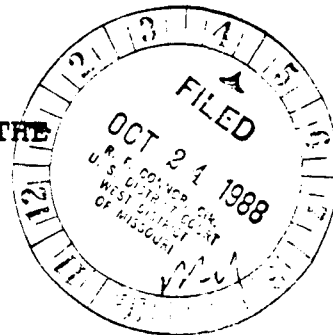


Hoecker

Todd Consent Decree (Waiting List Class)

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5/1/07

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION



ELSIE TODD, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 HOUSING AUTHORITY OF KANSAS )  
 CITY, MISSOURI, et al., )  
 )  
 Defendants. )

Civil Action No.  
84-0852CV-W-~~1~~ JWO

AMENDED CONSENT DECREE

The plaintiffs, Elsie Pearl Todd and Ruth M. White, having filed this Complaint on behalf of themselves and all others similarly situated, and plaintiffs and defendants Housing Authority of Kansas City, Missouri, and Venita Fain, Acting Executive Director of the Housing Authority of Kansas City, Missouri having each consented to the making and entry of this Amended Consent Decree, without trial or adjudication of any issue of fact or law herein, and the Court having considered the matters and being duly advised, it is

HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and of the parties hereto.

2. The parties stipulate and agree to the certification of a class in this action to be defined as all applicants for public housing operated by defendants Housing Authority of Kansas City, Missouri, and Venita Fain (hereinafter referred to collectively as "HAKC") whose applications will be denied by defendant HAKC.

Todd v. Housing Authority of Kansas City, Missouri



3. All procedures agreed to herein and incorporated within the Consent Decree shall be utilized with respect to Plaintiff Elsie Pearl Todd (hereinafter "Todd") and Ruth M. White (hereinafter "White") as well as all other persons who fall within the class as defined in paragraph 2 above. In the event Todd and/or White are declared eligible for housing, the Housing Authority of Kansas City, Missouri (Hereinafter "HAKC"), shall place Todd and/or White, respectively, in housing as soon as HAKC is reasonably able to do so based upon availability of housing. Both Todd and White will be given priority for placement above all others on the waiting list for housing. If Todd and/or White are declared ineligible for placement due to a finding pursuant to the procedures agreed upon herein that either of them owe money to HAKC, HAKC will enter into payment agreements with Todd and White and shall place Todd and/or White respectively as soon as HAKC is reasonably able to do so based upon availability of housing even though the entire delinquency may not yet have been paid in full. Both Todd and White will be given priority for placement above all others on the waiting list for housing.

4. Procedures for determination of ineligibility and forms of notice:

(a) HAKC shall have two categories as follows:

- (1) Eligible for placement;
- (2) Ineligible for placement.

(b) Any person who is declared eligible for placement shall be placed in housing on the basis of availability of housing and in accordance with HAKC'S usual and customary policies and criteria for placement. A person who has been declared ineligible shall not be placed in HAKC housing so long as the declaration of ineligibility remains in effect.

(c) At the time of an application fo HAKC housing, HAKC shall determine whether or not the applicant is eligible or ineligible and hand-deliver to the applicant a document in the form attached hereto as Exhibit A. If the applicant is determined to be ineligible, Exhibits A and C will be hand-delivered to the applicant. If the applicant requests a hearing, Exhibit B will be hand-delivered or mailed by certified and first class mail to the applicant. If the applicant thereafter duly requests a hearing in accordance with Exhibits A through C (whichever form or forms are applicable to the situation), the applicant shall have each of the following rights:

- (1) The right to confront and cross-examine live adverse witnesses.
- (2) The right to present oral and written evidence to rebut the basis of the determination of ineligibility or to show mitigating or extenuating circumstances in accordance with 24 C.F.R. 960.205(d).
- (3) The right to review at the office of HAKC by prior arrangement all of HAKC's files on the

applicant which relate to the determination of ineligibility. The applicant may arrange for this viewing at any time up to twenty (20) minutes prior to the hearing. Any documents not made available to the applicant after the request therefore may not be relied upon by the HAKC at the hearing.

