

66 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEBRA WALKER, ET AL.)	
)	Civil Action No.
v.)	3:85-CV-1210-R
)	
U.S. DEPARTMENT OF HOUSING)	
AND DEVELOPMENT, ET AL.)	Class Action
<hr/>		

HUD'S SUPPLEMENTAL RESPONSES TO
PLAINTIFFS' REQUESTS FOR ADMISSIONS

Defendant United States Department of Housing and Urban Development ("HUD"), pursuant to Fed. R. Civ. P. 36 and the Court's May 26, 1994 Order, supplements its response to Plaintiffs' Requests For Admissions 126-147 as follows:

126. The Exhibit B mobility provisions state:

"Exhibit B

...

Summary of Plan Objectives

...

2. establishment of a new Housing Mobility Division within DHA's organizational structure... This Division will promote and make housing mobility possible for black and other minority families of DHA's housing programs by:

A. Conducting outreach to owners of private rental housing in areas where few Section 8 certificate or voucher holders currently reside, with particular emphasis in non- racially-impacted areas of Dallas and the suburbs.

B. As part of the entire process of preparing for, locating and contracting for housing in those areas, assisting and counsel with families who are seeking such housing.

C. [non-minority and public housing.

D. Administering tenant relocation programs of the DHA pursuant to this Decree.

E. [working with fair housing organizations]

F. Complying with the Housing Mobility requirements of HUD Handbook 7420.7 (11-79), Chapter 7."

III. General Procedures to Improve DHA's Administration of DHA's projects and programs.

...

3. All current and future participants in the Section 8 existing and voucher program will be notified of DHA's Housing Mobility United and the availability of counseling and referral services to assist any certificate for voucher holder who wishes to locate alternative housing in area where his or her race does not predominate. The content of the notice to be provided shall be agreed upon by the parties. Counseling shall include notice of units available in non-impacted areas (including all HUD-assisted or insured rental projects in such areas), a description of the location or neighborhood in which suitable units may be found, and the facilities and services available in those neighborhoods such as schools, day care, health care, and public transportation.

...

5. A new Housing Mobility Division will be established for the purposes previously described. The division will be headed by a staff person at the Assistant Director level with a minimum of five other staff persons (one real estate outreach person, three counselors and one clerical person).... Once residents are placed by the Housing Mobility staff, they will be treated in the same manner as all regular Section 8 certificate holders with regard to handling of all interim examinations and re-examinations and other services under the Section 8 program. Either through the activities of this unit or through other means DHA will comply with the Housing Mobility requirements of HUD Handbook 7420.7 (11/79), Chapter 7."

Response: Admitted.

127. The Court has already found DHA in violation of these provisions. Walker I, 734 F. Supp. at 1235-1239. DHA is continuing the violation by assigning mobility division staff to general Section 8 duties and by otherwise limiting that staff's efforts to promote housing choices in non-racially impacted areas.

Response: As to the first sentence, HUD admits that in Walker I the Court found DHA to be in violation of the mobility provisions of the 1987 Consent Decree. Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny whether, or to what extent, DHA's mobility division staff perform other duties in addition to those described in the 1987 Decree or whether the staff's performance of any such duties would interfere with its ability to promote housing choices in non-impacted areas. Notwithstanding HUD's lack of independent knowledge regarding this subject, DHA informs HUD that the duties assigned to the mobility division staff under the current Administrative Plan (dated March 25, 1993) differ from those described in the 1990 Administrative Plan.

DHA's Record of Compliance with the Mobility Provisions

128. Walker I sets out DHA's past violations of the consent decree's mobility provisions. 734 F. Supp. 1235-1239. The mobility provisions of the supplemental consent decree were designed to remedy these past violations. DHA was given thirty days from the signing of the decree to reestablish the mobility division. Instead of restoring the mobility division, DHA continued the violation.

Response: The first three sentences are admitted. The fourth sentence is denied to the extent it states that DHA has not restored the mobility division. Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of the remainder of the sentence.

