IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RIXIE SOLOMON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	2:06cv1155
	)	**Electronic Filing**
	)	
HOUSING AUTHORITY OF THE CITY OF PITTSBURGH,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

September 18, 2006

Plaintiff, Rixie Solomon ("Plaintiff" or "Solomon"), filed a motion for temporary restraining order and for preliminary injunction, contending that Defendant, Housing Authority of the City of Pittsburgh ("HACP"), unlawfully (1) denied Solomon's application for admission into the federally subsidized residential tenant Section 8 program; and (2) failed to follow the decision of HACP's own hearing officer who, after an administrative grievance hearing, directed HACP to grant Plaintiff Section 8 benefits.

On February 1, 2006, Solomon, a sixty-two (62) year old disabled woman, applied for admission into the Section 8 Housing Choice Voucher Program administered by HACP. HACP denied the application on February 21, 2006, alleging that Solomon owed HACP an outstanding debt for past due rent arising from Solomon's 1985 tenancy in on of HACP's public housing units. Solomon timely requested a grievance hearing challenging HACP's denial of her Section 8 application. A hearing was scheduled for April 11, 2006, and an impartial hearing officer was appointed to conduct the hearing.

At the hearing, Solomon argued that the 1985 HACP rent debt was barred by the statute of limitations and the equitable doctrine of laches. Therefore, it was improper to base the rejection of her Section 8 application on of the debt. HACP was unable to present any evidence that it had ever obtained a judgment for the debt.

On May 10, 2006, the hearing officer issued a written determination overturning HACP's denial of Solomon's Section 8 application. Specifically the hearing officer found that "the laches doctrine applies in the case at hand as the debt dates back to 1985 and it appears that the HACP has not taken proper steps to enforce their rights." HACP was directed by the hearing officer to reactivate, and continue the processing of, Solomon's Section 8 application.

On June 26, 2006, HACP sent a letter informing Solomon that the HACP overturned the May 6, 2006, decision of the hearing officer because it was contrary to relevant Federal Regulation. As authority to its decision, HACP cited 24 C.F.R. §§ 982.555(f)(1) and (2) which provides that a public housing authority ("PHA") is not bound by a hearing decision:

> (1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures; and
>
> (2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, state or local law.

24 C.F.R. §§ 982.555(f)(1) and (2). HACP contends that the hearing officer's decision was contrary to Federal Regulation which provides that a PHA may deny a family assistance "[i]f the family currently owes rent or other amounts t the PHA . . ." 24 C.F.R. § 982.552(c)(1)(v). As a result, HACP has refused to take any further steps to process Solomon's Section 8 application.

A temporary restraining order may be granted only when the plaintiff demonstrates: (1) a substantial likelihood of success on the merits; (2) that irreparable injury will result in the absence of the requested relief; (3) that no other parties will be harmed if temporary relief is granted; and (4) that the public interest favors entry of a temporary restraining order. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc*., 559 F.2d 841, 843 (D.C. Cir. 1977). Relief may be granted "with either a high probability of success and some injury, or vice versa." *Cuomo v. United States Nuclear Regulatory Commission*, 772 F.2d 972, 974 (D.C. Cir. 1985) (*per curiam*). *See The Nation Magazine v. Department of State,* 805 F. Supp. 68, 72 (D.D.C. 1992), *Mertz v. Houstoun*, 155 F. Supp. 2d 415, 425 (E. D. Pa. 2001). These are the

same factors required for preliminary injunctive relief.

Preliminary injunctive relief is extraordinary in nature, and is discretionary with the trial judge. *Frank's GMC Trucking Center, Inc. vs. General Motors Corp.*, 847 F.2d 100, 101-102 (3d Cir. 1988); *Glasco vs. Hills*, 558 F.2d 179, 179 (3d Cir. 1977); *Orson, Inc. vs. Miramax Film Corp.*, 836 F. Supp. 309, 311 (E.D. Pa. 1993). This discretion is necessary because of the "infinite variety of situations which may confront" the trial judge. *A.L.K. Corp. vs. Columbia Pictures Indus., Inc.*, 440 F.2d 761, 763 (3d Cir. 1971). In considering a motion for preliminary injunctive relief, the court must consider, when appropriate, the following four factors: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the plaintiff will be irreparably injured by denial of such relief; (3) whether granting preliminary relief will result in even greater harm to the non-moving party; and (4) whether granting preliminary relief will be in the public interest. *ECRI vs. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987); *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1254 (3d Cir. 1985). Where a movant fails to show either a reasonable probability of success on the merits or irreparable injury, preliminary relief must be denied. *In re Arthur Treacher's Franchisee Litig.*, 689 F.2d 1137, 1143 (3d Cir. 1982).

