

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CARMEN THOMPSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. MJG 95-309
)	
UNITED STATES DEPARTMENT)	
OF HOUSING AND URBAN)	
DEVELOPMENT, et al.,)	
)	
Defendants.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. This action was brought on behalf of a class of African American residents of family public housing in Baltimore, Maryland. The primary thrust of plaintiffs' claim of liability, as of the beginning of the first trial in this action, was that the United State Department of Housing and Urban Development (HUD), the Housing Authority of Baltimore City (HABC) and various federal and local officials, had violated their statutory and constitutional obligations to operate family public housing located in Baltimore City in a manner free of racial discrimination. Issues of fact were tried in this case in December 2003, and, again, in March, April, and May 2006. Following the 2003 trial, this Court resolved most of the factual issues presented by this action against plaintiffs and in favor of both sets of defendants. Thus, the Court rejected most of the statutory claims made by plaintiffs. Further, in the earlier decision the Court concluded that none of the defendants had engaged in purposeful discrimination against plaintiffs since 1989. (That year is a significant one, because applicable statutes of limitation bar any claims arising before then.) The Court also determined that HABC had not violated any constitutional obligation to

eliminate vestiges of prior de jure segregation.

2. Notwithstanding the extensive findings already made earlier in this case, two issues of liability remained open as of the start of the most recent trial to be held in this case. First, although the Court, in its January 2005 decision, determined that the federal defendants had not adequately affirmatively furthered fair housing on a regional basis, the Court reopened the record to allow the federal defendants to introduce additional evidence regarding the claim that HUD had failed to affirmatively furthered fair housing on a regional basis to the degree required by statute. Second, following the first trial, the Court did not determine whether HUD had violated any constitutional obligation by failing to provide desegregative housing opportunities in the region surrounding the City of Baltimore.

3. Over the course of eleven trial days during March, April, and May 2006, the parties had an opportunity to introduce evidence relating to the two open liability issues, as well as on the issue of the proper remedy to be ordered by this Court in the event a liability determination is made in favor of plaintiffs.

4. On the basis of the evidence presented by the parties, and for the reasons given below, the Court has determined that the evidence does not support a finding of any liability on the part of the federal defendants. Further, the Court has determined that even if the federal defendants bore some liability to plaintiffs, no remedy, beyond a declaratory judgment, would be appropriate.

FINDINGS OF FACT

5. In deciding the question of liability as it did following the first trial, the Court noted the dearth of evidence introduced in the course of that trial to explain the degree to which the

federal defendants affirmatively furthered fair housing on a regional level. 348 F.Supp.2d at 463. Over the course of the most recent trial, however, HUD made quite clear that its commitment to providing fair housing options to those in need throughout the Baltimore area is both broad and deep.

6. Before discussing the particulars of those aspects of HUD's program activity in and around Baltimore that inure to the benefit of Baltimore City public housing residents, a word is in order with regard to the nature of the Baltimore region. The "region" of which Baltimore City is a part has different definitions for different purposes. As noted in this Court's earlier liability decision, the region is understood by HUD to be comprised of six counties and one city. For purposes of HUD's public housing program, the boundaries of the "region" are relevant only for the singular purpose of determining and applying fair market rent levels. For purposes of this case, the Court found earlier that consideration of the "region" should not include consideration of one of the counties that HUD considers to be part of the region. For administrative purposes, HUD has treated different parts of the country around the Greater Baltimore and Washington areas as being related, at different times. And although, from an urban planning perspective, it can be useful to think regionally, rather than only from the perspective of a city, a state, or the entire country, the record in this case does not indicate why HUD's obligation to affirmatively further fair housing on behalf of the plaintiff class members is any more significant on a regional basis than on any other basis. Thus, to whatever degree HUD can be said to be required to affirmatively further fair housing on a regional level, that obligation is fuzzy and indistinct.

7. The Court further finds that HUD's obligation to affirmatively further fair housing does not entail an obligation itself to create housing opportunities for people like those in the

plaintiff class, for the simple reason that HUD does not itself create housing opportunities. Such opportunities are actually created by public housing authorities, other state and local jurisdictions, and private landlords and real estate developers. Further, the many local jurisdictions in the area around Baltimore City that have not chosen to create public housing authorities do not have any public housing resources to offer to plaintiffs at all.

