

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SEP 30 1994

PARIS DIVISION

DAVID J. MALAND, CLERK

BY DEPUTY \_\_\_\_\_

LUCILLE YOUNG, et al.,  
Plaintiffs,

v.

HENRY G. CISNEROS, et al.,  
Defendants.

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P-80-8-CA

A G R E E D O R D E R

On July 6, 1994, the plaintiffs in the above-captioned action submitted the Plaintiffs' Motion to Remedy HUD's Noncompliance with the March 3, 1988 Interim Injunction (Plaintiffs' Motion). That motion sought, in part, an order directing HUD, to begin the rental of certain newly constructed low rent public housing units in Paris and Nacogdoches. The new Paris units are located at three separate sites and the new Nacogdoches units are located at a single site. All of the new units are located in non-minority neighborhoods. Of the 50 units at the three Paris sites, 15 are occupied by African-American tenants and 2 by white tenants. Of the 38 new Nacogdoches units, 19 are occupied by African-Americans and 2 are occupied by white tenants.

HUD has concluded that if currently applicable tenant selection and assignment procedures were followed, when fully occupied, the Paris projects would be 74% African-American and the Nacogdoches Project would be 84% African-American. HUD has

asked the housing authorities to temporarily refrain from renting some of the new units in order to permit HUD to formulate an alternate tenant selection mechanism that will produce racially balanced projects. In responding to the Plaintiffs' Motion, HUD proposed for the Court's approval an affirmative action tenant selection and assignment plan for the new Paris and Nacogdoches units. HUD's proposal sets a goal of producing a 50% White - 50% African-American occupancy in the new projects and offers alternate housing opportunities to African-American applicants who do not receive placements in public housing because of the need to achieve the target racial balance. The plaintiffs filed a reply to HUD's proposal in which the plaintiffs expressed opposition both to HUD's target racial balance and to HUD's methodology for determining which African-American applicants would be entitled to an offer of alternate housing.

Upon consideration of the written and oral representations of the parties, it is hereby ORDERED that in renting the vacant units at the new Paris and Nacogdoches projects, HUD shall comply with the tenant selection and assignment plan set forth below. This Order applies to the rental of the new Paris and Nacogdoches units only. Nothing in this Order shall be deemed to resolve, in whole or in part, any issue relating to any aspect of the Affirmative Action Waiting List Initiative proposed by HUD as an element of HUD's Comprehensive East Texas Desegregation Plan, or regarding any other race conscious tenant selection and assignment mechanism included either in the Comprehensive Plan or

in any of the individual amended desegregation plans submitted by HUD for the approval of the Court. Nothing in this Order shall be deemed to constitute a finding by the Court that any element of the plan for the rental of the new Paris and Nacogdoches units is legally required, or otherwise necessary or appropriate, for inclusion in the individual desegregation plan for any other public housing authority in the class action area.

Accordingly, it is hereby ORDERED as follows:

PARIS

1. The following procedures apply to units at the Price Street site, the Sherman/Netherly Street site and the Jackson Street site owned by the Housing Authority of the City of Paris, Texas (Paris Housing Authority).

2. HUD shall ensure that the Paris Housing Authority offers vacant units first to applicants on the transfer list, provided that no more than 50% of the total units, and 50% of the units at each of the three sites, shall be occupied by African-Americans. If the transfer list is exhausted before 50% of the total units are occupied by African-Americans, tenants will then be selected in order from the waiting list until 50% of the total units are occupied by African-Americans.

3. Units remaining after 50% of the units have been occupied by African-Americans, shall be tentatively reserved for white applicants. Units will be tentatively reserved for white applicants in the order in which the white applicants appear on the waiting list. A white applicant may be assigned a

tentatively reserved unit if: (A) an offer of alternative housing, as defined in Paragraph 4 below, has first been received by the African-American applicant who would otherwise have occupied that tentatively reserved unit, i.e., the African-American applicant who holds the highest position on the waiting list above the white applicant; or (B) as described in Paragraph 9 below, after 180 days of receipt by such applicant of a Section 8 certificate or voucher pursuant to Paragraph 4.a. below, such applicant has not received an offer of alternative housing, but elects to continue to seek housing with the certificate or voucher rather than move into the public housing unit tentatively reserved for a white applicant.

