

Williams v. New York Housing Authority, Not Reported in F.Supp. (1994)



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Order Modified by [Williams v. New York City Housing Authority](#),  
S.D.N.Y., September 29, 1994

1994 WL 323634

Only the Westlaw citation is currently available.  
United States District Court, S.D. New York.

Diedre WILLIAMS, individually and on behalf  
of all others similarly situated, et al., Plaintiffs,

v.

NEW YORK CITY HOUSING  
AUTHORITY, et al., Defendants.

No. 81 Civ. 1801 (RJW).

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July 5, 1994.

MEMORANDUM DECISION

[ROBERT J. WARD](#), District Judge.

\*1 This is a class action brought on behalf of certain rent-subsidized tenants (“the tenants”) against the New York City Housing Authority (“the Housing Authority”) and those private landlords participating in the rent-subsidy program.

On April 27, 1994, plaintiff-tenants and defendant-Housing Authority presented a proposed settlement resolving all claims of the plaintiff class. Defendant-landlords submitted objections, which were responded to by plaintiffs and the Housing Authority. For the reasons hereinafter stated, and subject to certain conditions set forth below, the settlement is approved.

BACKGROUND

The Section 8 program was introduced as part of the Housing and Community Development Act of 1974. [42 U.S.C. §§ 1404–1440](#). Congress conceived of the program as a means of providing decent, affordable housing to low-income families. Since the statute is rife with ambiguities, landlords have frequently found ways around the restrictions; and local authorities are often too busy to notice. The resulting victims

are the tenants, those very people whom the statute was designed to aid and protect.

Section 8 provides landlords with rental subsidies for each qualified tenant who occupies an approved housing unit. Units must meet minimal habitability standards and rent limits. Families are accepted for the program on the basis of their income: only a family whose annual income does not exceed 80% of the median income for the area in which the family lives is eligible. As rent, a Section 8 tenant must pay either 30% of the family's monthly adjusted income or 10% of the family's gross monthly income, whichever of the two amounts is greater. *See* [42 U.S.C. § 1437a\(1\)\(A\)](#). This way, the family is not forced to choose between food, shelter, and clothing when allocating its limited resources. The Housing Authority covers the balance of the rent.

This action was commenced on March 26, 1981, when Diedre Williams, a Section 8 tenant, moved by order to show cause for a Preliminary Injunction and Class Certification, and a Temporary Restraining Order against the Housing Authority. Williams was seeking a more equitable system for administering the Section 8 Existing Housing Program. In particular, she objected to the eviction provisions. Over the next two years, several other plaintiffs intervened in the proceedings. On August 10, 1983, this Court granted plaintiffs' motion for class certification.

The governing statute provides that a Section 8 tenancy is not to be terminated “except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause.” [42 U.S.C. § 1437f\(d\)\(1\)\(B\)\(ii\)](#). Moreover, the eviction must be “preceded by the owner's provision of written notice to the tenant specifying the grounds for such act.” *Id.* at [§ 1437f\(d\)\(1\)\(B\)\(iv\)](#).

While this litigation was pending, the Housing Authority agreed to review all requests for eviction of Section 8 tenants. In the First Partial Consent Judgment (“the First Judgment”), dated October 17, 1984, the parties addressed the problems arising from evictions caused by the Housing Authority's discontinuation of the rent subsidy. The First Judgment established procedures by which Section 8 tenants may challenge a Housing Authority decision to discontinue

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or terminate payment of Section 8 subsidy payments for any period of time.<sup>1</sup>

\*2 On April 27, 1994 the parties submitted a proposed second partial consent judgment, resolving the remainder of plaintiffs' claims. Pursuant to [Rule 23\(e\), Fed.R.Civ.P.](#), this Court ordered the parties to notify class members and other interested parties about the proposed agreement. Notice of the proposed agreement was sent to 18,000 participating Section 8 landlords. The parties solicited written comments and objections and ultimately nineteen sets of comments and objections were received. The various comments and objections were summarized by Elizabeth Cullen, Esq., one of the defendant class representatives. Plaintiffs and defendant-Housing Authority responded to the comments. On May 26, 1994, this Court conducted a hearing on the fairness, reasonableness, and adequacy of the proposed settlement.

