

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
SHERMAN DIVISION

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	*	
The Inclusive Communities, Project, Inc.,	*	Civil Action No.
Plaintiff,	*	
	*	
v.	*	
	*	
The City of McKinney, Texas and	*	
The Housing Authority of the City of	*	
McKinney, Texas,	*	
Defendants	*	

Complaint

Introduction

1. The Inclusive Communities Project, Inc. (“ICP”) as part of its mission to provide desegregated housing opportunities made offers of financial assistance to the City of McKinney and to the Housing Authority of the City of McKinney (“MHA”) for the City or the Housing Authority to assist and encourage the development of desegregated, affordable rental housing in west McKinney, west of U.S. Highway 75. In return for the financial assistance, ICP would obtain the ability to place its clients or other Section 8 voucher recipients in approximately 30% of any tax credit units developed in west McKinney with the assistance. The use of the units would provide desegregated rental housing for ICP’s clients and Dallas Housing Authority Section 8 Voucher tenants. Both the City and MHA refused to negotiate with ICP for the provision of ICP financial assistance for the development of affordable rental housing for families in west McKinney. Both refused to participate in the ICP program. The City and MHA are willing to negotiate for and to provide financial support for the location of LIHTC housing in

racially segregated low income and minority concentrated east McKinney area but refuse to do so in predominantly White west McKinney The City's and MHA's actions refusing to participate in the ICP program perpetuate racial segregation by making dwellings unavailable because of race or color in violation of the Fair Housing Act, 43 U.S.C. § 3604(a).

Jurisdiction

2. This Court has jurisdiction pursuant to 28 U.S.C. § § 1331, 1343, and 42 U.S.C. § 3613.

Plaintiff ICP

3. The Inclusive Communities Project, Inc. (ICP) is a non-profit Dallas area fair housing and civil rights organization working with families who seek to obtain and retain housing in predominately non-minority areas of the Dallas metropolitan area. This is part of ICP's work to break down barriers to the creation of racially and economically inclusive communities.

4. In furtherance of its mission, ICP assists Dallas Housing Authority (DHA) Section 8 Voucher families to find desegregated housing opportunities in the suburban communities in the Dallas area. DHA's Section 8 vouchers can be used to obtain housing in Dallas County and in any of the six counties adjacent to Dallas County. Most, 85%, of the families in DHA's Section 8 Voucher program are Black or African-American.¹ All of the DHA Section 8 voucher participants who are Walker Settlement Voucher participants are Black. ICP assists DHA Section 8 program families including Walker Settlement Voucher families who choose to lease dwelling units in non-minority areas with counseling and financial assistance. ICP can provide

¹ The term "Black" as used in the following portions of the complaint refers to persons choosing the racial identification Black or African American in the 2000 U.S. Census.

landlords who have units in non-minority concentrated areas with financial bonuses for leasing to DHA Section 8 clients.

5. One of the ways ICP assists its clients is by finding units for them in Low Income Housing Tax Credit (“LIHTC”) rental properties. These developments cannot refuse to rent to Section 8 tenants because the tenants are on the Section 8 voucher program. 26 U.S.C. §42(h)(6)(B)(iv); Texas Gov’t Code § 2306.269(b).

6. ICP can also provide financial assistance for purchasing, constructing, improving, repairing, or maintaining dwellings. The dwellings assisted by ICP must be in non-minority concentrated areas within the Dallas metropolitan area and must be affordable housing for low income tenants.

7. ICP’s office is located in the City of Dallas, Dallas County, Texas.

Defendants

City of McKinney

8. The City of McKinney (“City”) is a municipal political subdivision, a home rule city, located in Collin County, Texas.

McKinney Housing Authority

9. The Housing Authority of the City of McKinney (“MHA”) is a public housing authority located in the City of McKinney, Texas.

Facts

Segregated residential housing pattern in McKinney

10. The 2000 U.S. Census showed that the City of McKinney was 71% White.² The 2006 American Community Survey shows that the City of McKinney was 67% White.