4. An applicant will be deemed to have received an offer of alternative housing if:

a. the applicant has been provided with a Section 8 existing certificate or voucher, limited for the first 180 days to use in non-minority areas of Lamar County, Texas, i.e., located within one of the census blocks identified on the list attached hereto.

b. The applicant is offered mobility counseling as discussed in Paragraph 10 below, to assist the applicant to locate an appropriate housing unit.

c. The applicant has been referred to a landlord via the mobility counseling who is willing to accept the applicant's certificate or voucher for the rental of, or the applicant has otherwise located and accepted an offer for, a unit

located: (i) in a non-minority area of Lamar County, Texas, and (ii) outside an area where a reasonable African-American would perceive significant racial hostility.

d. The unit meets the applicable Section 8 Existing housing quality standards in 24 C.F.R. § 882.109, and contains the number of bedrooms appropriate for the particular applicant's family size and composition.

e. There is no legitimate basis for the family to refuse the offer. Legitimate reasons to refuse an offer include, but are not limited to, remoteness to jobs or day care, lack of transportation, or the necessity to change school districts. The burden is on the applicant to demonstrate that the proffered reason is legitimate, rather than on HUD to demonstrate that the reason is illegitimate.

5. HUD will make its best efforts to make an offer of alternative housing, as defined in Paragraph 4 above, within 180 days of issuance of this order, in addition to those African-American applicants who would otherwise have been offered a reserved public housing unit as described in Paragraph 3 above, to every other African-American applicant holding a position on the waiting list above any white applicant who obtains a public housing unit under the terms of this Order. If, within the 180 day period HUD is unable to make an offer of alternative housing to an applicant who otherwise would not have been offered a reserved public housing unit, or does make such an offer or

offers, but the applicant declines to accept the offer(s), then the applicant may use the certificate or voucher without the geographic restriction in paragraph 4.a within the time period prescribed in 24 C.F.R. § 882.209(d).

6. If an applicant who is one of the applicants who would otherwise have been offered a reserved public housing unit as described in Paragraph 3 above rejects an offer of alternative housing, HUD shall within 7 days of such rejection provide plaintiffs with a written notice stating the name of the applicant and stating the basis for HUD's determination that the applicant rejected the offer of a dwelling unit meeting the requirements of paragraph 4 above.

7. The plaintiffs shall have 7 days from the date of notice under Paragraph 6 above to submit to HUD, in writing, any objections plaintiffs may have to HUD's determination. In any such proceeding, HUD shall bear the burden of proving that the applicant has rejected an offer of alternative housing meeting the requirements of paragraph 4 above, except as provided in paragraph 4.e. The procedure in this paragraph and paragraph 6 shall be followed for all offers under paragraph 5.

8. If no objection is made, or, upon objection, the Court determines that an offer of alternative housing meeting the requirements of Paragraph 4 above was made, then the reserved unit shall be provided to the white applicant to whom it was tentatively assigned. The African-American applicant shall retain the certificate or voucher, and the mobility counseling

shall continue in order to assist the applicant to locate alternative housing until the expiration of the 180 day period.

9. If within 180 days following receipt of a certificate or voucher pursuant to Paragraph 4 above, the applicant has not received an offer of alternative housing, then the applicant may elect: (i) to move into the public housing unit that was being tentatively reserved for a white applicant; or (ii) to use their certificate or voucher without the geographic restriction described in Paragraph 4.a. above, within the time period prescribed in 24 C.F.R. § 882.209(d). If the applicant elects to use the certificate or voucher, then the public housing unit shall be assigned to the white applicant for whom it was tentatively reserved.

10. African-American applicants who are entitled to alternative housing under the terms of this Order shall be referred by the Paris Public Housing Authority to the Department of Housing and Urban Development Beaumont Fair Housing Office (Beaumont Office). It shall be the responsibility of the Beaumont Office to provide mobility counseling to each such African-American applicant; to recruit willing landlords with suitable units in non-minority areas in Lamar County, Texas; and to refer African-American applicants to willing landlords. The Beaumont Office may provide these mobility services either through its own personnel or through a private contractor.

11. HUD shall begin providing mobility services to African-American applicants entitled to receive an offer of alternative

housing within 30 days of the date of the entry of this Order. HUD shall use its best efforts to provide mobility services, and to obtain offers of alternative housing, for all applicants entitled to such offers as soon as possible after the entry of this Order.

12. An African-American applicant family that rejects an offer of alternative housing may retain its position on the public housing waiting list.

