

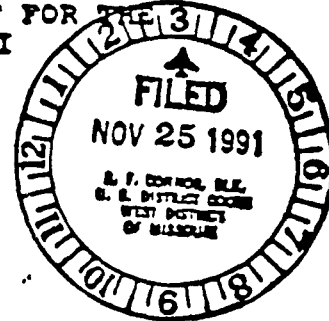
HOECKER
Tinsley Consent Decree

Tinsley v. Kemp

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5/11/91



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



DOLETHA TINSLEY, CORINE
BATTS, BERTHA DOSS, LORINE
DAWKINS, MARY VANN, AND LINDA
ROBINSON, ON BEHALF OF THEM-
SELVES AND THOSE SIMILARLY
SITUATED,

Plaintiffs,

Case No. 89-0023-CV-W-1
CLASS ACTION

v.

JACK L. KEMP, SECRETARY OF
THE UNITED STATES DEPARTMENT
OF HOUSING AND URBAN DEVELOP-
MENT; THE UNITED STATES DE-
PARTMENT OF HOUSING AND URBAN
DEVELOPMENT; MICHAEL FISHER,
EXECUTIVE DIRECTOR OF
HOUSING AUTHORITY OF KANSAS
CITY, MISSOURI AND THE HOUSING
AUTHORITY OF KANSAS CITY,
MISSOURI.

Defendants.

CONSENT DECREE

The plaintiffs, Doletha Tinsley, Corine Batts, Bertha Doss, Lorine Dawkins, Mary Vann and Linda Robinson, having filed this Complaint on behalf of themselves and all others similarly situated, and plaintiffs and defendants Housing Authority of Kansas City, Missouri, Michael Fisher, Executive Director of the Housing Authority of Kansas City, (collectively referred to as "HAKC") and the United States Department of Housing and Urban Development and its Secretary, Jack Kemp (collectively referred to as "HUD") having each consented to the making and entry of this Consent

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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. This case has been certified as a class action and the class is defined as all residents of T. B. Watkins Homes (T. B. Watkins); and all applicants to public housing operated by defendant HAKC who have been placed on a waiting list for public housing.

3. Subject to paragraph 3C below, HAKC will perform comprehensive modernization and rehabilitation of T. B. Watkins to transform the development into safe, decent and sanitary condition without loss of any units through, without limitation, the following courses of action:

A. HAKC will contract for an independent architectural survey and engineering study to achieve a needs assessment for T. B. Watkins which updates the architectural study prepared by WGN in 1986. The purpose of said study will be to determine the work and expense to be proposed to HUD for its approval, to make each of the 288 units of T. B. Watkins, all the common areas and grounds safe, decent, sanitary and viable for the next 20 years without any demolition, conversion or disposition except as provided for in paragraph 3F below.

B. Each of the 288 units, all the common areas and grounds of T. B. Watkins will be rehabilitated into safe, decent and sanitary condition so that they will remain viable for the next twenty (20) years. As part of the above-described rehabilitation, all services on site at T. B. Watkins controlled by HAKC shall be improved, including but not limited to the playground, park areas, landscaping, outside lighting and security. Security Guards will be provided in accordance with the terms of a Public Housing Drug Elimination grant obtained by HAKC from HUD on February 16, 1990.

C. HUD agrees to fund the modernization of T. B. Watkins, according to the Comprehensive Modernization Plan as revised April, 1990, under the Comprehensive Improvement Assistance Program (CIAP), with Fiscal Year 1991 funds, and HUD and HAKC agree to fund the completion of the Modernization Plan under the Comprehensive Grant Program (CGP), with funding provided in Fiscal Year 1992 and thereafter. See 42 U.S.C. §1437j. Said plan is attached hereto as Attachment 1. Subject to: (1) the availability of appropriations under the CIAP and CGP Programs; (2) the existence of statutory authority authorizing acts necessary for performance by HUD; (3) HAKC's compliance with statutory requirements in the United States Housing Act, as amended and/or HUD public housing regulations and Handbooks pertaining to CIAP and CGP (including satisfactory progress in

completion of CIAP or CGP work), and/or any provisions of HAKC's Annual Contributions Contracts (ACC) with HUD) that pertain to the CIAP and CGP program; and (4) any Memoranda of Understanding (MOU) between HAKC and HUD that have been, or may in the future be, executed to ensure HAKC's compliance with the requirements in (3) above pertaining to its conventional public housing program, including specifically an MOU executed on November 29, 1990, HUD and HAKC agree that the modernization of the T.B. Watkins development will be fully funded in the fewest number of stages feasible.