8. Setting aside questions about the scope of HUD's obligation to affirmatively further fair housing regionally (which are discussed further in the Conclusions of Law, below), this Court finds that HUD has taken significant action to further fair housing throughout the area around the City of Baltimore. As Professor Robert Fishman, an eminent urban historian, explained in an expert report submitted to the Court, "it was precisely to escape from its relative powerlessness at the regional level when the Fair Housing Act was passed in 1968 that HUD began in the 1970s to implement a series of very basic changes in its low-income rental housing programs." Expert Report of Robert Fishman, FDR 2, at 2. As Dr. Fishman explained, HUD's constant recalibration of its policies, with an eye towards ever better ways of providing housing assistance to the needy on a regional level, has continued ever since.

9. Beyond understanding from an academic perspective that HUD has acted regionally over the last quarter century, and more, to affirmatively further fair housing, this Court had an opportunity during the most recent trial in this matter to hear testimony from the very people who have overseen meaningful, directed, program activity focused on the Baltimore area, undertaken to broaden, to the degree possible, during the Open Period.

A. HUD has operated its Section 8 program in such a way as to offer Baltimore City public housing residents the opportunity to find housing on a regional basis. Thus,

i. Section 8 vouchers are portable across jurisdictional lines.

ii. HUD has taken affirmative steps to see to it that the various Section 8 administering agencies around Baltimore provide briefing sessions that are frequent enough to make that portability meaningful and valuable.

iii. HUD has taken affirmative steps to ensure that the Section 8 programs in and around Baltimore are run in keeping with the spirit, and not only the letter, of the program's rent reasonableness requirements.

iv. HUD has publicized the existence, and availability, of Section 8 resources, along with other housing resources, by publishing some 20,000 copies of its Locator.

v. HUD administered the congressionally funded Regional Opportunity Counseling program in such a way as to afford prospective Section 8 tenants information about, and opportunities to move to, locations throughout the Baltimore area.

vi. HUD conceived of, and implemented, the Moving to Opportunity program, to study the complex mechanisms relating to housing mobility in general, and voucher mobility more specifically, for the purpose of helping in future redesigns of the program. That program additionally provided actual vouchers with mobility counseling to many Baltimore area families.

B. HUD has provided funding for thousands of hard units of housing for the benefit of people such as plaintiff class members throughout the Baltimore area. Many of those units have been developed by local government entities as public housing, and many by private developers under HUD's multi-family housing programs.

C. In the context of HUD's HOME program, HUD has provided funding for

thousands of low income housing opportunities throughout the Baltimore area, although HOME funds are allocated on the basis of a statutory formula, with local jurisdictions having considerable discretion in deciding how to use the money to which they are entitled.

D. Under the Community Development Block Grant program, local jurisdictions also receive money in amounts determined formulaically, to be used for any or all of a broad array of community development initiatives. In connection with this program, too, the recipient local jurisdictions have wide discretion to decide in what ways they will use their money.

E. HUD has affirmatively furthered fair housing through its Office of Fair Housing and Equal Opportunity by enforcing fair housing laws. Additionally, HUD's FHEO office has furthered the interest in fair housing through its education and outreach efforts, which include doing such things as funding a regional fair housing action plan in 2002.

F. HUD's various program offices, as well its FHEO office, work on a constant basis to provide local governmental entities with technical assistance in connection with the various affordable housing programs that HUD administers. This technical assistance takes the form of advice and support at all levels of formality, to help the recipient local jurisdictions further the interests of fair housing for all eligible families and individuals.

10. As to the second open liability question, the constitutional issue, the Court finds in favor of the federal defendants. Plaintiffs have not identified any vestige of prior de jure segregation that can be attributed to anything that HUD has done that it should not have done, or that it should have done but did not. The Court finds that no action that HUD has taken, or failed to take, during the Open Period in the area surrounding Baltimore City relates in a proximate way to any de jure segregation for which HUD or its predecessors are responsible. Further, HUD has

done what it can to help ameliorate whatever difficulties members of the plaintiff class have faced in finding housing in appropriate locations.

11. In light of the findings set forth above, and the conclusions set forth below, with regard to liability, the Court need not provide findings and conclusions on the question of remedy. Nonetheless, for the ease of appellate review, the Court makes the following findings on the question of remedy.

