publish a new Request for Proposals for the remaining 26 units. Any proposals submitted by private developers will still go through the same HUD and HANH approval process as 110 Dell Drive and Fulton Street did between 2002 and 2006.

43. HANH has also published a fundamentally flawed Request for Qualifications for brokerage services which seeks a flat rate by brokers to negotiate sales contracts and perform due diligence for an as-of-yet undetermined number of sites.

WHEREFORE, plaintiffs respectfully request that the Court issue an order 1) requiring the defendant Housing Authority to develop and occupy the final 30 units of scattered site public housing within the next 12 months; 2) appointing a special master for a period of twelve months (subject to renewal if necessary) to assist the defendant housing authority in the completion of its obligations under the 1995 Settlement Agreement to develop the final 30 units of scattered site public housing; and 3) awards the plaintiffs attorneys fees and costs for the prosecution of this Motion.

Respectfully submitted,

By: 

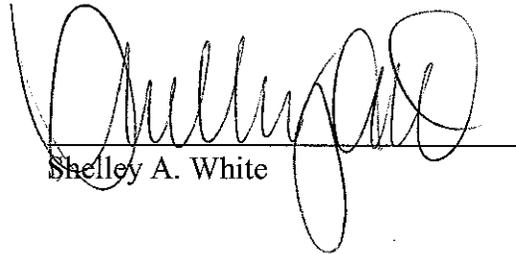
Shelley White ct05727
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By: _____

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to Christopher Brigham, Updike, Kelly & Spellacy, One Century Tower ,265 Church St. New Haven, CT 06510; Harold J. Rennett, United States Department of Housing and Urban Development, Office of Litigation, Room 10258, 451 Seventh Street, SW, Washington, DC 20410; Martha Hirschfield, United States Department of Justice, Civil Division, 901 E. Street, Rm. 1020, NW, Washington, DC 20530; Thomas Ude, City of New Haven, Office of Corporation Counsel, 165 Church Street, New Haven, CT 06510, this 17th day of November 2006.


Shelley A. White

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CHRISTIAN COMMUNITY ACTION, INC., et al.

Plaintiffs,

v.

MEL MARTINEZ, in his official capacity as
Secretary of the United States Department of
Housing and Urban Development,
HOUSING AUTHORITY OF THE CITY OF
NEW HAVEN, et al.,

Defendants.

No. 3:91 CV 00296 (AVC)
(TPS)

November 8, 2002

**NOTICE OF WITHDRAWAL OF MOTION
TO ENFORCE SETTLEMENT AGREEMENT**

Plaintiffs seek to withdraw without prejudice their pending Motion to Enforce Settlement Agreement dated April 15, 2002, based on an agreement reached with defendants on a schedule for completion of the remaining 29 scattered site units promised under the 1995 Settlement Agreement in this case. The agreed-upon schedule for completion of these units is described in the letter from plaintiffs' counsel to Ms. Robin Golden, Deputy Director of the New Haven Housing Authority (attached hereto as Exhibit A).

The parties agree that this withdrawal should be without prejudice to plaintiffs' future right to enforce the Settlement Agreement, should the need arise.

Wherefore, with the Court's permission, Plaintiffs hereby withdraw their pending motion, *nunc pro tunc*, without prejudice and without costs to either party.

Wherefore, with the Court's permission, Plaintiffs hereby withdraw their pending motion, *nunc pro tunc*, without prejudice and without costs to either party.

Respectfully submitted,



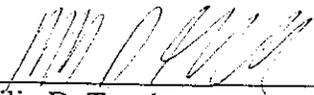
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to Chris Brigham, Updike Kelley & Spellacy, One Century Tower, 265 Church Street, New Haven, CT 06510; Harold J. Rennett, United States Department of Housing and Urban Development, Office of Litigation, Room 10258, 451 Seventh Street, SW, Washington, DC 20410; Hannah A. Stires, United States Department of Justice, Civil Division, P.O. Box 883, Rm. 904, Washington, DC 20044; Thomas Ude, City of New Haven, Office of Corporation Counsel, 165 Church Street, New Haven, CT 06510 this 8th day of November, 2002.