## DISCUSSION

In determining whether to accept the proposed settlement, this Court must balance the equities. Certainly, the landlords involved in this litigation are fulfilling an important societal need: they are providing shelter to families that might otherwise be left homeless. In order to continue doing so, they need to be able to rely on the Housing Authority's financial assistance. On the other hand, the Court must consider the interests of the tenants. The fact that Section 8 tenants receive a portion of their rent from the government should not deprive them of the right to feel secure in their dwellings, without concern of being unjustly evicted. *See, e.g., Jeffries v. Georgia Residential Finance Authority*, 678 F.2d 919 (11th Cir.1982) (since Section 8 tenancy invokes substantive property interest, unjust eviction violates tenant's due process rights); *Joy v. Daniels*, 479 F.2d 1236, 1242 (4th Cir.1973) (a plaintiff's entitlement to continued occupancy of public housing comes within the protection of the Due Process Clause).

### I. Legal Standards

In approving a class action settlement, "the normal focus is on the fairness, reasonableness and adequacy of the settlement to the plaintiff class" and on the effects upon interested third

parties. *In re Masters Mates & Pilots Pension Plan*, 957 F.2d 1020, 1025–26 (2d Cir.1992).

To determine the fairness, reasonableness and adequacy of a class action settlement, a district court must consider both the terms of the settlement and the process through which it was negotiated. *Malchman v. Davis*, 706 F.2d 426, 433 (2d Cir.1983). To this end, some or all of the following factors will be relevant:

- (1) the complexity, expense and likely duration of the litigation,
- (2) the reaction of the class to the settlement,
- (3) the stage of the proceedings and the amount of discovery completed,
- (4) the risks of establishing damages,
- (6) the risks of maintaining the class action through the trial,
- (7) the ability of the defendants to withstand a greater judgment,
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery,
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

\*3 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir.1974) (citations omitted).

### II. Analysis

No purpose would be served by providing a lengthy discussion of the proposed settlement. The settlement is highly detailed; and only a few points addressed therein are objected to by the defendant-landlords. Accordingly, only a brief overview of the proposed settlement will be presented.

Paragraphs two and three of the proposed settlement provide that good cause must exist before the commencement of eviction proceedings. This provision is not controversial; it simply incorporates established interpretations of statutory and regulatory requirements. *See* 42 U.S.C. § 1437f(d)(1)

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(B)(ii); 24 C.F.R. § 882.215(c); *see also, Swann v. Gastonia Housing Authority*, 675 F.2d 1342, 1345–47 (4th Cir.1982).

As a corollary, the Housing Authority may not terminate Section 8 assistance payments to the landlord without good cause.

In perhaps the most controversial portion of the proposed settlement, paragraphs five through eight, the landlord is required to provide the tenant and the Housing Authority with adequate notice prior to eviction. Landlords must inform tenants and the Housing Authority of their intent to begin eviction proceedings at least twenty-five days prior to commencement of the proceedings. If the Housing Authority is to be notified by mail, landlords are required to give thirty days' notice.

Notification is facilitated by use of a Certification for Basis of Eviction Proceeding (“the Certification”), which includes the following information: (1) sufficiently specific factual allegations; (2) in the case of nonpayment proceedings, the total amount of rent owed and a breakdown of source of arrearage; (3) certification that the landlord will not commence a nonpayment proceeding against the tenant for housing assistance payments; and (4) confirmation that a copy of the Certification was mailed or delivered to the tenant. After receiving the Certification, the tenant has ten days to respond. Therefore, the Housing Authority has twenty days to determine whether it will accept the Certification or submit objections to it.

