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AUG 20 1979

NOTE TO: Arthur Gang  
SUBJECT: Melton, et al. v. New York City Housing Authority, et al.  
U.S.D.C., E.D. N.Y. No. 79 Civ. 1015

This is in response to your memorandum seeking our comments concerning the New York City Housing Authority's (NYCHA) interpretation of the term "remaining member of a tenant family" in the above-mentioned litigation.

This case involves three sets of plaintiffs who reside in NYCHA units. Each plaintiff seeks to continue occupancy, as a remaining member of a tenant family, after the departure from the unit of the head of the household.

The plaintiff in Case A is Melton, a minor who has resided with his mother in a NYCHA unit since 1977. Recently, his mother died and his two half brothers moved into the NYCHA unit with him, one allegedly to serve as his guardian. NYCHA notified Melton that because of the death of his mother, neither he nor his half brothers are entitled to remain in the unit. Melton then filed this action in order to avoid being evicted by NYCHA.

The plaintiffs in Case B, the Johnsons, are brother and sister and are both adults. They have lived with their parents in a NYCHA unit for a number of years. The sister has been employed and her income has been included by NYCHA in computing rent. For health reasons, the parents have moved to the South. NYCHA notified the Johnsons that they are no longer entitled to occupy the unit because their parents had moved from the unit. The Johnsons brought this action to avoid being evicted by NYCHA.

The plaintiffs in Case C, the Yarbroughs, are two adult sisters and their three minor children. The mother of the sisters was a tenant in a NYCHA unit. The Yarbroughs moved into the unit with their mother without notifying NYCHA. Shortly thereafter, the mother died. The Yarbroughs intervened in this case alleging they are entitled to remain in the unit. Each of the plaintiffs alleges that he or she is a "remaining member of a tenant family" as the term is used in the United States Housing Act of 1937 (Act) and, therefore, is an eligible family entitled to continue to occupy his/her respective unit.

\* HDS 464, 3 pp.

NYCHA claims the plaintiffs are not entitled to continue occupancy because "remaining member of a tenant family" should be interpreted as limited to remaining adult family member or members following the death of the tenant or tenants of record.

NYCHA asserts that Melton does not qualify because he is not an adult, the Johnsons do not qualify because the tenants of record, their parents, did not die, and the Yarbroughs do not qualify because they were never occupants of the unit since NYCHA was never notified of their moving in.

It is our position that NYCHA's interpretation of remaining member of the tenant family is restrictive and inconsistent with the Act and HUD regulations.

Section 3(2) of the Act defines "families" as: ". . . including families consisting of single person in the case of . . . (c) the remaining member of a tenant family."

The statute does not require the remaining member to be an adult, nor does the statute require that one's status as a remaining member must result from the death of a family member. A review of the legislative history does not provide support for NYCHA's theory that a restrictive interpretation of the statute was the intent of Congress. "Family" is defined by HUD regulations 24 CFR 812.2(d)(2) as including but not limited to "the remaining member of a tenant family." A review of the preamble to the regulation (42 FR 63744) fails to provide support for NYCHA's restrictive interpretation.

Therefore, it is our position that NYCHA must revise its interpretation.

With regard to this litigation, the facts suggest that Melton, in Case A, would qualify as a remaining member of a tenant family. He lived in the unit with his mother prior to her death. He was a member of her household. His occupancy in the unit was recognized by NYCHA. Whether he can continue to occupy the unit is dependent upon his capacity under State law to enter into contracts. As the sole remaining household member, he becomes the head of the household for the family. In order for a family to occupy a NYCHA unit, the head of the household must have the capacity to, and actually execute a mutually binding lease with NYCHA. Whether or not Melton is qualified to execute such a lease must be determined pursuant to State law by NYCHA. If NYCHA determines that Melton does not have the legal capacity to execute a mutually binding

lease, and, therefore, is unable to remain in occupancy, NYCHA should notify Melton citing the specific reasons for the determination. If Melton is dissatisfied with the NYCHA determination and requests a hearing in accordance with 24 CFR 866.50 et seq., and the NYCHA grievance procedures, NYCHA must provide such a hearing.

Since Melton's half brothers were not members of the household prior to the mother's death, they are not remaining members of the tenant family and, therefore, are not entitled to continue to occupy the unit. Also, since they are not tenants as defined at 24 CFR 866.53(f), they would not be entitled to a grievance hearing.

Concerning the Johnsons in Case B, each would qualify as a remaining member of the tenant family. Each lived in the unit with the parents as a member of the household prior to the parents' departure. The occupancy of each, especially the sister, since her income was included by NYCHA in determining rent, was recognized by NYCHA. From the facts it appears that either could execute a lease as the head of the household.

Even though the Johnsons qualify as eligible to remain in the project, it does not follow that their status as remaining members of the tenant family entitles them to remain in the original unit if the unit is not the appropriate size. The departure of the parents has resulted in a change in family composition, therefore, NYCHA may wish to transfer the family to an appropriate size unit. If NYCHA decides to transfer the Johnsons and the Johnsons are dissatisfied with this decision, they should be provided an opportunity for a hearing in accordance with 24 CFR 866.50 et seq., and NYCHA grievance procedures.

Concerning the Yarbroughs in Case C, it appears that they were guests of the tenant and are not "remaining members of the tenant family." The Yarbroughs were not members of the tenant's household, they were not listed on her lease, and even though they occupied the unit with the tenant prior to the tenant's death, the occupancy by the Yarbroughs was not recognized by NYCHA. Also, they would not be entitled to a hearing in accordance with 24 CFR 866.50 et seq., and NYCHA grievance procedure since they are not tenants as defined at 24 CFR 866.53(f).

We apologize for the delay in responding to your request, and hope that this clarifies certain issues raised in this litigation.

/s/ Joseph F. Gellatich

Assistant General Counsel