Philip D. Tegeler

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.

426 STATE STREET
NEW HAVEN, CONNECTICUT 06510-2018
TELEPHONE (203) 946-4811
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October 30, 2002

VIA FACSIMILE 497-9259
AND FIRST-CLASS MAIL

Ms. Robin Golden, Deputy Director
Housing Authority of the
City of New Haven
360 Orange Street
New Haven, CT 06510

Re: CCA v. Martinez/Scattered Site Program

Dear Ms. Golden:

This letter will confirm our recent conversations (with consent of your counsel) regarding resolution of plaintiffs' pending Motion to Enforce Consent Judgment. Plaintiffs understand that HANH is willing to use its best efforts to identify sites and subsequently acquire or develop the remaining 29 units within the next 12 months. Towards that end, HANH published a Request for Proposal for sites for turnkey developments in non-impacted areas, as defined by year 2000 census figures, on October 20. The published proposal requires responses to be submitted to HANH in the next 60 days. HANH will notify plaintiffs of all proposals it receives, and afford plaintiffs the opportunity to review all such proposals.

We further understand that HANH also has published a Request for Proposal for a specific turnkey site, consisting of six units to be built on property owned by HANH on Fulton Street. Again, we understand that these proposals are to be submitted to HANH in the next 60 days, and that plaintiffs will be afforded the opportunity to review all responsive proposals. Plaintiffs have agreed that HANH may develop the site on Fulton Street notwithstanding changes in the 2000 census, which render the site "impacted" under the terms of the 1995 Agreement, given that the property has been owned by HANH since 1993. These units will count against the remaining 29 units to be created. However, we will expect that development of this property will commence by the first quarter of 2003.

We also understand that HANH is actively soliciting listings for single family and other appropriate existing units in permissible census tracts and blocks, and that HANH officials will investigate all such listings that are available for sale within existing TDC limitations. Plaintiffs will expect to be provided with information pertaining to all sites presented to HANH for the scattered site program on no less than a monthly basis. We will be willing to review this information at your office.

Ms. Robin Golden

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October 30, 2002

We will also expect HANH to investigate all sites which plaintiffs identify as potential sites for the program provided these sites are available for sale within existing TDC limitations. However, after visiting the Revere Street site, we agree with HANH that this is an inappropriate site for additional scattered-site development.

We understand that no potential site will be rejected by HANH for reasons of neighborhood opposition, and that responding to such opposition will not be a permissible reason for any delay in acquiring appropriate and affordable units that are available to HANH. Plaintiffs will be provided with the basis for rejection of any site with sufficient specificity for plaintiffs to assess the permissibility of the reason under the terms of the 1995 Agreement.

Plaintiffs will be given the opportunity to meet personally with appropriate HANH officials familiar with the progress of acquisitions and development of these scattered site units at least one time per month, to review the program's progress, answer questions about potential acquisitions, and to plan alternative strategies in the event that it appears that the program cannot be substantially completed within the next 12 months.

On that basis, plaintiffs will agree to withdraw its pending Motion to Enforce Consent Judgment, without prejudice, and plaintiffs agree to represent to HUD, in connection with HANH's intended application for one of the 2002 Hope VI Revitalization Grants announced by HUD on July 31, 2002, that HANH is in present compliance with the terms of the 1995 Agreement.

Sincerely,


Shelley A. White
New Haven Legal Assistance
Association, Inc.

Philip Tegeler
Connecticut Civil Liberties
Union Foundation

SAW/CCA/Golden-settlement.ltr

cc: Rev. Bonita Grubbs, CCA (via fax 777-7923 and first class mail)
Attorney Christopher L. Brigham (via fax 772-2037 and first class mail)