If HUD determines that HAKC is deficient in its modernization of T. B. Watkins, it will provide HAKC with notice and a reasonable opportunity to correct the deficiencies, in accordance with 42 U.S.C. § 14371(e) (4)(D), prior to withholding any funds. HUD will simultaneously provide a copy of such notice to plaintiffs' counsel. If HUD subsequently determines to withhold funds from HAKC because HAKC did not take the necessary corrective action, plaintiffs reserve the right to challenge in this or any other court any such decision.

HAKC will provide plaintiffs' counsel with a copy of the quarterly report that it submits to HUD pursuant to paragraph 17 of this Consent Decree which details HAKC's progress in completing the modernization of T.B. Watkins.

If at any time before the complete modernization of T. B. Watkins, Congress revokes or substantially modifies the CIAP or CGP programs so as to make the completion of the modernization under that program impossible, HUD will in good faith explore providing funding for completion through any other available HUD public housing assistance program under which such funding would be legally permissible.

D. Subsequent to the date of this Consent Decree, within 30 days of any vacancy in a unit either existing as of the date of this Decree or arising thereafter, HAKC must make that unit occupiable (ready for immediate occupancy) if that unit could be made occupiable with the expenditure of \$1,000 or less. HAKC need not make occupiable within 30 days those units located in buildings that are to be rehabilitated with CIAP or CGP funds, provided that those units are under contract (with a construction company) to be rehabilitated within the same fiscal year as the date of the vacancy. In the event that the vacancy occurs after November 15th of the year, then HAKC will have until January 30th of the subsequent year to make the unit occupiable. In addition, HAKC agrees to implement the Notification of Availability Procedures set forth in Attachment 2 (to which are attached Attachments 3 and 4) for each of its public housing developments. The Notification of Availability Procedures shall be imple-

mented contemporaneously with the occupiability of a unit.

E. HAKC will continue to implement and maintain the Central Maintenance Work Order Procedures attached hereto as Attachment 5 and as amended, if necessary. These procedures will be implemented for work orders of occupied units and will in no way alter the procedures outlined in Paragraph 3D.

F. HAKC shall not apply to HUD for its approval of the total demolition of T. B. Watkins within 20 years from the date of this Consent Decree. If HAKC submits an application to HUD for approval for partial demolition of T. B. Watkins or its disposition, HAKC will simultaneously provide to plaintiffs a copy of any such application. HUD will provide to plaintiffs any copy of HUD's response to such application and, in the event HUD approves the application, HUD will provide plaintiffs with a copy of said approval. HUD and HAKC will provide copies to plaintiffs of any correspondence concerning any application for disposition or partial demolition of T. B. Watkins. Should plaintiffs object to HAKC's application or HUD's approval of said application, plaintiffs may challenge these actions before this or any other court.

G. If HAKC requests the reconfiguration as defined in 24 C.F.R. 970.2(e) of one or more units in T. B. Watkins, it shall simultaneously provide to plaintiffs a

copy of the request and HUD shall provide to plaintiffs a copy of its response.

4. HAKC will conduct a promotional campaign designed to increase occupancy at T. B. Watkins. The campaign will include but not be limited to the following features:

A. HAKC will publicize the rehabilitation of T. B. Watkins in brochures and posters. HAKC will submit the brochures and posters to the plaintiffs' counsel for approval prior to dissemination. The brochures will be distributed to all applicants and the posters will be displayed at HAKC offices. The publicity will initially emphasize the scope and substance of the rehabilitation work to be performed at T. B. Watkins. After completion of the work at T. B. Watkins, the publicity will emphasize the scope and substance of the work actually completed. HAKC will also advertise in local newspapers for applicants. HAKC will begin the publicity campaign within 60 days from the date of this Consent Decree.

B. HAKC will offer tours to any applicant expressing an interest in residing at T. B. Watkins. HAKC can delegate this responsibility to the Resident Management Corporation ("RMC"), if the RMC agrees. The tours will emphasize the program of improvements at T. B. Watkins. The tours will be conducted by persons who are familiar with the neighborhood, schools and all of the benefits of residing at T. B. Watkins. HAKC is ultimately re-

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responsible for fulfilling the requirements of this paragraph whether or not it decides to delegate the tour function to the RMC.