- (4) The right to be represented by counsel at the applicant's own expense or to be represented or assisted by a person of the applicant's choice.
- (5) A tape recording of the original and one copy of the tape recording of the hearing will be made by HAKC. The original recording shall be retained by HAKC for three (3) months following the final determination by the hearing office. The duplicate tape recording shall be given to the applicant at the close of the hearing.
- (6) The hearing shall be presided over by an impartial hearing officer who did not participate in making the determination under review. The hearing officer will not be an employee of HAKC.
- (7) Hearsay evidence may be admissible but will not serve as the sole or primary basis for determination of any ultimate fact unless

such evidence falls within the exceptions provided in Rules 801(d), 803 or 804 of the Federal Rules of Evidence.

- (8) Within ten working days after the hearing, the original or a copy of a written, signed, dated determination letter will be sent by first-class mail to the applicant, and, if represented, to counsel for the applicant. A copy will be placed in the applicant's file. The determination shall be based solely on the evidence presented at the hearing and upon applicable laws and regulations.
- (9) The determination set forth in the letter shall constitute a final administrative determination.
- (10) The determination shall not limit either party's right to take the matter to a court of competent jurisdiction.

5. Hearings and matters in issue:

(a) An applicant shall be entitled to an informal hearing if one has been duly requested in writing by the applicant in response to any of the notices given by HAKC embodied in any of the forms attached hereto as Exhibits A through C.

(b) At any such hearing, evidence can be presented on any mitigating or extenuating circumstances relating to the issues that caused the determination of ineligibility in

accordance with 24 C.F.R. 960.205(d). Additionally, any facts that were at issue or would have been at issue in a previous hearing had it been held, will still be in issue at the current hearing unless HAKC can prove to the hearing officer:

- (1) That the applicant actually received notice of the right to request a previous hearing but did not do so, without good cause, or failed, without good cause, to appear for any such hearing or;
- (2) HAKC demonstrates that the applicant (while a tenant of HAKC) had vacated HAKC premises without authority in breach of the lease and that HAKC did not have a forwarding address for the applicant and that the applicant did not leave a forwarding address with the United States Post Office within a reasonable time before or after vacating the premises without HAKC's authority in violation of the lease. In such event, HAKC must only show to the hearing officer that notice of the right to a hearing was sent by certified mail, return receipt requested to the last known address of the applicant but HAKC need not prove that the applicant actually received any such notice, unless the applicant can

show good cause for failing to request a hearing.

(c) If the hearing officer determines that HAKC has met its burden of establishing that the applicant had a prior hearing or had actual notice or notice as provided in paragraph 3(b)(2) of the opportunity for a hearing on the facts for which the applicant was determined ineligible as provided in paragraph 3(b)(1) and (2), the applicant can only have a hearing on all issues establishing any mitigating or extenuating circumstances related to the facts that caused the denial of eligibility in accordance with 24 C.F.F. § 960.205(d).

(d) Any notice that could be provided to an applicant at the time they were a tenant in public housing, that would set forth facts or issues arising out of the former tenancy in public housing which could be used as a basis for a later determination of the tenant's (applicant's) ineligibility for a new tenancy in public housing, (including but not limited to a "notice to quit" or a "notice of lease violation"), must provide the following:

- (1) Each such notice must state that: "In the event that you do not agree that you have violated these sections of the lease or you do not agree with anything stated in this notice, you may submit a written request for a grievance hearing. This request must be submitted within three (3) working days after

you have actually received this notice, unless you can show good cause why you cannot or could not do so. You must submit this written request to the central office of the Housing Authority of Kansas City, Missouri (299 Paseo). This request must specify your reasons for a grievance hearing, your disagreement with this notice and your request not to be evicted. You must keep one copy of your request and deliver one copy to the central office of the Housing Authority."

- (2) Each notice will have a form attached to it as provided in Exhibit C which will enable the tenant to check off that he/she requests a hearing and will enable the tenant to mail in that form to the Housing Authority and retain a copy.
- (3) Each notice will state that "unless you can show good cause for not requesting a hearing, the failure of you or your representative to request a grievance hearing may bar you from raising the issues in this notice at a later date and could prevent you from being readmitted into public housing at a later time. Immediate attention to this matter is crucial to your continued tenancy with us."



(4) Each notice will have a signature line indicating who received the notice, the date said notice was received and a line upon which the signature of the person who delivered said notice will be placed.

