

162/12

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

SUFFOLK, ss:

HOUSING COURT DEPARTMENT  
CITY OF BOSTON DIVISION  
CIVIL ACTION  
DOCKET NO. 24773

\_\_\_\_\_  
KATHLEEN WHALEN, et al.,  
Plaintiffs

v.

BOSTON HOUSING AUTHORITY,  
Defendant  
\_\_\_\_\_

CONSENT JUDGMENT

The Court, having considered the parties' joint proposal for settlement of this action by entry of a Consent Judgment, and having held a hearing on ~~October~~ September 23, 1992 with advance notice given to members of the plaintiff class so that they could submit their views concerning such settlement, hereby enters the following Judgment in this action by consent of the parties:

1. This action is certified as a class action. Members of the plaintiff class consists of all persons who are current tenants of the Boston Housing Authority (hereinafter, BHA) who have had their rents raised to a "ceiling" or "maximum" rent for failure to complete recertification at any time from May 5, 1982 to the present. For the purpose of this Consent Judgment, "current tenants" means persons who are in legal occupancy of BHA-owned apartments as of the effective date of this Consent Judgment.

2. BHA hereby agrees not to increase public housing tenants' rents to a "ceiling" or "maximum" rent as a penalty for failure to recertify except to the extent such practice is: (a) specifically permitted or required by regulations of the Executive Office of Communities and Development of the Commonwealth of Massachusetts (hereinafter, EOCD) or the United States Department of Housing and Urban Development (hereinafter, HUD); or (b) specifically provided for in any future BHA lease, and such lease has been approved by EOCD and HUD following applicable tenant notice and comment periods.

3. BHA shall, within a reasonable time, not to exceed six (6) months from the effective date of this judgment, make adjustments to the rent accounts of the named plaintiffs and other members of the plaintiff class already identified to BHA by plaintiffs' counsel prior to such effective date.

4. Within sixty (60) days of the effective date of this judgment, BHA shall cause a notice to be sent out to all of its public housing tenants (including tenants in BHA's privately managed public housing), informing tenants that if any of them believe that he or she has had his or her rent raised to a "ceiling" or "maximum" rent for failure to recertify at any point since May 5, 1982 and have not had such rent subsequently adjusted back to an income-based rent, he or she has the right to seek adjustment by identifying themselves to plaintiffs' counsel. Such notice shall be in the form provided in Attachment "A" to this Judgment. BHA shall also cause such notice to be given to its tenant task forces, Mass. Senior Action Council, and the Committee for Boston Public Housing.

5. Tenants who believe that they have a claim for adjustment shall be required to notify plaintiffs' counsel, in writing, that they are asserting such a claim within sixty (60) days of the date BHA sends them the notice provided in Paragraph 4 above. A form to notify plaintiffs' counsel of the assertion of a claim will accompany BHA's notice, and shall be in the form provided in Attachment "B" to this Judgment. For good cause shown, such as prolonged hospitalization, disability, or other prolonged excusable absence, the time period for submission of a claim may be extended. Any disputes concerning whether there is good cause for an extension which cannot be resolved by agreement of the parties may be submitted to the Court for resolution. Failure to assert a claim within the time periods provided here, except where there is good cause for extension, shall bar any later assertion of such claim.

6. Plaintiffs' counsel shall, within ninety (90) days of the date BHA sends the notice provided in Paragraph 4 above, provide BHA with a list of the names and addresses of all tenants for whom there is reasonable cause to believe they have possible claims. Plaintiffs' counsel shall provide similar information for any tenants who have good cause for extending the time period for submission of a claim, as provided in Paragraph 5. Plaintiffs' counsel shall make reasonable efforts to determine, for all tenants asserting claims, whether they would, in fact, be eligible for relief, consistent with the obligation to get timely notice to BHA of putative claims and the information then available to counsel. BHA shall, within a reasonable time not to exceed six months from the time plaintiffs' counsel identifies a tenant, retrieve all records necessary to identify whether

such tenant has in fact been charged a "ceiling" or "maximum" rent due to failure to recertify after May 5, 1982. Any tenants identified as having been charged a ceiling or maximum rent due to failure to recertify shall then have their rent accounts adjusted in accordance with Paragraph 7.