129. Walker I found that DHA's reorganization of the mobility unit which assigned responsibility for basic Section 8 program services to the mobility staff violated the consent decree. 734 F. Supp. 1236-1237.

Response: Admitted.

130. DHA did not even make a token effort to remedy the Walker I violations of the consent decree until November 13, 1989 when the Assistant Director for HOP was hired. On January 20, 1990, DHA reported to the Court that the complete staff had been hired [DHA's Report to the Court # 8, Jan. 20, 1990]. This was five months after the opinion in Walker I. The claim was false. DHA did not have the 1987 decree required three (3) mobility counselors until May 13, 1991, only two weeks before the hearing on mobility related matters [5/28/91 transcript pages 60-62].

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the first sentence, except to admit that testimony from the May 28, 1991 hearing supports the conclusion that DHA did not hire the number of mobility counselors required by the 1987 decree until at least December, 1989. As to the second sentence, HUD admits that DHA's 1/20/90 Report includes an entry for January 8, 1990, which states "Complete staffing of Housing Opportunity Division (7 staff members)." The third sentence is admitted. Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the fourth and fifth sentences. However, it is unclear from the testimony given at the May 28, 1991, hearing whether, as of

January 20, 1990, DHA had hired three mobility counselors as required by the 1987 decree. Moreover, DHA informs HUD that its employment records indicate that three counselors were hired in December, 1990.

131. DHA's Section 8 Administrative Plan and the testimony of DHA's employees make it clear that the HOP performs a substantial amount of general administrative work for the entire Section 8 program. The Court has already ruled that a similar attempt by DHA to make the mobility staff responsible for basic Section 8 program services as well as mobility services "in itself, violated the Consent Decree". Walker I, 734 F.Supp. 1236-1237.

Response: Denied that the existing Administrative Plan (dated March 25, 1993) and the May 28, 1991 testimony of DHA employees indicate that the HOP currently performs a substantial amount of general administrative work for the entire Section 8 program. HUD admits that the Court has found that DHA's assignment of such duties to mobility staff violates the 1987 Decree.

132. DHA's present organization does not even have the consent decree required Housing Mobility Division. Instead, DHA has assigned mobility duties to a new section called the Housing Opportunity Program [HOP] which is also charged with general Section 8 program duties [plaintiffs' mobility exhibit #6, pages 4, 10, 13-16].

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of these statements.

However, DHA has informed HUD that mobility duties described in the 1987 decree have been assigned to the Housing Opportunity Program ("HOP").

133. DHA adopted a new Section 8 Administrative Plan on August 23, 1990, after the agreement was reached on the Supplemental Consent decree. The Plan governs the operation of the HOP [plaintiffs' mobility exhibit #6; Mobility Tr. Campbell testimony, page 101].

Response: Denied, except to admit that DHA adopted an Administrative Plan on August 23, 1990, which has been superseded by DHA's current Section 8 Administrative Plan, adopted March 25, 1993.

134. According to the 1990 Section 8 Administrative Plan, the personnel assigned to the HOP are required to perform many basic Section 8 program services. The HOP staff has been given duties not included in the original consent decree's definition of the Housing Mobility Division. These duties include: working with all property owners, not just those in non-impacted areas, conducting the housekeeping training course, assisting families with jobs location [page 4], assisting all families with social services requests and other difficulties, doing the home visits for all clients [page 14], handling all requests for extensions of certificates and vouchers [page 15], and taking requests for housing quality standards complaint inspections [page 17]. The Assistant Director for HOP hears all appeals under the Section 8 program [page 14]. While these duties are important for the

operation of the overall Section 8 program, the requirement that the limited HOP staff perform them continues the pattern of using the Housing Mobility division staff to perform general duties which has already been found to violate the consent decree.

Walker I, 734 F. Supp. 1236. The 1987 decree requires DHA to maintain a Housing Mobility Division whose responsibilities are limited to those provided in the consent decree. [1/20/87 decree Exhibit B sections - Summary section 2 through 2.F., III.3., III.5, III.15].