11. The City is racially segregated. As of the 2000 U.S. Census, McKinney's east side was 49% White. The east side of McKinney is located east of U.S. Highway 75.

12. As of the 2000 U.S. Census, McKinney's west side was 86% White. The west side of McKinney is located west of U.S. Highway 75.

13. The east side of McKinney is where 68% of all Blacks in McKinney lived and where 78% of all Hispanics in McKinney lived as of the 2000 census. Only 39% of the total City population lived in east McKinney and only 27% of the White Non-Hispanic population lived in east McKinney.

14. The affordable housing operated by MHA is racially segregated by location. All of the public housing and most of the Section 8 vouchers are located on the east side of McKinney. The apartments that participate in the Section 8 program are concentrated on the east side of McKinney. A 2007 survey found that 2,057 of the 2,485 units operated by landlords willing to participate in the Section 8 voucher program were located on the east side of McKinney. Seven of the nine LIHTC developments are located in the east side of McKinney. The two tax credit developments west of U.S. Highway 75 are less than a mile west of the highway and are located near an industrial area.

² The term "White" and the term "non-minority" are used in this complaint to refer to the 2000 U.S. Census category for persons of the White race who are also not Hispanic or Latino.

The federal low income housing programs involved in the case - Section 8 vouchers, public housing, and the Low Income Housing Tax Credit Program

15. The Section 8 program is the federal government's major program for assisting very low-income families to find and pay for decent, safe, and sanitary housing in the private housing market. 42 U.S.C. § 1437f(o). The Section 8 families pay at least 30% of their income for the gross rent for a unit. Gross rent includes both the contract rent and the cost of the utilities for the unit. The Section 8 subsidy for the portion of the rent not paid by the Section 8 family is paid directly to the landlord. The United States Department of Housing and Urban Development (“HUD”) is the federal agency responsible for administering the Section 8 program.

16. The DHA Settlement Voucher program is a federal court ordered enhancement of the Section 8 program as part of the remedy for racial segregation in the DHA public housing and Section 8 programs. The DHA Settlement Voucher program is part of the remedy in *Walker v. U.S. Dept. of Housing and Urban Development, et. al.*, 03:85-cv-1210 (N.D. Tex.).

17. Public housing is a federal low income housing program that uses dwelling units owned by a local housing authority such as the McKinney Housing Authority. The federal government provides a subsidy that allows the tenants to pay no more than 30% of their income for rent. HUD is the federal agency responsible for administering the public housing program. 42 U.S.C. § 1437c.

18. The LIHTC Program is a federal housing program based on the provision of income tax credits for developers and investors in low income multifamily rental housing. 26 U.S.C. § 42. The targeted beneficiaries of the program are very low and extremely low income

households. The program's purpose is to encourage the development and preservation of rental housing for low income families, maximize the number of units added to the state's housing supply, and prevent losses in the state's supply of affordable housing. The Texas Department of Housing and Community Affairs ("TDHCA") is the state agency with the authority to allocate tax credits under this program. The program has produced many units. The TDHCA's 2008 Property Inventory Report lists 1,691 LIHTC projects with 194,532 units in the State of Texas.

19. The LIHTC program is disproportionately minority occupied when compared to the general housing market. According to TDHCA's 2007 Housing Sponsor Report, the State's LIHTC units are 34.8% Black and 33.4% Hispanic or Latino occupied. The State's occupied housing units are 11.5% Black and 28.6% Hispanic or Latino.

MHA facts

20. The public housing in McKinney is racially segregated by location. All of the public housing is located in east McKinney. The occupants of MHA public housing are predominantly minority. 63% of the occupants are either Black or Hispanic.

21. 50% of the participants in the MHA Section 8 program are either Black or Hispanic. According to the City, most of these households are located in east McKinney.

22. The waiting lists for both public housing and Section 8 housing in McKinney show that the population in need of affordable housing is disproportionately minority.