7. For all tenants identified under Paragraphs 3 and 6, BHA shall adjust such tenants' rent accounts utilizing the following guidelines:

(a) If a tenant recertified within four (4) months of the effective date of his/her annual rent change, BHA shall utilize the income, household composition, and applicable deductions reported at such recertification in determining the rent that would have been charged had the tenant timely recertified. BHA shall purge the "ceiling" or "maximum" rent charge for such months, substitute the income-based rent, and adjust the tenant's rent account within sixty (60) days of confirming with plaintiffs' counsel that the tenant has a legitimate claim for adjustment. If the household's income was such that a "ceiling" or "maximum" rent would have been charged in any event, no adjustment is required.

(b) If a tenant did not recertify within (4) months of the effective date of his/her annual rent change, the tenant shall be required to provide verifications, satisfactory to the BHA and consistent with normal BHA practices and procedures, of the actual income, household composition, and applicable deductions for the period in question. Within sixty (60) days of receipt of such satisfactory verifications, the BHA shall utilize the information to determine the rent that should have been charged, shall purge the

"ceiling" or "maximum" rent, and shall adjust the tenant's rent account. If the household's income was such that a ceiling or maximum rent would have been charged in any event, no adjustment is required. BHA shall be under no obligation to adjust a tenant's rent under this provision if the household fails to provide satisfactory verifications. However, for good cause shown, the BHA shall consider alternative forms of verification if the tenant is unable, despite reasonable efforts, to obtain verification in the form required by BHA. Such verification shall be acceptable if it may be reasonably relied upon to establish the fact or condition which is claimed.

(c) If a "current tenant" voluntarily relinquishes possession and vacates subsequent to identifying that he or she has a claim under Paragraph 3 or 6, such tenant shall continue to be eligible for the adjustment provided in this paragraph, so long as all necessary verifications are provided.

(d) BHA shall only be required to make adjustments in full to the extent that the tenant has an outstanding rent arrearage which exceeds the amount of the adjustment. If the adjustment exceeds any rent owed by the tenant, the BHA shall grant the tenant a rent credit in such installments and over such time as may be necessary for full adjustment, but in no event shall the monthly installment exceed 50% of the tenant's current monthly rent.

8. BHA shall review non-payment eviction cases pending in the Boston Housing Court, or which may be filed in the Boston Housing Court, to insure that tenants are not evicted for non-payment of rent that is based on "ceiling" or "maximum" rents charges for failure to recertify, except where such evictions are

permitted as provided in Paragraph 2. Nothing in this paragraph shall bar BHA from bringing an eviction for non-payment or seeking issuance of or levying upon an execution where the tenant owes rent in addition to any "ceiling" or "maximum" rent charges for failure to recertify.

9. Any applicant for housing who has been determined ineligible for public or subsidized housing at the BHA or other housing agency due to a BHA rent arrearage which includes "ceiling" or "maximum" rent charges which have not been previously purged or adjusted shall be given the opportunity to show their actual income and circumstances at the time. If, based on income, household composition, and relevant circumstances, the rent would have been lower than ceiling rent, BHA agrees to appropriately adjust the tenant's rent account. If there is no remaining rent balance the tenant shall no longer be considered ineligible for admission to public or subsidized housing due to a BHA arrearage.

10. All claims and counterclaims raised in this action, except to the extent that they are included in this Consent Judgment, are dismissed with prejudice. Plaintiffs' claim for reasonable attorney's fees is reserved for consideration as part of plaintiff's counsel's claim for fees in Armando Perez et al. v. Boston Housing Authority, Suffolk Superior Court Civil Action No. 17222, and BHA reserves all rights with regard to objection to such fees.