Response: The first, third and fourth sentences are admitted to the extent that these statements refer to the 1990 Section 8 Administrative Plan, except that HUD denies that the 1990 Administrative Plan remains in effect. Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of the second and fifth sentences. The sixth sentence is admitted.

135. The 1990 Section 8 Administrative Plan makes no provision for individual transportation for applicants to view available units, to make return inspection visits, and to execute leases. The Administrative Plan includes only van tours [page 13].

Response: Admitted that the 1990 Section 8 Administrative Plan did not specifically include provisions concerning individual transportation, return inspection visits, or return visits to execute leases. DHA's 10/23/90 Report concerning the Supplemental Decree, however, stated that DHA was providing such

services upon request, including transportation services to make return inspection visits and to execute lease documents. Report, ¶ 9(a). DHA's existing Section 8 Administrative Plan (dated March 25, 1993) also includes provisions for such additional transportation services.

136. The 1990 Section 8 Administrative Plan lists only one subject for individual counseling - "all HUD regulations pertaining to housing" [page 14]. The original consent decree requires extensive individual counseling [1/20/87 decree Exhibit B, Section III.3.; 9/24/90 decree section 9.(b)].

Response: As to the first sentence, HUD admits that the 1990 Section 8 Administrative Plan does not precisely describe the content of the individual counseling that is to be provided under the Plan. As to the second sentence, HUD admits that the 1987 Decree, Exhibit B, III.3, provides in part:

"Counseling shall include notice of units available in non-impacted areas (including all HUD-assisted or insured rental projects in such areas), a description of the location or neighborhood in which suitable units may be found, and the facilities and services available in those neighborhoods, such as schools, day care, health care, and public transportation."

137. The 1990 Section 8 Administrative Plan omits the requirement that DHA conduct an ongoing analysis of the adequacy of the Section 8 Fair Market Rent levels. The analysis is required by HUD Handbook 7420.7, paragraph 7.2.d. and paragraph III.5 of Exhibit B to the original consent decree.

Response: Admitted that the 1990 Section 8 Administrative Plan does not state that "an ongoing analysis of the adequacy of the

Section 8 Fair Market Rent levels" will be conducted. The second sentence is admitted.

138. The DHA employees' testimony at the hearing before the master on the mobility issue confirms that a substantial part of the HOP's time is spent on basic Section 8 program services and on participants who are not seeking housing in non-impacted areas.

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny whether a "substantial part" of the HOP's time is spent on "basic Section 8 program services and on participants who are not seeking housing in non-impacted areas." However, HUD admits that the testimony of DHA employees at the May 28, 1991 hearing supports plaintiffs' contention that as of that date, a portion of the time of the HOP staff was devoted to basic Section 8 program services and to persons seeking housing in non-impacted areas.

139. Each HOP counselor at DHA has an individual caseload of approximately 40 persons at any given time [mobility Tr. - Wade (Senior counselor) testimony, page 76]. HOP has a caseload of from 300 to 500 persons every month [mobility Tr. - Campbell (mobility assistant director) testimony page 107]. Fifty percent of the caseload are families who are not interested in finding housing in the non-impacted area [mobility Tr. - Wade (Senior Counselor) testimony page 76]. The HOP provides basic Section 8 services to all Section 8 participants, not just those looking for housing in non-impacted areas [mobility Tr. - Campbell

(Assistant Director) testimony page 94-95]. It is necessary to spend 20% more time with the families who want non-impacted housing than it does with families who are looking for housing in impacted areas [mobility Tr. Wade (Senior Counselor) testimony page 76-77].

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of these statements, except to admit that plaintiffs' statements accurately report the estimates provided in the cited testimony with respect to case load and time requirements of certain HOP employees as of May 28, 1991.

140. The HOP staff at DHA have no information on basic neighborhood facts such as the difference in rankings in the various school districts, relative crime statistics or job opportunities in the suburbs [mobility Tr. - Campbell (Assistant Director) testimony pages 96-99]. The HOP briefings do not include any information on which suburbs are served by DART [id. at 99-100].