C. Immediately prior to the completion of the modernization of T. B. Watkins pursuant to the Comprehensive Modernization Plan (Attachment 1), HAKC will conduct a reception at T. B. Watkins. Representatives from local radio, television and newspapers will be invited. Public officials in Kansas City and tenants at T. B. Watkins will also be invited. The focus of the reception will be on presenting the improvements at T. B. Watkins. For example, HAKC will present photographs and exhibits showing the difference between T. B. Watkins before improvements and after improvements. HAKC will use the reception as an opportunity to promote T. B. Watkins as a desirable place to live.

D. HAKC may discontinue the promotion campaign set out in this paragraph 4 when T. B. Watkins has achieved 90% occupancy. All expenses of the promotion campaign described in this paragraph 4 will be borne by HAKC, except for expenses associated with the RMC's tours of T. B. Watkins, which expenses shall be the sole responsibility of the RMC.

5. The parties understand that HAKC currently has two (2) waiting lists, one for public housing and one for section 8 certificates and vouchers. Said waiting lists are arranged for each unit size by preference status, and then

by date and time of application. Each program will continue its present preferences, priorities and procedures. New applicants will be added to the lists by unit size, preference status, date and time of application. Whenever an applicant applies for any type of housing, his or her name will be placed on both waiting lists and said applicant will be offered each type of housing as it becomes available.

A. When a unit, certificate or voucher becomes available, it will be offered to the first family on the list needing a unit of that size and who has the highest preference required by the program being offered. If a family rejects an offer of a unit, it will be placed at the bottom of the public housing waiting list, but retain its place on the section 8 waiting list. If the family rejects an offer of a certificate and voucher, it will be placed at the bottom of the section 8 waiting list, but retain its place on the public housing waiting list.

B. If two or more appropriately sized units are simultaneously available in public housing, the offer must be made based on the location of the unit in the project with the most total vacancies.

C. Once an offer is accepted in any of HAKC's housing programs, the family may either be removed from all waiting lists or, if the family so chooses, it can still remain on the list for an alternative housing program. All applicants for public housing will be

offered only one appropriately sized unit. If said unit is refused, the applicant will be placed at the bottom of the waiting list for public housing.

D. HAKC will make decisions on the intra-project and inter-project transfers of tenants based on race-neutral criteria, but which will maximize desegregation results. Any policy adopted must provide first priority for those under and over housed.

To this end, HAKC will develop a voluntary transfer program to encourage present tenants who are currently living in a development where their race is predominant to transfer to a development where their race does not predominate, even if they are not inappropriately housed. HAKC will also develop a special transfer list and give these tenants priority by allowing these transfers to occur after emergency applicants and after over and underhoused tenants; but before new applicants.

E. Three (3) months after the date of this Consent Decree, and every three (3) months thereafter, upon twenty-four (24) hours notice from plaintiffs' counsel, HAKC shall make all of its files on applicants available to plaintiffs' counsel. HAKC shall allow plaintiffs' counsel to inspect the rehabilitation work performed at T. B. Watkins periodically at the request of plaintiffs' counsel. Plaintiffs' counsel shall give HAKC twenty-four (24) hours notice prior to such in-

specifications. HAKC shall deliver to plaintiffs' counsel any documents concerning the Comprehensive Improvement Assistance Program that come into existence after the date of this Consent Decree.

6. Each class member applicant and all future applicants shall be given by HAKC, on a one-time basis, a notice that contains information about available HUD subsidized housing resources.

A. HUD has prepared the notice for HAKC. HUD will revise said notice as circumstances dictate. HUD will include in this notice the full address of the project and the telephone number of the manager, a short description of the type of housing offered by the project or program and the general eligibility requirements for the project or program.

B. This notice will also advise the applicant of the right to file a discrimination complaint. A copy of the current form notice is attached hereto as attachment 6.

C. The requirements of this paragraph 6 will no longer be necessary at such time as the percentage of non-minority residents in public housing operated by HAKC is equal to or greater than 23% or 8 years whichever comes first.