13. No applicant will be selected for a public housing unit, or for an offer of alternative housing, unless the applicant satisfies all eligibility, evaluation, verification, screening and other requirements for admission to public housing imposed under the tenant selection and assignment plan for the Paris Housing Authority.

14. The tenant selection and assignment procedures specified above are applicable only to the initial rental of the new vacant units. Following completion of the initial rental of all of the new vacant units, tenant selection and assignment shall be governed by the tenant selection and assignment plan currently in effect for the Paris Housing Authority, or such other tenant selection and assignment plan for the Paris Housing Authority as shall be approved by the Court.

15. For a period of 6 months from the date of the entry of this Order, HUD shall submit periodic reports on the progress of the initial rental of the public housing units. The first such report shall be due 30 days after the date of the entry of this



Order and subsequent reports shall be due at 7 day intervals thereafter. Each such report shall contain the following information:

- a. With respect to each African-American applicant who is entitled to an offer of alternative housing:
  - i. The name of the applicant.
  - ii. The date on which mobility counseling was provided.
  - iii. The date on which an offer of alternative housing was made, the identity of the landlord making the offer, the address of the dwelling offered and a description of that dwelling.
  - iv. Whether an offer of alternate housing was accepted or rejected.
- b. The number of reserved units remaining for occupancy and the number of African-American applicants who are entitled to an offer of alternative housing but who have not received such an offer.

Nacogdoches

16. The following procedures apply to the Park Crest Apartments owned by the Housing Authority of the City of Nacogdoches, Texas (Nacogdoches Housing Authority).

17. Vacant units will be tentatively reserved for white applicants in the order in which the white applicants appear on the waiting list. A white applicant may be assigned a tentatively reserved unit if: (A) an offer of alternative

housing, as defined in Paragraph 18 below, has first been received by the African-American applicant who would otherwise have occupied that tentatively reserved unit, i.e., the African-American applicant who holds the highest position on the waiting list above the white applicant; or (B) as described in Paragraph 9 below, after 180 days of receipt by such applicant of a Section 8 certificate or voucher pursuant to Paragraph 18.a. below, such applicant has not received an offer of alternative housing, but elects to continue to seek housing with the certificate or voucher rather than move into the public housing unit tentatively reserved for a white applicant.

18. An applicant will be deemed to have received an offer of alternative housing if:

- a. the applicant has been provided with a Section 8 existing certificate or voucher, limited for the first 180 days to use in non-minority areas of Nacogdoches County, Texas, i.e., located within one of the census blocks identified on the list attached hereto.
- b. The applicant is offered mobility counseling as discussed in Paragraph 24 below, to assist the applicant to locate an appropriate housing unit.
- c. The applicant has been referred to a landlord via the mobility counseling who is willing to accept the applicant's certificate or voucher for the rental of, or the applicant has otherwise located and accepted an offer for, a unit located: (i) in a non-minority area of Nacogdoches County,

Texas, and (ii) outside an area where a reasonable African-American would perceive significant racial hostility.

d. The unit meets the applicable Section 8 Existing housing quality standards in 24 C.F.R. § 882.109, and contains the number of bedrooms appropriate for the particular applicant's family size and composition.

e. There is no legitimate basis for the family to refuse the offer. Legitimate reasons to refuse an offer include, but are not limited to, remoteness to jobs or day care, lack of transportation, or the necessity to change school districts. The burden is on the applicant to demonstrate that the proffered reason is legitimate, rather than on HUD to demonstrate that the reason is illegitimate.

19. HUD will make its best efforts to make an offer of alternative housing, as defined in Paragraph 18 above, within 180 days of issuance of this order, in addition to those African-American applicants who otherwise would have been offered a reserved public housing unit as described in Paragraph 17 above, to every other African-American applicant holding a position on the waiting list above any white applicant who obtains a public housing unit under the terms of this Order. If, within the 180 day period HUD is unable to make an offer of alternative housing to an applicant who otherwise would not have been offered a reserved public housing unit, or does make such an offer or offers, but the applicant declines to accept the offer(s), then

the applicant may use the certificate or voucher without the geographic restriction in paragraph 18.a within the time period prescribed in 24 C.F.R. § 882.209(d).

20. If an applicant who is one of the applicants who would otherwise have been offered a reserved public housing unit as described in Paragraph 17 above rejects an offer of alternative housing, HUD shall within 7 days of such rejection provide plaintiffs with a written notice stating the name of the applicant and stating the basis for HUD's determination that the applicant rejected the offer of a dwelling unit meeting the requirements of paragraph 18 above.

