

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY

MARLENE JIGGETTS, BETTY MEYERS,
MAXINE MINTER, MARIA CALCADOR,
RAPHAEL CALCADOR, EMILY HARRIS,
NETTIE HAYWOOD, INEZ DIAZ, and
CESAR DIAZ, on behalf of them-
selves and all others similarly
situated,

Plaintiffs,

-vs-

HOUSING AUTHORITY OF ELIZABETH,
New Jersey; EDWARD SMOLEN, CHARLES
HARRIS, EDWARD MORAN, CHRIS PADAS,
M. ALBERTO PLANAS, CRAIG EXELBIRT,
and MARY ANN DEMPSEY, individually,
and in their official capacities as
Commissioners of the Housing
Authority of Elizabeth; J. WILLIAM
FARLEY, individually, and in his
official capacity as Executive
Director of the Housing Authority
of Elizabeth; JOSEPH PLOWUCHA,
individually, and in his official
capacity as Project Manager of the
Housing Authority of Elizabeth;
and UNKNOWN EMPLOYEES OF THE
HOUSING AUTHORITY OF ELIZABETH,
individually and in their official
capacities,

Defendants.

Civil Action 80-759

MEMORANDUM OPINION

2 11 1987

LACEY, D.J.

Before this court is the issue of whether to approve a Consent Decree in a class action lawsuit. The suit was brought by and on behalf of minority residents of and applicants for the six public housing projects located in Elizabeth, New Jersey, against the defendant Housing Authority (hereinafter referred to as the

Authority) and its officers and employees. Plaintiffs allege that the defendants practiced unlawful discrimination on the basis of race in the operation of the housing projects. For the reasons set forth below, the court concludes that the Consent Decree should be approved.

BACKGROUND

On March 20, 1980, the plaintiffs, who are black and hispanic residents of and applicants to public housing in Elizabeth, filed this class action alleging that the Authority was discriminating against blacks and hispanics in its system of tenant admission, assignment and transfer to apartments, and maintenance of the projects. The defendants denied the allegations.

The parties entered in settlement negotiations in September of 1980 at the court's request. In December of 1980, the parties advised the court that they had agreed to the general terms of a settlement contingent upon the U.S. Department of Housing and Urban Development (HUD) awarding the Authority a substantial grant to modernize and upgrade its projects. Affidavit of Donnarumma, August 31, 1983, Paragraph 6. On December 9, 1980 this court administratively terminated the action to accord the parties time to consummate a settlement.

In May of 1981, HUD approved a modernization grant to the Authority of approximately \$4 million. Affidavit of Donnarumma, August 31, 1983, Exhibit B.

The parties reached an impasse in April of 1983 on the issue of what compliance reports the Authority would have to provide to plaintiffs' counsel. The court reopened the case and directed the parties to look into the cost to the Authority of preparing the reports requested by the plaintiffs. On June 17, 1983, the Court listed the matter for trial for September 13, 1983 in the event the parties were unable to reach an agreement.

On July 28, 1983, the parties advised the court that they reached an agreement on the substance and form of a proposed Consent Decree subject only to approval by HUD.

On September 12, 1983, a preliminary hearing was held before this court concerning the fairness, reasonableness, and adequacy of the proposed settlement. HUD was represented at the hearing, and voiced its objections to the proposed Consent Decree. As a result, HUD and the other parties entered into negotiations to amend the Decree. Final agreement was reached on November 23, 1983. The court then ordered, on December 27, 1983, that all members of the class be notified, by mail and by publication, of the proposed settlement, and set down a hearing date on the fairness, reasonableness, and adequacy of the proposed Consent Decree for February 29, 1984.

STANDARDS GOVERNING REVIEW OF CLASS ACTION SETTLEMENT

Fed.R.Civ.P. 23(e) addresses the settlement of class actions and provides as follows:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

To determine the fairness of a proposed settlement the court must consider

. . . (1) the substantive terms of the settlement compared to the likely result of a trial, Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968); In re Traffic Executive Association - Eastern Railroads, 627 F.2d at 633, and (2) the negotiating process, examined in light of the experience of counsel, [and] the vigor with which the case was prosecuted, . . . Weinberger v. Kendrick, 698 F.2d 61, 73 (2d Cir. 1982); City of Detroit v. Grinnel Corp., 495 F.2d 448, 465 (2d Cir. 1974) (Grinnel I).

Malchman v. Davis, 706 F.2d 426, 433 (2d Cir. 1983); see also Bryan v. Pittsburgh Plate Glass Co., 494 F.2d 799, 801 (3d Cir.), cert. denied, 419 U.S. 900 (1974).

The primary factor to be considered is the substantive terms of the settlement, weighed against the likely results of the litigation. As the Third Circuit noted in Bryan, supra, 494 F.2d at 801,

Consideration of the merits of the case is one step in determining the likely rewards the class would secure, if any, from prosecuting the litigation to a conclusion (citations omitted).

Thus, the court must start by weighing the strength of plaintiff's case and balancing it against the amount offered in settlement.

In Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975), the Third Circuit set forth a list of factors to be considered by the court in determining the fairness of a class action settlement:

(1) the complexity, expense, and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

In the instant case, the substantive terms of the proposed Consent Decree are as follows:

(1) The Authority has agreed to allow tenants from Pioneer Homes and Migliore Manor to transfer to the other four projects (Mravlag Manor, Farley Towers, Ford-Leonard Towers, and Kennedy Arms) and to establish a special transfer procedure to effectuate those transfers.

