

1991 WL 329756

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United States District Court, D. Rhode Island.

PROJECT B.A.S.I.C., Plaintiff,

v.

Jack F. KEMP, in his capacity as Secretary of the United States Department of Housing and Urban Development; the United States Department of Housing and Urban Development; Stephen J.

O'Rourke, in his official capacity as Executive Director of the Housing Authority of the City of Providence; the Housing Authority of the City of Providence; the City of Providence; and the Providence Community Action Program, Inc., Defendants.

Civ. A. No. 89-0248/P. | April 16, 1991.

Attorneys and Law Firms

Steven Fischbach, Judith Kaye, Rhode Island Legal Services, Providence, R.I., for Project B.A.S.I.C.

Arthur R. Goldberg, Peter Kimm, Jr., David J.F. Gross, U.S. Department of Justice, Washington, D.C., for Jack F. Kemp, in his capacity as Secretary of the United States Department Of Housing And Urban Development, and the United States Department Housing and Urban Development.

Stephen J. Reid, Jr., Karen A. Pelczarski, Blish & Cavanagh, Providence, R.I., for Stephen J. O'Rourke, in his official capacity as Executive Director of the Housing Authority Of The City Of Providence, and The Housing Authority Of The City of Providence.

Opinion

SETTLEMENT STIPULATION

PETTINE, Senior District Judge.

*1 WHEREAS, plaintiff, Project B.A.S.I.C. ("B.A.S.I.C."), has brought this action alleging, *inter alia*, that the actions and inactions of:

a. defendants Jack F. Kemp, in his capacity as Secretary of the United States Department of Housing and Urban Development, and the United States Department of Housing and Urban Development (collectively, "H.U.D.") with respect to the scattered site replacement housing plan have violated the United States Housing Act, as amended,

42 U.S.C. § 1437p, the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*; and

b. defendants Stephen J. O'Rourke, in his official capacity as Executive Director of the Housing Authority of the City of Providence, and the Housing Authority of the City of Providence (collectively, the "PHA") with respect to the scattered site replacement housing plan have violated the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; and

WHEREAS, H.U.D. and the PHA have denied and continue to deny that their respective actions and inactions with respect to the scattered site replacement housing plan are or have been in any way improper or unlawful as alleged by B.A.S.I.C.; and

WHEREAS, B.A.S.I.C., H.U.D. and the PHA desire to avoid the time and expense related to the continued litigation of this action; and

WHEREAS, HUD has given final approval and the PHA has already constructed or is in the process of constructing 131 of the 240 scattered site replacement housing units, 58 of which are located outside of "areas of minority concentration", defined with respect to these 131 units as those census tracts in the City of Providence containing a higher proportion of racial minorities than the City-wide average using 1980 census information; and

WHEREAS, B.A.S.I.C., H.U.D. and the PHA desire to focus their attention and efforts on the construction of the remaining 109 units of scattered site replacement housing;

NOW THEREFORE, it is hereby stipulated and agreed by and between B.A.S.I.C., H.U.D. and the PHA that the issue of the scattered site replacement housing plan be and hereby is settled on the following terms and conditions:

1. H.U.D. will continue to fund and the PHA will construct the remaining 109 units (of the total of 240 units) of scattered site replacement housing, in accordance with the PHA's Annual Contributions Contracts with H.U.D. for the construction of those units.

2. The remaining 109 units (of the total of 240 units) of scattered site replacement housing will be constructed only in census tracts of the City of Providence which are outside areas of minority concentration. With respect to these 109 units, "areas of minority concentration" are defined as those census tracts in the City of Providence

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containing a higher proportion of racial minorities than the City-wide average using 1990 census information. In addition, none of the remaining 109 units will be constructed in census tracts 18 or 26.

*2 3. The PHA will make all reasonable efforts to construct the remaining 109 units of scattered site replacement housing within thirty-six (36) months of the date of this Settlement Stipulation. In this regard, it is specifically understood and agreed that the PHA will make available to B.A.S.I.C. bi-weekly reports concerning the status of construction of the 240 units of scattered site replacement housing. It is further specifically understood and agreed that in the event additional time beyond the thirty-six (36) month timeframe is required for the PHA to complete construction of the remaining 109 units, it will so advise B.A.S.I.C., stating the reason(s) therefor and identifying the amount of additional time necessary to complete the units. B.A.S.I.C. reserves the right to object to an extension of the deadline for completing construction of the remaining 109 units.