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of these statements, except to admit that the cited testimony supports plaintiffs' contention that, as of May 28, 1991, HOP staff did not have information with respect to rankings of school districts, relative crime statistics or job opportunities in the suburbs; and to admit that, as of May 28, 1991, HOP staff generally provided information on DART service only to individuals requesting such

information. However, DHA's 10/23/90 Report concerning the Supplemental Decree states that "DHA has developed amenity packages for DHA's non-Section 8-impacted areas. These information packets cover the following services: school systems, child care, medical facilities, public transportation, recreation and shopping." Report, ¶ 9(b). In addition, the HOP currently operates under a new Section 8 Administrative Plan, dated March 25, 1993. DHA informs HUD that HOP briefings currently include information on which suburbs are served by DART.

141. Even though the HOP staff at DHA recognize that families seeking housing in non-impacted areas face more difficulties in finding that housing, the staff does not believe it has any obligation to provide additional assistance to the families seeking non-impacted housing [mobility Tr. - Campbell (assistant director) testimony pages 102-104].

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of this statement, except that HUD denies that the cited testimony supports the statement.

142. Both the Assistant Director and the Senior Counselor believe that it would be illegal steering for the HOP staff at DHA to even encourage minority families to seek housing in non-impacted areas [mobility Tr. - Wade (senior counselor) testimony pages 67-68, 74-75; Campbell (assistant director) testimony page 96]. There is no one at DHA whose job it is to encourage people to move to the predominantly white suburbs or the predominantly white area of Dallas [mobility Tr. - Wade (senior counselor)

testimony page 68]. Under the 1/20/87 decree, DHA has the obligation to "use every good faith effort to locate a substantial percentage of its Section 8 certificate or voucher units outside census tracts in which there are currently 10 or more Section 8 certificates in use" [1/20/87 Exhibit B III. 12.A.].

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of these statements, except to admit that plaintiffs' characterization of the cited testimony from the May 1991 hearing and cited provisions of the 1987 Decree is accurate.

143. Half the caseload of the HOP staff at DHA is persons who are not seeking housing in non-impacted areas. But for its regular Section 8 duties, the HOP would be spending twice as much time on behalf of the mobility clients who want and need the extra assistance necessary to find housing in the predominantly white suburbs and areas.

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of these statements, except to admit that testimony of HOP staff on May 28, 1991, supports the first statement as of the date the testimony was given. However, the Section 8 Administrative Plan then in effect has been superseded by DHA's March 25, 1993 Plan.

144. DHA continues to provide false information about the availability of housing in predominantly white areas to Section 8 participants. Walker I, 734 F. Supp. 1238. Each Section 8

participant is given a list of units in non-impacted areas in order to assist the participant in her housing search. Under the 1987 consent decree that list should include only housing in non-impacted areas and should include all such housing in non-impacted areas. DHA continues to list impacted housing on the non-impacted list [plaintiffs' 1/13/92 exhibit #20.B - November 1990 list and attached census tract locations with impacted units marked on the list]. DHA continues to omit non-impacted housing available for Section 8 participants in predominantly white areas from the list [plaintiffs' 1/13/92 exhibit #20.C. - November 1991 list and attached sheets showing Section 8 available units in non-impacted that are not on the list].

Response: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of the first, fourth and fifth sentences. The second and third sentences are admitted.

145. The 1987 decree requires DHA to provide only a limited staff. For most of the consent decree's duration, DHA has not even assigned the minimum staff. During those periods when there was a minimum staff DHA, by assigning that limited staff to non-mobility, basic Section 8 duties, continued to deprive the class of a substantial remedial component of the 1987 decree.

Response: HUD objects to the first sentence as vague, in that the statement does not indicate in what sense the staffing levels prescribed by the 1987 decree are "limited." Notwithstanding this objection, HUD admits that the 1987 Decree provides that DHA must establish a mobility unit with an Assistant Director and a

minimum of five other staff persons. Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of the second and third sentences.