7. HAKC will adopt an affirmative marketing plan which will include, without limitation, the following:

A. HAKC will conduct outreach to potential section 8

landlords in non-racially impacted census tracts within HAKC's jurisdiction. A census tract will be considered non-racially impacted if it is comprised of less than 50% minority residents. Such outreach will include:

1. At least once a year HAKC shall advertise in the print media in order to notify the landlords or other interested parties within HAKC's jurisdiction of the availability of rental property programs including the Section 8 certificate and voucher programs.

2. HAKC shall sponsor two seminars to be conducted in 1992 and 1994. These seminars shall concern fair housing opportunities which shall provide a variety of activities aimed at:

- a) Broadening participation of owners/landlords in the Section 8 certificate/voucher programs;
- b) Explaining certificate/voucher programs to landlords; and
- c) Promoting the value of Section 8 vouchers as a tool for desegregation.
- d) Seminars will be advertised to maximize participation.

B. HAKC will conduct outreach to non-minority prospective applicants in order to attract them to public housing. Such outreach will include:

1. Dissemination of information about modernization, maintenance, resident initiatives at all public housing developments, security, play equipment and other housing authority or resident programs designed to improve the quality of life in public housing.

2. HAKC will continue to cooperate with the local police and other law enforcement authorities to provide security and safety for all tenant families, especially those who move into developments in which their race does not predominate. HAKC will continue to contact police to request stepped up security measures and continue to notify police of suspected criminal activity. Development crime-watch groups will continue to be organized. Special measures will be taken to notify tenants that incidents of racial and sexual harassment will be reported and investigated immediately. Resident policies will be revised to provide that racial and sexual harassment is prohibited and may be justification for eviction.

3. HAKC agrees to market its programs to families of the race which is least likely to apply for any of the housing programs administered by HAKC. HAKC may delegate this responsibility to the RMC if the RMC agrees, but HAKC retains the ultimate responsibility.

a) HAKC, or its designee, shall contact community and neighborhood organizations, and stores in neighborhoods of the targeted population in order to post informational materials about available housing or programs.

4. HAKC shall provide tours for individuals and groups of tenants who are considering desegregative transfers or move-ins to projects where their race does not predominate. HAKC may delegate this responsibility to the RMC if the RMC agrees, but HAKC retains the ultimate responsibility.

a) HAKC tours shall be conducted on the development and shall include information on local transportation, neighborhood schools and services.

C. HAKC will conduct a program of outreach designed to increase community awareness of the availability and desirability of public housing. The program will include but not be limited to the following features:

1. HAKC will publicize the features and amenities of each public housing development in brochures. The brochures will also publicize any rehabilitation work which has been or will be undertaken within one year of the date of the brochure's publication. Separate brochures may be prepared for each development, or one brochure describing all developments. The outreach litera-

ture will be updated as it becomes outdated and as new rehabilitation work is undertaken.

2. The brochures will be distributed to each applicant for assistance under the section 8 program. The brochures will also be distributed to community and neighborhood organizations, stores and other locations where they are most likely to increase awareness of the availability of public housing among individuals least likely to apply for public housing. HAKC will insure that the organizations, stores and locations will be provided an adequate supply of brochures and will be provided additional brochures as needed. Distribution will be focused on organizations, stores and locations which serve non-minority persons predominantly.

3. HAKC will also print posters publicizing the public housing program. The posters will be designed to promote applications for public housing from individuals least likely to apply for public housing and will include information about where to apply for such housing. The posters will be distributed similarly to the brochures. HAKC will ensure that the posters remain posted at a wide variety of locations until such time as the percentage of non-minority residents in public housing operated by HAKC is equal to or greater than

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4. At least once every three (3) months, HAKC will take applications for public housing at a site within a geographic area which has over a 50% non-minority population. HAKC will publicize the date, time and location for taking applications by advertising in local media having a wide distribution in the geographic area where the applications will be taken. The advertisements will be published/announced at least twice in the two weeks preceding the date set for taking applications. Notices containing the same information will be distributed to community and neighborhood organizations, stores and other places in the area in the month preceding the taking of applications.

5. Plaintiffs' counsel may review the posters, brochures, advertisements or notices prior to distribution.

8. HUD will request in writing that the Executive Director of each public housing authority (PHA) that offers assistance in non-racially impacted areas or neighborhoods in the Kansas City Standard Metropolitan Statistical Area, conduct outreach to recruit as applicants to their respective areas those class members identified in the full class list provided by HAKC and all applicants for housing operated by HAKC whenever the PHA has no appropriately sized families on its waiting list. Said request will be in the

form of Attachment 7.