4. In the event that the PHA should sell or otherwise convey any of the 240 scattered site replacement housing units in accordance with applicable law with the result that such unit(s) are no longer in the PHA's public housing inventory, the PHA shall apply to H.U.D. for funding to construct a unit of public housing to replace each unit so sold or conveyed. H.U.D. will review and process the PHA's application for funding in accordance with applicable statutes and regulations.

5. B.A.S.I.C. hereby remises, releases, and quitclaims unto, and forever discharges H.U.D. and the PHA, and H.U.D. and the PHA hereby remise, release, and quitclaim unto, and forever discharge B.A.S.I.C., of and from any and all claims, actions, causes of action, grievances, arbitrations, charges, complaints, suits, proceedings, debts, controversies, liabilities, agreements, judgment, orders, damages, losses, and demands whatsoever, including interest, costs, expenses, and attorneys' fees, in law or equity, ("Claims") as of the date of this Settlement Stipulation arising out of, related to, and/or in any way connected with the issue of the scattered site replacement housing plan which is the subject of this litigation.

B.A.S.I.C., H.U.D. and the PHA intend this provision to be all-encompassing and to act as a full, total and final release of any Claims B.A.S.I.C. ever had, now has, and/or may have against H.U.D. and/or the PHA, or that H.U.D. and/or PHA ever had, now have, and/or may have against B.A.S.I.C., as of the date of this Settlement Stipulation regarding the issue of the scattered site replacement housing plan, whether or not specifically referred to herein, and no motions, complaints, applications, ancillary and/or other proceedings of any

kind will be made, brought, submitted, or filed, other than as provided in paragraph 9 below, regarding the issue of the scattered site replacement housing plan, including the issue of attorneys' fees.

6. B.A.S.I.C. hereby acknowledges and agrees that neither this Settlement Stipulation nor its content constitutes, may be referred to as evidence of, and/or may be construed as an admission by H.U.D. or the PHA that either has engaged in any wrongdoing or any illegal or unlawful conduct whatsoever in connection with the scattered site replacement housing plan which is the subject of this litigation and this Settlement Stipulation.

*3 7. B.A.S.I.C., H.U.D. and the PHA shall each bear responsibility for their own respective attorneys' fees, costs and expenses. B.A.S.I.C. and its attorneys hereby specifically waive any and all claims and/or rights that they may have against H.U.D. and/or the PHA under 42 U.S.C. § 1988, 28 U.S.C. § 2412, or any other statute or common law or other claim for attorneys' fees, costs and expenses incurred as a result of the filing, litigation, and/or settlement of this action or otherwise related to this action.

8. The Court shall retain jurisdiction over this Settlement Stipulation until the 240 units of scattered site replacement housing have been constructed in accordance with the terms of this Settlement Stipulation. Upon notification to the Court that all 240 units have been so constructed, the Court shall forthwith dismiss this action against H.U.D. and the PHA, in its entirety, with prejudice.

9. So long as the Court retains jurisdiction of this Settlement Stipulation, any party may apply to the Court for an Order solely to enforce the terms of this Settlement Stipulation. Upon dismissal of this action in accordance with paragraph 8, above, paragraph 4 of this Settlement Stipulation shall survive and be enforceable as a contract between the parties.

10. B.A.S.I.C., H.U.D. and the PHA acknowledge and agree that they each have reviewed this Settlement Stipulation with their respective attorneys, that they fully and completely understand and agree with the terms of this Stipulation, that this Stipulation represents a fair and equitable settlement of all Claims between B.A.S.I.C., H.U.D. and the PHA in connection with the scattered site replacement housing plan, that they are voluntarily executing this Stipulation, and that this Stipulation cannot be altered, amended, changed, or modified except by means of a written instrument, specifically referring to this Stipulation, executed by B.A.S.I.C., H.U.D. and the PHA.

PROJECT B.A.S.I.C. by Asata Tigrari

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Title: Director

THE HOUSING AUTHORITY OF THE CITY OF
PROVIDENCE by Stephen J. O'Rourke, in his official

capacity as Executive Director of the Housing Authority
Of The City of Providence