15% of Section 8 units in the Suburbs

146. Exhibit B III.12.A states that by the third year of the decree "15% of the total DHA Section 8 certificate or voucher units will be in the suburbs." DHA has never met this goal. As of January 31, 1991 DHA's total Section 8 certificate and voucher allocation was 5,506 [DHA's 6/29/91 Section 8 utilization plan, page 2]. In addition there are 117 Section 8 certificates which were converted to free standing certificates when the Robin Square project was terminated from the Section 8 moderate Rehab program. As of October 31, 1991, almost five years into the decree and two years since the deadline set by the decree, there were only 747 certificates or vouchers in the suburbs to DHA's monthly report. This was only 13.57% of the allocation. DHA has maintained approximately 13% of the Section 8 allocation in the suburbs for the last 11 months [plaintiffs' 1/13/92 exhibit #20.A - summary of Section 8 in the suburbs]. DHA has never achieved the 15% goal.

Response: As to the first sentence, Exhibit B III.12.A states in full:

"Each year under the Decree, DHA commits to use every good faith effort to locate a substantial percentage of its Section 8 certificate or voucher units outside census tracts in which there are currently 10 or more Section 8 certificates in use. In furtherance of this effort, DHA will identify as available the following percentage of Section 8 certificate or voucher units

outside census tracts in which there are currently 10 or more Section 8 certificates in use:

First Year -- 15%

Second Year -- 30%

Third Year -- 50% (of which 15% of the total DHA Section 8 certificate or voucher units will be in the suburbs).

With respect to the remaining sentences, HUD lacks sufficient knowledge to admit or deny the truth of the statements, but based on DHA's September 30, 1993 Report to this Court, it appears that DHA has met its goal of locating 15% of available certificates and vouchers in the suburbs.

147. Had DHA achieved the 15% minimum goal, an additional 84 families, most African-American, would have been residing in the housing of their choice in the suburbs for each month of the last two years.

Response: Despite reasonable inquiry, HUD lacks sufficient information to admit or deny the truth of this statement.

However, based upon information submitted to the Court by DHA in September 1993, it appears that this request for admission is based upon an incorrect premise.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

PAUL E. COGGINS
United States Attorney

Felix V. Baxter / JLD
FELIX V. BAXTER
MEMBER MASSACHUSETTS AND NEW YORK
BARS

Thomas H. Peebles/JLD

THOMAS H. PEEBLES
DC BAR # 391624

Jeffrey L. Darsie

JEFFREY L. DARSIE
KENTUCKY BAR # 84190

Attorneys, Department of Justice
Civil Division
Federal Programs Branch
901 E Street, N.W., Suite 1000
Washington, D.C. 20530
Telephone: (202) 514-4778

OF COUNSEL:

NELSON A. DÍAZ
General Counsel

JOHN W. HEROLD
Associate General
Counsel for Litigation

KIM KENDRICK
Assistant General
Counsel for Litigation

STEVEN GOLDSTEIN
Trial Attorney

Office of General Counsel
United States Department
Of Housing and Urban
Development

June 6, 1994

CERTIFICATE OF SERVICE

I, Jeffrey L. Darsie, hereby certify that on June 6, 1994, I served copies of the foregoing HUD's Supplemental Responses To Plaintiffs' Requests For Admissions by first-class mail, postage prepaid, to the following:

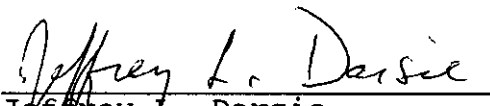
Honorable Louis Weber, Jr., Esq.
Special Master
Preston Commons West
8117 Preston Road, Suite 680
Dallas, Texas 75225

Michael M. Daniel, Esq.
3301 Elm Street
Dallas, Texas 75226

Joseph G. Werner, Esq.
Haynes & Boone
3100 NationsBank Plaza
901 Main Street
Dallas, Texas 75202

Mike McKool, Esq.
Jeffrey A. Carter, Esq.
McKool, Smith
300 Crescent Court, Suite 300
Dallas, Texas 75201

Chris G. Wittmayer, Esq.
Assistant City Attorney
City Hall
Dallas, Texas 75201



Jeffrey L. Darsie
Trial Attorney
Federal Programs Branch