11. It is expressly understood and agreed that BHA expressly denies any liability to the named plaintiffs and the plaintiff class, and that any adjustments made to the rental accounts of the affected

tenants are in full accord and satisfaction of disputed claims, and that any adjustments made by BHA are not an admission of liability.

12. Copies of this Consent Judgment shall be available for review in the BHA Legal Department at 52 Chauncy Street, Boston, MA 02111, as well as at management offices at BHA's various family and elderly/handicapped public housing developments, during normal business hours.

Effective Date of Judgment:\_\_\_\_\_

By the Court:

\_\_\_\_\_  
E. George Daher  
Chief Justice  
Boston Housing Court

Attachment "A"

**NOTICE TO ALL BHA PUBLIC HOUSING TENANTS  
SETTLEMENT OF CLASS ACTION LAWSUIT  
THAT MAY AFFECT YOU**

Date Notice Sent: \_\_\_\_\_

Dear BHA Tenant:

As the result of the settlement of a class action lawsuit known as Kathleen Whalen, et al. v. Boston Housing Authority, Boston Housing Court Civil Action No. 24773, you may be entitled to an adjustment on your BHA rent account. Under the settlement, current BHA tenants have claims for rent adjustment if:

- (1) The tenant had his/her rent raised to a "ceiling" or "maximum" rent between May 5, 1982 and the present for failing to recertify; and
- (2) BHA failed to subsequently remove the "ceiling" or "maximum" rent charges and set the tenant's rent back retroactively to an income-based rent.

If you think that you are entitled to an adjustment under this court settlement, you must contact the attorney handling the class action lawsuit, Mac McCreight at Greater Boston Legal Services (GBLS), 68 Essex Street, Boston, MA 02111, (617) 357-5757, ext. 3997, by no later than sixty (60) days from the date that this notice was sent (i.e., by no later than \_\_\_\_\_). You should identify yourself as a BHA tenant who has a "Whalen" claim and give GBLS your name, address, and telephone number (if you have one). You may either call Attorney McCreight or send the enclosed form to:

Mac McCreight  
Greater Boston Legal Services  
68 Essex Street  
Boston, MA 02111

If you do not contact GBLS within sixty (60) days from the date of this notice, and you do not have "good cause" for delay in response



(such as hospitalization, disability, or prolonged excusable absence), you will not be entitled to any adjustment as part of the Whalen settlement.

If you contact GBLS because you think you have a claim, GBLS will submit your name to BHA if there is reasonable cause to believe you have a claim. BHA will then provide the information regarding your rent and recertification history so that it can be determined whether you have a valid claim. If you have a valid claim, GBLS may need to get more information from you in order to determine what adjustment is proper under the settlement. You will be informed by GBLS regarding what action is being taken on your claim.

If you have any questions concerning this notice, please feel free to contact Attorney McCreight at 357-5757, ext. 3997. If he is not in or is tied up when you call, please leave a message with a number at which he can reach you, and indicate that you are calling about the Whalen case. A copy of the court settlement is also available for review at the BHA's Legal Department at 52 Chauncy Street downtown, as well as at your development's management office.

[AT END OF NOTICE, INCLUDE STANDARD BHA MULTI-LINGUAL NOTICE:

"THIS IS AN IMPORTANT NOTICE. PLEASE HAVE IT TRANSLATED."]

Attachment "B"

Date: \_\_\_\_\_

Mac McCreight  
Greater Boston Legal Services  
68 Essex Street  
Boston, MA 02111

RE: Whalen case

Dear Attorney McCreight:

I am a BHA tenant. I think that I may be entitled to a rent adjustment as a result of the settlement in the Whalen case. I have reasonable cause to believe that my rent was raised to a "ceiling" or "maximum" rent for failure to recertify. My name, address, and phone are:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

I can provide you with the following additional facts to help you in investigating my claim:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sincerely yours,

\_\_\_\_\_