9. HUD will request in writing that the owner, operator, or manager of each HUD assisted non-public housing program that offers assistance in non-racially impacted areas or neighborhoods in the Kansas City Standard Metropolitan Statistical Area conduct outreach to recruit as applicants to their respective programs those class members identified in the full class list provided by HUD and all applicants for housing operated by HAKC whenever the owner or manager has no appropriately sized families on its waiting list. Said request will be in the form of Attachment 8.

10. HAKC will make application to HUD for making exceptions to fair market rents up to 120% for the Section 8 certificate program in non-racially identifiable neighborhoods, or, on a community-wide basis for both the Section 8 certificate and voucher programs. HAKC shall only be required to make said application if it is able to substantiate the necessity for an increase of fair market rents to 120%.

11. Any person who receives a section 8 certificate from HAKC will be given written notice that he or she has the right to use it in Missouri, HAKC's Metropolitan Statistical Area (MSA), or a MSA that is contiguous to HAKC's MSA. Said written notice will be in the form of Attachment 9. HAKC will make inspections in accordance with HUD's Housing Quality Standards of units owned and offered by these prospective landlords when the units are located within HAKC's

jurisdiction.

12. Any person who receives a voucher from HAKC will be given written notice that he or she has the right to use it in Missouri, HAKC's MSA, or an MSA that is contiguous to HAKC's MSA. Also, said notice should advise prospective tenants that they may use their voucher anywhere in the nation, provided that an administering public housing authority is located there, as provided by 24 C.F.R. § 887.563(c). Said written notice will be in the form of Attachment 10.

13. HAKC will file with the Court annually, a report detailing the status of compliance with each provision of this Consent Decree.

14. For purposes of monitoring this Consent Decree, HUD, upon written request, will make available to plaintiffs' counsel for inspection and copying the following documents, reports and records that come into existence after the date of this Consent Decree with the exclusion of any documents that would not be discoverable under the Federal Rules of Civil Procedure:

- A. Any CIAP or CGP documents, memoranda, records, and correspondence pertaining to T. B. Watkins.
- B. Documents relating to the racial composition of T. B. Watkins.
- C. All correspondence sent by HUD pursuant to Paragraphs 8 and 9 of this Consent Decree and any correspondence received by HUD regarding those matters.

D. All management reviews and occupancy audits by HUD in which T. B. Watkins has been referenced and responses of HAKC to same.

E. Any complaints of HAKC racial discrimination with regard to T. B. Watkins.

F. Any correspondence concerning maintenance, lack of maintenance, vacancies or fair housing compliance with regard to T. B. Watkins. The release of said documents is subject to applicable restrictions found in 24 C.F.R. § 1.7(e).

G. Any Memoranda of Understanding between HAKC and HUD;

Plaintiffs will attempt to obtain the above documents from HAKC before requesting them from HUD.

15. For purposes of monitoring this Consent Decree, HAKC will make available to plaintiffs' counsel for inspection and copying the following documents, reports and records that come into existence after the date of this Consent Decree:

A. Any CIAP or CGP documents, memoranda, records and correspondence.

B. All waiting lists for public housing.

C. Documents relating to the racial composition of public housing operated by HAKC.

D. Documents that contain any information concerning the outreach and marketing efforts of HAKC referred to in this Consent Decree.

- E. Any complaints of HAKC discrimination. The names of complainants shall be deleted.
- F. Any materials used in support of HAKC's application for an increase in fair market rents for the section 8 and voucher programs pursuant to Paragraph 10 of this Consent Decree.
- G. Any Method of Administration Procedures.
- H. Any Admission to and continued Occupancy Plans.
- I. Monthly Occupancy Reports.
- J. Comprehensive Occupancy Plans and Revisions as well as any responses from HUD.
- K. Any documents pertaining to maintenance delivery by HAKC.
- L. Any Property Condition Reports.
- M. Any documents pertaining to Move-Out Inspections at T. B. Watkins.
- N. Any documents used in the investigation by HAKC of the appropriateness of exceptions to fair market rents or in preparation of HAKC's application for exceptions to fair market rents.
- O. Any documents referred to in Attachment 2.

