

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JANET BRADLEY, et al.,)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	No. 84-527-K
SAMUEL R. PIERCE, et al.,)	
Defendants.)	

SECRETARY'S MEMORANDUM
IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER

Plaintiffs Treva Knight and Dolores Oliver seek an order compelling defendants to continue housing assistance payments on their behalf to Knight's and Oliver's respective landlords, notwithstanding the expiration and non-renewal of the leases and housing assistance payment contracts authorizing the payments.

As shown herein, however, Knight and Oliver are in no immediate risk of harm. Federal law requires that their tenancies may not be terminated unless their landlords had good cause for the non-renewal of their leases. Plaintiffs may not be evicted other than by a state court proceeding wherein plaintiffs will have a hearing upon that good cause issue. The requirement and availability of that state court hearing prior to the plaintiffs' potential loss of possession of their housing units satisfies any requirements of the due process clause of the Fifth Amendment. Plaintiffs accordingly have not shown any substantial probability of success on the merits.

THE STATUTORY AND REGULATORY FRAMEWORK

This case concerns the "Section 8" housing assistance program for low-income persons established under the National Housing Act, § 8, 42 U.S.C. § 1437f. More particularly, it concerns the "existing housing" component of the Section 8 program. The program is implemented by regulations at 24 C.F.R. part 882.

The U.S. Department of Housing and Urban Development ("HUD") administers the program through local public housing agencies ("PHAs"). A PHA is authorized to issue a certificate of family participation to eligible low-income persons. The certificate authorizes its holder to locate privately owned, existing housing that complies with applicable HUD standards. Once the housing is located, the certificate holder enters into a HUD-approved lease with the landlord, and the landlord simultaneously enters into a housing assistance payments contract ("HAP Contract") with the PHA. Through these documents, a tenant pays only a share of a rent established under HUD regulations, and HUD pays the remainder of the rent through the PHA.

It is the existence of an effective HAP contract which actually authorizes payment of the subsidized share of the rent by a PHA to a landlord. The statute provides that a HAP contract "shall be for a term of not less than one month nor more than one hundred and eighty months." 42 U.S.C. § 1437f(d) (2). The lease between a certificate holder and a landlord "shall be for at least one year or the term of [a HAP] contract,

whichever is shorter." Id., § 1437f(d)(1)(i).

This case raises issues arising when a landlord seeks to terminate the tenancy of a certificate holder who has already entered into a lease and occupancy with respect to a unit. In 1981, Congress amended the statute to provide that a tenancy may not be terminated except for various specified grounds, or "for other good cause." Id., § 1437f(d)(1)(B)(ii). This provision applies both to mid-term efforts to terminate a lease, and to a landlord's decision not to renew a lease at the end of the term.

After the 1981 amendments, HUD issued "interim regulations" at 24 C.F.R. § 882.107 and § 882.215 (1983). These provisions provided for lease terms of one year, for HAP contracts with a concurrent term, and provided expressly that a PHA should not make subsidy payments to a landlord after the expiration of a HAP contract. Rather, the landlord would be required to enter into a new HAP contract and lease in order to continue receiving payments on behalf of the tenant. HUD-approved leases and HAP contracts were distributed and used that incorporate these features of the interim regulations.

On March 29, 1984, however, after notice and comment rule-making, HUD promulgated final regulations that deleted § 882.107 and amended § 882.215. Under the new scheme, both a lease and a HAP contract have indefinite terms, and shall

continue until terminated in accordance with the statute for the specified reasons or "other good cause." These new provisions explicitly apply only to leases and HAP contracts entered after the effective date of the permanent regulations, May 10, 1984. Most present Section 8 tenancies, accordingly, continue to be governed by the leases and HAP contracts promulgated under the interim regulations.

PLAINTIFFS' CLAIMS

Plaintiffs' First Amended Complaint herein challenges both the interim regulations and the permanent regulations. Plaintiffs' Motion For Temporary Restraining Order, however, concerns only the continuing effects of the interim regulations. This memorandum, accordingly, will deal only with plaintiffs' immediate claims.

Plaintiffs' essential complaint about the interim regulations is that rental subsidy payments to a landlord cease automatically as soon as a HAP contract expires and is not renewed. Plaintiffs allege that such termination of payments to the landlord deprives them of a protected property right without due process, since the payments cease prior to any determination of whether the landlord actually has good cause for the failure to renew the underlying lease. As shown below, however, the cessation of such payments to a landlord on a tenant's behalf causes no harm to the tenant, because the tenant may not be removed from occupancy until such good cause has been established in a state court eviction proceeding.

ARGUMENT

Plaintiffs' First Amended Complaint and other papers frequently equate the cessation of subsidy payments to a landlord at the non-renewal of a HAP contract with termination of the tenant from the Section 8 program. The situation is, however, far different than plaintiffs portray.

First, a landlord's failure to renew a HAP contract for whatever reason does not terminate the tenant from the Section 8 program. Indeed, the tenant continues to have a valid certificate of family participation, and 24 C.F.R. part 882 contains entirely separate and non-challenged procedures for termination of a certificate.

Moreover, the non-renewal of a HAP contract and lease by a landlord does not put a tenant on the street without housing. Rather, in order to regain possession of the apartment a landlord must pursue state court eviction proceedings, and in those proceedings he must demonstrate that he had good cause for the failure to renew the lease with the tenant. The fact that, after such non-renewal, the landlord is not receiving rent subsidy payments, cannot form a basis for good cause for the non-renewal, since it is the non-renewal itself which has caused the rental payments to cease. In short, a Section 8 tenant may not be evicted from a unit absent a state court hearing wherein the landlord must show good cause for the failure of the landlord to renew the relationship.

Plaintiffs raise a host of speculative possibilities as to why plaintiffs might be harmed, notwithstanding the protections just described. One of the plaintiffs, Treva Knight,

claims that her landlord is pursuing an eviction action for non-payment, without demonstrating good cause unrelated to non-payment. If so, however, the place for litigating the adequacy of the landlord's reasons for attempting to evict Ms. Knight is in the state court proceeding, where Knight has a full opportunity to present any legal defense to eviction. The landlord's possible misapplication of federal standards does not constitute federal or state action for which any of the present defendants are responsible. Blum v. Yaretsky, 457 U.S. 957 (1982) (private nursing home decisions on appropriate levels of care for patients does not constitute state or federal action, even though Medicaid Program administrators base reimbursement decisions upon the private decisions); Miller v. Hartwood Apartments, Ltd., 689 F.2d 1239 (5th Cir. 1982) (no state action where landlord evicted Section 8 tenant, where tenant had state court due process hearing under correct standard).

Plaintiffs essentially challenge here a provision that HAP contracts terminate after one year, and that no payments may be made absent an effective HAP contract. It is plain from the face of § 1437f, however, that a PHA is authorized to make HAP rental subsidy payments solely where there is an effective HAP contract. Otherwise, there would be no contractual basis for PHA control of the relationship with the landlord. The explicit authority in § 1437f for the HAP contracts to have terms, combined with the requirement that a landlord demonstrate good cause in a state court eviction proceeding for failure to renew the lease and HAP contract,

certainly satisfy any requirements of due process. At a minimum, plaintiffs have not demonstrated a substantial probability of success on their claim that this system violates any due process rights. This is particularly so where the acts of which plaintiffs essentially complain, alleged violations by landlords of the requirements to renew leases absent good cause, do not constitute federal or state action.

CONCLUSION

For the reasons stated, plaintiffs' motion for temporary restraining order should be denied.

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