A plaintiff need not establish with certainty that the plaintiff will succeed on the merits. The burden is on the moving party, however, to make a *prima facie* showing that the plaintiff has a reasonable probability of succeeding on the merits. *Oburn vs. Shapp*, 521 F.2d 142, 148 (3d Cir. 1975). The Third Circuit has held that "in order to demonstrate irreparable harm the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. The preliminary injunction must be the only way of protecting the plaintiff from harm." *Instant Air Freight Co. vs. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989).

A. Likelihood of Success on the Merits

Solomon argues that the decision to reactivate her application despite an alleged past due rental debt was not contrary to federal regulation. Section 982.552(c)(1)(v) is not mandatory, it

does not require the denial of program assistance to an applicant based on a debt owed to a PHA. The regulation states that "[t]he PHA **may** . . . deny program assistance . . . [i]f the family currently owes rent or other amounts to the PHA . . ." The regulation clearly affords a PHA the discretion to choose whether or not a Section 8 applicant will be denied benefits on the basis of a pre-existing debt owed to the PHA. Therefore a decision that does not deny program assistance based on a debt owed is not contrary to 24 C.F.R. § 982.552(c)(1)(v).

Further, Solomon contends that Section 982.552(c)(1)(v) is inapplicable in this instance because Solomon does not "currently" owe the alleged debt. In 1984, HUD clarified its position on denial of assistance based on past debt stating: "[p]ast debt to a PHA is not grounds for denial of assistance. The PHA may not deny assistance if the debt . . . is not valid for any reason (*e.g.* a rent claim extinguished by the statute of limitations." *See* Section 8 Housing Assistance Payments Program, 49 Fed. Reg. at 12216. HUD later reaffirmed stating "[§ 982.552(c)(1)(v)] does not allow the [PHA] to deny assistance for a debt . . . that is barred by statute of limitations. By definition, an amount a family currently owes is not barred by the statute of limitations" *See* Section 8 Certificate and Voucher Programs Conforming Rule, 60 Fed. Reg. at 34689. According to HUD's interpretation, a debt that is barred by the statute of limitations is not "currently owed."

The statute of limitations for an action for the collection of a past debt in Pennsylvania is six (6) years. *See* 42 PA. CONS. STAT. § 5527. Here the debt is twenty-one (21) years old, and there is no evidence that HACP ever obtained a judgment on the alleged debt. Any action for collection is now barred.

Based on the above, the Court finds: (1) the May 10, 2006, decision of the hearing officer was not contrary to HUD regulations or requirements, or otherwise contrary to federal, state or local law; and (2) Solomon does not "currently" owe the alleged debt that dates back to 1985.

B. Irreparable Harm

Solomon contends that without immediate reactivation of her application, irreparable

harm will occur in that she cannot continue to pay her full rent and she will likely become homeless without assistance. HACP contends that Solomon has an adequate remedy at law if it is later determined that it failed to comply with the regulations. Further, HACP argues that Solomon will not be irreparably harmed if her application is not reinstated as she has not participated in any subsidized program for some time, yet she remains housed.

C. Harm to HACP

Th immediate reactivation of Solomon's Section 8 application does not appear to cause any tangible harm to HACP.

D. Public Interest

Solomon argues that HACP's violation of the laws and regulations related to the United States Housing Act affects the potentially irretrievable loss of federally subsidized, affordable housing. Further, injunctive relief furthers the public interest of preventing homelessness.

All the elements necessary for this Court to enter equitable relief in the form of a temporary restraining order are present here. Accordingly, ths Court will grant Solomon's motion for a temporary restraining order and schedule a time for a hearing/argument on the motion for a preliminary injunction.

ORDER OF COURT

AND NOW, upon consideration of Plaintiff's Motion for a Temporary Restraining Order (**Document No. 2**), Defendant's response thereto, and the arguments of counsel in open court,

IT IS HEREBY ORDERED that the motion for temporary restraining order is **GRANTED**. Defendant shall immediately reactivate Plaintiff's application for participation in Defendant's Section 8 Housing Program and restore Plaintiff's application retroactive to the date on which she applied.

IT IS FURTHER ORDERED that a hearing on Plaintiff's Motion for Preliminary Injunction shall be held on **Monday, September 25, 2006, at 10:00 a.m.** in Courtroom No. 7A, Suite 7270, United States Post Office and Courthouse, Pittsburgh, PA 15219.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

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