16. The provisions of this Consent Decree shall apply to the plaintiffs, defendants HAKC and HUD 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.

17. Every three (3) months, from the date of this Consent Decree, defendant HAKC will submit a status report to plaintiffs' counsel detailing the progress made in the rehabilitation and modernization of T. B. Watkins as well as its obligation and expenditures of CIAP or CGP funds on T. B. Watkins. Said status report shall include defendant HAKC's progress in implementing all of its other obligations outlined in this Consent Decree. Said report shall also include but not be limited to the following:

- (1) A description of the CIAP or CGP funds received, expended and obligated for the applicable time period;
- (2) A description of the rehabilitation work performed and in progress at T.B. Watkins and the status of said work;
- (3) The racial occupancy characteristics of each project site owned, operated, or managed by HAKC and of the immediate area or neighborhood within which each project site is located;
- (4) The racial characteristics of those on HAKC's waiting list for each HUD-assisted program operated by HAKC; and
- (5) The racial characteristics of those receiving housing assistance through section 8 programs that are operated, managed, or administered by HAKC.

Defendant HAKC shall allow plaintiffs' counsel, upon twenty-four (24) hours prior notice, to review any files, documents, memoranda or records in defendant HAKC's possession pertaining to the CIAP or CGP programs and to the other obligations of defendant HAKC outlined in this Consent

Decree.

18. The Court will retain jurisdiction over this matter for the purpose of enabling any party to this proceeding, including the named plaintiffs, the plaintiff class, HAKC, or HUD to apply to the Court for such further orders as may be necessary or appropriate for the construction, implementation, or enforcement of this Decree; however, this agreement may be modified only with the prior written consent of counsel for all parties. In addition, prior to submission of any dispute under this Agreement to the Court, counsel for the parties shall consult in an effort to resolve the matter informally.

19. Nothing in this Decree shall be construed to require HUD to perform the obligations of a public housing agency or to act as a guarantor of HAKC's performance under this Decree. In addition, HUD shall not be obligated to provide any additional funding to HAKC, to carry out the terms of this Decree, except those funds necessary to complete the CIAP and CEP projects for T.B. Watkins, subject to the terms of paragraph 3C above.

20. HUD's obligations under this Decree will end when the Comprehensive Modernization of T. B. Watkins is completed with the exception of the obligations outlined in paragraphs 3F, 3G and 14.

21. The terms of this Decree constitute the entire understanding of the parties, and no statement, remark, agreement or understanding, oral or written, which is not

contained herein, shall be recognized or enforced, nor does the Decree reflect any agreed-upon purpose other than the desire of the parties to reach a full conclusion of this action as between the parties and to resolve this matter without the time and expense of further litigation.

22. HAKC will pay \$95,000.00 to plaintiffs in full compensation for their attorney's fees. HAKC will also pay plaintiffs their expenses and costs including any court-ordered notification to the class members up to the date of approval of this Consent Decree; none of such fees, expenses, and costs will be borne by HUD. Plaintiffs will not thereafter be compensated for any work in monitoring this Decree, except that, should plaintiffs obtain from the Court further orders for the enforcement of this Decree, their right to seek fees, expenses and costs including the costs of any court-ordered notification to the class members for such work against either or both HAKC and HUD is reserved.

23. 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, 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 defendant HAKC's offices at 299 Paseo, Kansas City, Missouri.

24. The procedures, policies and forms incorporated in

this final judgment will be in full force and effect as of
this date.


Dated this 25th day of November, 1991.

Dean White
UNITED STATES DISTRICT COURT


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

Julie E. Levin
JULIE E. LEVIN, No. 28341
TIM HAUSER, No. 35168
Legal Aid of Western Missouri
600 Lathrop Building
1005 Grand Avenue
Kansas City, Mo 64106
(816) 474-6750
Attorneys for Plaintiffs

Alleen S. Castellani
ALLEEN S. CASTELLANI
Assistant U.S. Attorney
549 U.S. Courthouse
811 Grand Avenue
Kansas City, Missouri 64106


JOHN W. HEROLD
United States Department of
Housing and Urban
Development
451 7th Street S.W.
Washington, D.C. 20410

Attorneys for Federal
Defendants


JOHN L. WILLIAMS
Fields Williams & Clark
2544 Holmes
Kansas City, Missouri 64108

Attorneys for Housing
Authority of Kansas City,
Missouri