23. MHA has taken no steps to desegregate the location of its public housing. MHA has never located any sites for public housing in west McKinney.

24. MHA proposes to replace its public housing with low income housing tax credit units in east McKinney. MHA refused to plan for the development of any of the replacement units for

public housing in west McKinney.

Both the City and MHA refuse to negotiate with ICP for financial assistance from ICP to provide affordable desegregated housing in west McKinney

25. ICP asked the City and MHA to participate with ICP in providing financial assistance to developers of low income housing tax credit multifamily rental units. ICP offered to provide this financial assistance in two separate ways.

26. In the first proposal, ICP would make funds available to the City or to MHA. The City or MHA would then use the grant to make low-interest loans available to one or more developers for Low Income Housing Tax Credits to be used in the western part of McKinney where there is a need for affordable, non-elderly, rental housing. In return for the funding, the developer would set aside approximately 30% of the units in the development for ICP's clients or other DHA Section 8 voucher tenants.

27. Because the ICP provided assistance would come from the City and would show City support for a tax credit application, the assistance would give the developer up to 18 points in the Texas Department of Housing and Community Affairs application scoring process. These points give a selection priority to applications that have the support of and financial assistance from a local political subdivision. The points make it more likely that an application will be successful and receive a tax credit allocation for the development of the housing. The legal authority for the local political subdivision grant or loan for housing tax credit projects is Tex. Gov't Code 2306.6710(b)(1)(E). The local political subdivision grant or loan program is at Section 49.9(i)(5) of the FY 2007 Qualified Allocation Plan and at Section 50.9(i)(5) of the TDHCA 2008 Qualified Allocation Plan.

28. There are developers willing to take local political subdivision grants for tax credit developments. The grants are attractive to developers because of the financial assistance and because of the selection priority points that are awarded for the grants.

29. In Texas, the local political subdivision contribution programs have been very successful at attracting tax credit developers. For example, in the 2006 tax credit award cycle, four of the nine applications in the Dallas area region receiving tax credits had also received TDHCA selection criteria points for the local political subdivision contribution. Although none of these grants was from ICP's program, the ICP program is designed to work similarly by providing the funds for the City's contribution to the tax credit developer.

30. The City of Frisco, Texas has entered into this type of local political subdivision grant agreement with ICP for the use of ICP financial assistance in the development of LIHTC housing for ICP clients in Frisco.

31. The second funding proposal by ICP was for the City or MHA to enter into a memorandum of understanding with the Southeast Texas Finance Corporation ("SETH") and to agree with ICP and a developer of affordable housing to locate low income housing tax credit rental housing in the western part of McKinney. Under the second proposal, ICP would provide the fees for the developer to obtain a loan from SETH. SETH is a housing finance agency that is willing to make such loans to low income housing tax credit developers on behalf of local municipalities or other local political subdivisions. The City or MHA would agree in the memorandum of understanding with SETH that the City would support the development. The City support through the SETH memorandum would provide the developer with up to 18 points under the LIHTC application for local political subdivision support, thus making the application

more likely to receive an allocation of tax credits. In return for making the funds available, ICP would obtain a reservation of units for ICP's clients or other DHA Section 8 voucher clients.

32. Both the City of McKinney and MHA refused to negotiate with ICP and refused ICP's request to join with ICP in providing financial assistance to developers of low income housing tax credit multifamily rental units.

33. At least one factor in the City's and MHA's refusal to negotiate or participate is the race of the population that would be eligible for and that would probably served by the units developed using the financial assistance from ICP. Because of ICP's participation in the program, that population would include a substantial number of Black DHA Section 8 families. Other Black or Hispanic families would also be eligible for and probably served by the units. Another factor in the City's and MHA's refusal is the race of the population in the neighborhoods in west McKinney where the units would be developed using the financial assistance. That population is predominantly White. The inclusion of these factors is purposeful discrimination because of race or color.