6. The following administrative procedures shall be implemented by HAKC:

a. In the event that a public housing applicant is determined to be ineligible, a copy of the completed Exhibit A will be put in files maintained by HAKC for all eligible applicants. The files will be designated by month and year and the documents will be filed in chronological order. Each document pertaining to a specific applicant will be fastened together. If the applicant requests a hearing, then the hearing procedures for the applicant will conform to the procedures in the Consent Decree. The hearing officer will be fully trained by the defendants. This training will include an explanation of the Consent Decree procedures for determination of ineligibility, and the procedures for conducting the hearings of ineligible applicants.

b. In the future, a report will be issued by HAKC on a quarterly basis to Legal Aid of Western Missouri. This report will state whether or not HAKC is using the proper forms and procedures for ineligible applicants. The report will indicate how many people have had

hearings and what procedures were used at those hearings. The report will also detail how many applicants were determined to be ineligible during that period and the reasons for their ineligibility. Upon receipt of the report, Legal Aid staff will be given the opportunity to review all of the files and other documents that were used to compile the quarterly report.

c. Additionally, HAKC shall make all of its files of ineligible and rejected applicants available to plaintiffs every two months beginning December 1, 1988. Plaintiffs can review these files after the Housing Authority Board of Commissioners meeting held on the second Tuesday of each month. Plaintiffs need not make an appointment to view these files during said time period, unless plaintiffs wish to view the files at a different time. In that case, counsel for plaintiffs and defendants will agree upon a mutually convenient time for the file review.

d. The computer system of HAKC will be programmed to contain the names, addresses and reason for determination of ineligibility for all applicants who are determined to be ineligible.

e. Counsel for defendants will meet with appropriate HAKC personnel, including the author of the quarterly reports described in part (b) of this paragraph and advise them as to the requirements of the

Consent Decree and the proper preparation of the quarterly reports.

7. Payment Agreements:

In the event that after a hearing, it is determined that an applicant owes money to HAKC arising from a prior tenancy in a unit operated by HAKC, HAKC will enter into a payment agreement with the applicant that will enable the applicant to pay off the debt on a monthly basis without causing unreasonable hardship to the financial stability of the applicant. After it has been determined that the applicant is otherwise eligible and upon payment of the entire delinquency, or if agreed to by HAKC, upon entry into the payment agreement, the applicant will be eligible for placement based on the availability of housing and in accordance with the normal and customary procedures and criteria of the Housing Authority for placement. The offer of an applicant to repay an alleged delinquency or enter into a payment agreement will be considered a mitigating circumstance for purposes of determining eligibility as provided for in paragraph 3(b) and (c).

8. The provisions of this Consent Decree shall apply to the plaintiffs and the defendant HAKC and to each of their officers, directors, agents, employees, successors and assigns, and to all persons, firms, or corporations in active concert or participation as partner or joint venturer with defendants.

9. Jurisdiction is retained by this Court for the purpose of enabling either party to apply to the court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Consent Decree, for the modification or any of the provisions herein, and for the enforcement of compliance therewith and the punishment of violations thereof.

10. This decree shall remain in full force and effect unless specifically modified by agreement of the parties. Prior to initiating formal enforcement proceedings, plaintiffs shall notify defendants of any area(s) of noncompliance and shall attempt to resolve such issues without the assistance of the Court. In the event that the issues are not resolved within thirty (30) days following notice to the defendants, plaintiffs may move the court to enforce this decree.

11. It is agreed and the Court so finds that all of the foregoing obligations of defendants were agreed upon with full participation of plaintiffs; that all of the foregoing obligations benefit the members of the defined plaintiff class; and further, therefore, it shall be sufficient notice of this Consent Decree to members of the defined plaintiff class that defendants post copies of this order on the main bulletin boards of the defendant HAKC's offices at 299 Paseo, Kansas city, Missouri.

12. The procedures, policies and forms incorporated in this final judgment will be in full force and effect as of this date.

Dated this 24th day of October, 1988.

  
UNITED STATES DISTRICT COURT

We hereby consent to the entry of the foregoing Consent Decree without further notice.