12. The issue of remedy presented by this case requires the resolution of knotty, and often insoluble, problems relating to multiple disciplines. The remedial issues raised in this action relate to significant issues of economics, urban planning, sociology, statistics, political science, history, geography, and demography. Beyond the need to address complex and difficult intellectual questions, the crafting of a remedy would require the resolution of daunting issues of policy.

13. The fact that the questions presented here are challenging might not be reason enough to conclude that the Court is not in a position to order a remedy. The problem is, however, that the Court does not – and cannot – have enough information to come to an acceptably appropriate conclusion on the question of remedy. This is so for several reasons:

A. The questions that would need to be resolved are many and complex. As to most of those questions, there does not appear to be a correct answer. The Court is not institutionally equipped to choose the most appropriate one.

B. In order to reach acceptable answers to the remedial questions presented, the Court would need to have input from a variety of perspectives that are not represented by the parties before the Court.

C. Whatever remedy might be imposed in an action such as this is likely to have myriad consequences for all sorts of individuals and entities, many of which are not represented here. Most of those consequences cannot be anticipated. A court order is too cumbersome an instrument to allow for the flexibility that would be needed to address many of the consequences that are likely to occur as they happen.

D. The efficacy of a Court-imposed remedy in this case would be dependent on the decisions and actions of many actors who are outside the control of the parties, and who are not subject to the Court's jurisdiction.

E. A remedy in this case along the lines of that requested by plaintiffs would require the expenditure of resources that are not available to the Court or to the parties. In that regard, the amounts of money that Congress has made available for housing development in the context of programs such as Section 8, HOME, and the Community Development Block Grant program are targeted and limited. The sort of relief that plaintiffs want would require this Court to ignore those limitations, which the Court neither wants to do, nor may do.

14. For these reasons, the Court finds that even if HUD bore some liability to plaintiffs, no injunctive relief could issue. The only remedy that would be appropriate would be a declaratory judgment.

CONCLUSIONS OF LAW

15. HUD is statutorily obligated to affirmatively further fair housing. The statute that imposes that obligation, however, does not define its contours with any precision. Indeed, although this Court opined earlier that HUD had failed to affirmatively further fair housing on a regional basis, the statute does not require any specifically regional focus on fair housing issues.

In any event, the Court concludes that HUD has affirmatively furthered fair housing on a regional basis in a manner that easily meets whatever requirement HUD might have to do so. Therefore, judgment must be entered in favor of the federal defendants with regard to that statutory claim.

16. As to the open constitutional claim, plaintiffs may obtain relief only if they can establish purposeful racial discrimination during the Open Period on the part of the federal defendants – which they are not claiming, and have certainly not shown – or if they demonstrate that the federal defendants have failed, during the Open Period, to take appropriate action to eliminate the vestiges of earlier de jure segregation. In this case, plaintiffs have identified no remnant of prior purposeful segregation that can constitute such a vestige. Further, HUD's actions would meet whatever requirement it might have had to eliminate such a vestige if the Court had found that one exists. Therefore, plaintiffs are entitled to no finding of liability in this regard.

17. Because the Court has concluded that defendants bear no liability to plaintiffs, plaintiffs are entitled to no remedy. Worthy of note, however, is that the remedy proposed by plaintiffs would have to be rejected in any event. That proposal goes far beyond anything that would be necessary to address the broadest liability holding that this case could bear. Further, for such a remedy to be effective, various contingencies over which the parties and the Court lack control would have to occur. Additionally, the proposed remedy would entail a considerable risk that its benefits would be outweighed by harm to the interests of the parties, of non-parties to this action, and of the public at large. Given that the possibility that the remedy would achieve its desired results would be, at most, speculative, the Court would have no basis for awarded such a remedial order.

Upon the findings of fact and conclusions of law set forth above, and upon the entire record in this action, it is hereby

ORDERED, ADJUDGED, and DECREED that every claim that has been raised, or that could have been raised, in this action, except for any aspect of this case resolved by the Partial Consent Decree entered in this action, is hereby dismissed on its merits and with prejudice.

Dated:

MARVIN J. GARBIS
UNITED STATES DISTRICT JUDGE