(2) The Authority has agreed to allocate maintenance services among all projects based on the need of each project, unless otherwise provided by law, and to allocate all funds for modernization, rehabilitation, or structural improvements among the projects with the goal of providing equivalent conditions and facilities in each

project insofar as this is possible.

(3) The Authority has agreed not to discriminate in the future against blacks or hispanics in admitting new tenants, assigning apartments, transferring tenants, and maintaining the projects.

(4) The Housing Authority has agreed to give the named plaintiff's priority in admission to Mravlag Manor.

(5) The parties have agreed that the settlement does not constitute any admission of wrongdoing by the defendants.

(6) Each side will bear its own cost and attorneys' fees in this action.

To ensure that these provisions are implemented as contemplated by the parties, the Consent Decree directs the Authority to prepare tenant lists to establish priority for assignments and transfers. The Consent Decree also provides a detailed schedule upon which the Authority is to report certain information, on an ongoing basis.

LIKELY RESULT OF LITIGATION

It is very difficult to assess, with any degree of specificity, the strength of plaintiff's case because of the large number of claims involved and the intricate factual issues that would have to be resolved at trial. However, a few general comments may be made. These class plaintiffs seek redress for constitutional violations, alleging discrimination based on race and national origin in housing. Their proof consists largely, although not entirely, of evidence of discriminatory impact in the form of statistics. The difficulty of proving discriminatory motive or purpose based upon evidence of discriminatory effect is well known. See, e.g., Village of Arlington Heights v. Metropolitan Housing Corp. 429 U.S. 252, 265 (1976). This is not to say that plaintiff could not have prevailed on the merits, for proof of disproportionate impact may be sufficient to obtain limited

injunctive relief under Title VI, 42 U.S.C. §2000d, et. seq. Guardians Association v. Civil Service Commission of City of New York, 103 S.Ct. 3221, 3226 (1983). Given the difficulty inherent in actions of this sort, the fact that the Consent Decree provides essentially all the injunctive relief sought in the complaint militates strongly in favor of its approval. Indeed, it appears that the only concession of the plaintiffs' as to their original demands is the relinquishment of the claim for court costs and attorney's fees. Since the plaintiff class is being represented by counsel without fee, this is not much of a concession for the class, and actually inures primarily to the benefit of the defendants in that they no longer face the risk of a judgment imposing plaintiffs' costs and fees upon them.

As I have already considered the complexity of the issues, the risks of establishing liability and damages, and the range of reasonableness of the settlement in light of the best possible recovery and attendant risks of litigation, it is now necessary to consider some of the other factors set forth in Girsh, supra, 521 F.2d at 157.

The plaintiffs' attorney gave his opinion that the proposed Consent Decree compares favorably to the likely rewards of litigation. Affidavit of Donnarumma, August 31, 1983, page 2. "Given the limits upon the court's opportunity to assess all aspects of a case, the opinion and judgment of experienced counsel must be given substantial weight." Walsh v. Great Atlantic & Pacific Tea Company, 96 F.R.D. 632, 643 (D.N.J. 1983), affirmed, _____ F.2d _____ (3d Cir. 1983).

Also significant is the fact that there has not been any objection to any of the terms of the proposed Consent Decree by any of the class members. Since the Consent Decree provides all the injunctive relief sought in the complaint, the class members' silence may be taken as acquiescence.

I conclude that the substantive terms of the Consent Decree compare favorably to the likely result of a trial. This brings me to consideration of the negotiating process.

NEGOTIATION OF SETTLEMENT AND PROSECUTION OF LAWSUIT

Settlement negotiations in this action were initiated in September of 1980 at the court's request with the active support of HUD and the U.S. Department of Justice. Since then, the court has played a very active role in facilitating this proposed settlement, and significant portions of the proposed Consent Decree represent compromises suggested by court. Affidavit of Donnarumma, August 31, 1983, page 2. In order to bring about this settlement, in May of 1981, HUD awarded the Authority a modernization grant of approximately \$4 million to upgrade its projects. This special funding directly and significantly benefits the plaintiff class. The settlement was made contingent upon such an award, and, in the opinion of the plaintiffs' counsel, it is doubtful that those funds would have been secured through litigation of plaintiffs' claims. Affidavit of Donnarumma, August 31, 1983, page 2-3.

Before entering into negotiations, plaintiffs' counsel obtained a vast array of information concerning the Authority through discovery, Freedom of Information Act requests, and independent investigations. In addition to the extensive exchange of information that took place between the parties, the court ordered fact-finding concerning the cost to the Authority of compliance reporting. In view of the comprehensive exchange of information that occurred during negotiations, I am satisfied that the parties entered into this Consent Order with full knowledge.

Plaintiffs in this action have been represented by a team of attorneys comprised of: Alfred Donnarumma of the Union County Legal Services Corporation; Lowell Johnston and Beth Lief of the NAACP Legal Defense and Educational Fund, Inc.; and Pamela Mann and Jonathan Hyman of the Constitutional Litigation Clinic of Rutgers School of Law, Newark, New Jersey. The qualifications of Alfred Donnarumma, Beth Lief, Lowell Johnston, and Pamela Mann are set forth in detail in the record and there is no need to recite them now except to note that these attorneys have significant trial experience in civil matters, including prior class actions.

Moreover, there is no question in my mind that, as counsel for the plaintiff class, they prosecuted the action competently and zealously. The record speaks for itself.

CONCLUSION

For the reasons set forth above, the proposed Consent Decree is found to be fair, reasonable, and adequate, and is therefore approved.

Dated: _____

7/7 9/84



FREDERICK B. LACEY, U.S.D.J.