34. The City's and MHA's refusals to negotiate or to participate have the discriminatory effect of making financial assistance unavailable for the development of affordable low income rental housing for which the eligible population is disproportionately minority. The population eligible for tax credit housing is disproportionately minority compared to the population of the west McKinney portion of the City. The DHA Section 8 families for whom the developer would reserve units are disproportionately minority compared to the population of the west McKinney portion of the City. The City's and MHA's actions make affordable low income rental housing in West McKinney unavailable to Black and Hispanic low income tenants.

35. The City's and MHA's refusals to negotiate or to participate have the discriminatory effect of making financial assistance unavailable for the development of affordable low income rental housing in a predominantly White neighborhood. The effect is discriminatory because the population eligible for and likely to reside in the dwellings is disproportionately minority. The City's and MHA's refusals make dwellings in West McKinney unavailable to ICP's clients and maintains the racial segregation in its neighborhoods.

36. The City and MHA are willing to negotiate for and to provide financial assistance to locate LIHTC housing in the racially segregated east side of McKinney. MHA states in its plans that it will eliminate all of the existing public housing and replace those units using LIHTC and a mix of programs on the same sites. The location of the replacement LIHTC units is on the east side. MHA has submitted applications to TDHCA for an allocation of low income housing tax credits to replace the public housing units at MHA's Merritt Homes on the east side of McKinney. The MHA 2008 application for low income housing tax credits was based on the City providing a \$875,000 loan to MHA for the replacement of Merritt Homes with LIHTC units in east McKinney on the site of Merritt Homes.

37. There is no comparable willingness by the City or by MHA to negotiate for or to provide LIHTC units in the predominantly White west side of McKinney. The City and MHA refused to participate in ICP's offers of financial assistance for the development of LIHTC housing in west McKinney.

38. The City and MHA refused to negotiate for or participate in ICP's offers of financial assistance for the development of LIHTC housing despite the need for such affordable housing in the west side of McKinney.

ICP standing

39. There are few affordable rental units available for ICP clients in the predominantly White west McKinney.

40. Had McKinney or MHA agreed to participate in ICP's local political subdivision grant program, then there is at least a reasonable likelihood that approximately 30 to 60 units of low income housing tax credit financed housing in one or two apartment developments in west McKinney would have become available to ICP for its clients. The City's and MHA's refusal to participate makes those units completely unavailable.

41. The refusal to participate by the City and by MHA directly injures ICP. Had the tax credit units become available, then ICP's clients could not have been barred from those units because they are Section 8 voucher participants. The rents for those units would have been limited to rents with the Section 8 payment standard and between 30% of 30% of the Area Median Family Income and 30% of 60% of the Area Median Family Income, a rent that is within the Section 8 Settlement Voucher payment standard for ICP's clients. ICP would have an existing agreement with the landlord to place ICP's clients in a substantial percentage of the units. This agreement would make available units in which ICP could place its clients which units would not otherwise be available for such use by ICP.

42. The use of government funds to provide a loan or grant to low income housing tax credit developers has worked to obtain the tax credits and other financial assistance for the development of low income affordable rental units.

43. The requested relief - court ordered participation in the ICP program or a similar program devised by the City or MHA - provides a remedy for the injury.

Claims for relief

44. The City of McKinney's refusal and MHA's refusal to negotiate about or to participate in ICP's political subdivision grant program make dwelling units unavailable because of race or color and violate 42 U.S.C. § 3604(a).

Prayer for relief

45. Plaintiff requests the following relief:

A. Injunctive relief requiring the City of McKinney and MHA to either participate in ICP's political subdivision grant program or provide an equivalent program that will also make units available in west McKinney for ICP's clients and other low income tenants participating in the Section 8 voucher program,

B. The payment of attorney fees, litigation expenses, and court costs, and

C. Any other appropriate relief.

Respectfully Submitted,

s/ Michael M. Daniel

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