JULIE E. LEVIN  
KELLY P. FINN  
Legal Aid of Western Missouri  
600 Lathrop Building  
1005 Grand Avenue  
Kansas City, MO 64106  
(816) 474-6750

ATTORNEYS FOR PLAINTIFFS

KOENIGSDORF, WYRSCH & RAMSEY

By:

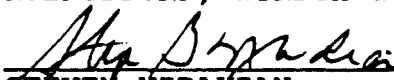
  
STEVEN MIRAKIAN  
Koenigsdorf, Wyrsh & Ramsey  
1050 Home Savings Bldg.  
1006 Grand Ave.  
Kansas City, MO 64106  
ATTORNEYS FOR DEFENDANTS

EXHIBIT A

DATE: \_\_\_\_\_

TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dear \_\_\_\_\_:

YOUR APPLICATION FOR HOUSING DATED \_\_\_\_\_, HAS BEEN REVIEWED AND YOU ARE:

- ( ) Eligible for Public Housing. Estimated date of placement in housing is \_\_\_\_\_. (The estimated date for placement in housing may change depending upon occupancy rates).
- ( ) Ineligible for Public Housing because:

\_\_\_\_\_  
\_\_\_\_\_  
(short statement of reason(s) for determination of ineligibility)

If you have been determined ineligible for housing, YOU HAVE THE RIGHT TO REQUEST AN INFORMAL HEARING ON THE ISSUE OF THIS DETERMINATION. IF YOU DESIRE AN INFORMAL HEARING, YOU MUST REQUEST ONE IN WRITING WITHIN TEN (10) DAYS OF THE DATE OF THIS LETTER. IF YOU DO NOT REQUEST A HEARING WITHIN TEN (10) DAYS OF THE DATE OF THIS LETTER, YOU WILL NOT BE ENTITLED TO A HEARING AT A LATER DATE.

Your rights at an informal hearing on the determination of ineligibility, should you request one, are the following:

- (1) Right to present oral or written evidence on your behalf;
- (2) Right to call witnesses on your behalf;
- (3) Right to question witnesses against you;
- (4) Right to review the Housing Authority's file by prior arrangement concerning the determination of ineligibility any time up to twenty (20) minutes prior to the hearing;
- (5) Right to be represented or assisted by a lawyer or any other person of your choice;
- (6) Right to written notice of the designated hearing officer's decision within ten (10) working days after the date of the hearing.
- (7) Right to receive a duplicate copy of the tape recording of the hearing.
- (8) Right to present evidence to refute the reasons stated for your ineligibility or to present evidence on why the determination of ineligibility is unfair due to a change in your circumstances or for any other reasons.

I HEREBY ACKNOWLEDGE RECEIPT OF THIS NOTICE, AND I HAVE READ AND UNDERSTAND THE CONTENTS OF IT.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

THE APPLICANT REFUSED TO SIGN THE ACKNOWLEDGMENT OF THE NOTICE AND IT WAS SENT BY CERTIFIED MAIL TO THE APPLICANT ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_.  
HOUSING AUTHORITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_

EXHIBIT B

NOTICE OF HEARING

At your request, an informal hearing regarding the determination that you are ineligible for public housing will be held on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, at \_\_\_\_\_ o'clock at the central office of the Housing Authority, 299 Paseo, Kansas City, Missouri.

Your rights at an informal hearing on the determination of ineligibility, should you request one, are the following:

- (1) Right to present oral or written evidence on your behalf;
- (2) Right to call witnesses on your behalf;
- (3) Right to question witnesses against you;
- (4) Right to review the Housing Authority's file by prior arrangement concerning the determination of ineligibility any time up to twenty (20) minutes prior to the hearing;
- (5) Right to be represented or assisted by a lawyer or any other person of your choice;
- (6) Right to written notice of the designated hearing officer's decision within ten (10) working days after the date of the hearing.
- (7) Right to receive a duplicate copy of the tape recording of the hearing.
- (8) Right to present evidence to refute the reasons stated for your ineligibility or to present evidence on why the determination of ineligibility is unfair due to a change in your circumstances or for any other reason.

A CONTINUANCE WILL ONLY BE GRANTED FOR ILLNESS, UNAVOIDABLE ABSENCE OF A PARTY OR OTHER GOOD CAUSE. IF YOU DESIRE A CONTINUANCE, YOU MUST REQUEST ONE IN WRITING PRIOR TO THE DATE OF THE HEARING.

HOUSING AUTHORITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_

Date: \_\_\_\_\_

REQUEST FOR HEARING  
(To be returned to the Housing Authority)

I, \_\_\_\_\_, request a grievance hearing  
because: (state the reason).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant

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REQUEST FOR HEARING  
(To be retained to Tenant)

I, \_\_\_\_\_, request a grievance hearing  
because: (state the reason).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Tenant