21. The plaintiffs shall have 7 days from the date of notice under Paragraph 20 above to submit to HUD, in writing, any objections plaintiffs may have to HUD's determination. In any such proceeding, HUD shall bear the burden of proving that the applicant has rejected an offer of alternative housing meeting the requirements of paragraph 18 above, except as provided in paragraph 18.e. The procedure in this paragraph and paragraph 20 shall be followed for all offers under paragraph 19.

22. If no objection is made, or, upon objection, the Court determines that an offer of alternative housing meeting the requirements of Paragraph 18 above was made, then the reserved unit shall be provided to the white applicant to whom it was tentatively assigned. The African-American applicant shall retain the certificate or voucher, and the mobility counseling

shall continue in order to assist the applicant to locate alternative housing until the expiration of the 180 day period.

23. If within 180 days following receipt of a certificate or voucher pursuant to Paragraph 4 above, the applicant has not received an offer of alternative housing, then the applicant may elect: (i) to move into the public housing unit that was being tentatively reserved for a white applicant; or (ii) to use their certificate or voucher without the geographic restriction described in Paragraph 4.a. above, within the time period prescribed in 24 C.F.R. § 882.209(d). If the applicant elects to use the certificate or voucher, then the public housing unit shall be assigned to the white applicant for whom it was tentatively reserved.

24. African-American applicants who are entitled to alternative housing under the terms of this Order shall be referred by the Nacogdoches Public Housing Authority to the Department of Housing and Urban Development Beaumont Fair Housing Office (Beaumont Office). It shall be the responsibility of the Beaumont Office to provide mobility counseling to each such African-American applicant; to recruit willing landlords with suitable units in non-minority areas in Nacogdoches County, Texas; and to refer African-American applicants to willing landlords. The Beaumont Office may provide these mobility services either through its own personnel or through a private contractor.

25. HUD shall begin providing mobility services to African-American applicants entitled to receive an offer of alternative housing within 30 days of the date of the entry of this Order. HUD shall use its best efforts to provide mobility services, and to obtain offers of alternative housing, for all applicants entitled to such offers as soon as possible after the entry of this Order.

26. An African-American applicant family that rejects an offer of alternative housing may retain its position on the public housing waiting list.

27. No applicant will be selected for a public housing unit, or for an offer of alternative housing, unless the applicant satisfies all eligibility, evaluation, verification, screening and other requirements for admission to public housing imposed under the existing tenant selection and assignment plan for the Nacogdoches Housing Authority.

28. The tenant selection and assignment procedures specified above are applicable only to the initial rental of the new vacant units. Following completion of the initial rental of all of the new vacant units, tenant selection and assignment shall be governed by the tenant selection and assignment plan currently in effect for the Nacogdoches Housing Authority, or such other tenant selection and assignment plan for the Nacogdoches Housing Authority as shall be approved by the Court.

29. For a period of 6 months from the date of the entry of this Order, HUD shall submit periodic reports on the progress of

the initial rental of the public housing units. The first such report shall be due 30 days after the date of the entry of this Order and subsequent reports shall be due at 7 day intervals thereafter. Each such report shall contain the following information:

a. With respect to each African-American applicant who is entitled to an offer of alternative housing:

i. The name of the applicant.

ii. The date on which mobility counseling was provided.

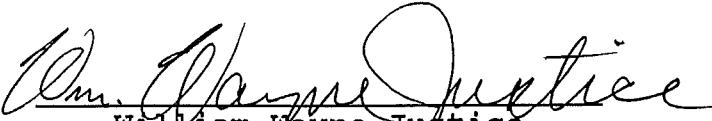
iii. The date on which an offer of alternative housing was made, the identity of the landlord making the offer, the address of the dwelling offered and a description of that dwelling.

iv. Whether an offer of alternate housing was accepted or rejected.

b. The number of reserved units remaining for occupancy and the number of African-American applicants who are entitled to an offer of alternative housing but who have not received such an offer.

30. Henry Cisneros, Secretary of HUD, and Roberta Achtenberg, Assistant Secretary of HUD for Fair Housing and Equal Opportunity, and their successors in office, are named, pursuant to 5 U.S.C. § 702, as the officers personally responsible for compliance with this order.

SIGNED the 30th day of September, 1994.

  
William Wayne Justice  
United States District Judge