Eviction proceedings may be instituted if the Housing Authority fails to respond to the landlord's Certification. In the event that the landlord is evicting for nonpayment of the subsidy portion of rent or if the Housing Authority otherwise objects to the Certification, then the Housing Authority must be named in the eviction proceedings. Failure to name the Housing Authority in such a case will result in the dismissal of the proceeding.

Defendant-landlords object to the notice requirement. They argue that the twenty-five day period is excessively long. When added to the amount of time it would take to serve a demand and petition, and, if necessary, for the Housing Authority to make a rent determination, the delay could result in several months of lost rent. Legal proceedings to recover this loss are not a practical option for the landlord, since litigation would entail considerable cost and time. Moreover,

it would be virtually impossible for the landlord to recoup any significant portion of the legal fees accrued in Housing Court.

\*4 While the landlords have expressed legitimate concerns, the Court believes that the amount of time specified in the proposed settlement is reasonable.<sup>2</sup> For the Section 8 program to function effectively and equitably, the Housing Authority must maintain a monitoring role in the process. Accordingly, the Authority must be afforded an adequate period of time to review the landlord's Certification and the tenant's reply. As noted above, the tenant is provided with ten days to respond to a Certification, thereby affording the tenant the opportunity to formulate his approach. The tenant can learn of his rights in the proceeding, his obligations, and seek whatever assistance is available. Presumably, the tenant will utilize the entire ten day period. In that event, the Housing Authority has only twenty days to respond to the landlord's Certification and determine whether it will accept or object to it. Before responding to the Certification, the Housing Authority should have the tenant's reply. Assuming that the tenant responds on day ten, the Authority is left with five days to make its determination. Any less than five days would be insufficient.

The eviction proceedings described in the proposed settlement apply to holdover evictions as well. In contrast to other cases of eviction, holdover evictions are never grounded in non-payment of rent. Instead, they involve management issues: e.g. property damage, violation of no pet clause, use of illegal drugs on premises. In virtually all cases, the Housing Authority has no direct interest in these proceedings, and would have little (if any) reason to object. Plaintiffs offer vague arguments to the effect that there currently exist or may sometime develop situations in which the Housing Authority “could be privy to information that could prompt it to alert a landlord that a holdover proceeding should not be brought.” (Letter from Housing Authority, June 6, 1994.)

This Court does not find plaintiffs' arguments, which are supported by the Housing Authority, to be persuasive.<sup>3</sup> Inasmuch as the Housing Authority has no role to play in holdover proceedings, by assigning the it a role, this Court would be unnecessarily augmenting an already lengthy process. Accordingly, the Court declines to extend the certification process to holdover proceedings.

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CONCLUSION

The proposed settlement, while less than perfect, is fair, reasonable, and adequate. However, the Court remains concerned about the interests of the defendant-landlords, primarily in holdover evictions. Therefore, this Court will maintain jurisdiction over the implementation of the

settlement, with power to enforce or modify its terms upon application by one or more parties.

Settle judgment on notice.

**All Citations**

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**Footnotes**

- 1 Prior to the First Judgment, the tenant could be subject to eviction due to no fault of his own. As the result of a dispute between the landlord and the Housing Authority, the Housing Authority might have withheld the rental subsidy. The landlord would then have evicted the tenant for non-payment of rent.
- 2 So too do several ranking members of the House Committee on Banking, Finance and Urban Affairs. The committee members recently introduced a bill that would revise the current Section 8 rental assistance program. The proposed revisions closely resemble the notice provisions of this settlement. The relevant section of the bill reads as follows:

NOTICE OF TERMINATION OF TENANCY.—Each assistance contract shall provide that before terminating the tenancy of any tenant, the owner shall provide written notice to the tenant specifying the legal and factual grounds for such action. *Such notice shall be provided to the tenant not less than 30 days before termination, except that in cases of termination for nonpayment of rent such notice shall be provided 14 days before termination.*

H.R. 3838 (emphasis added).

- 3 Indeed, the Housing Authority is also not persuaded of the fairness of applying the provisions to holdover evictions. As the Authority states in its June 6, 1994 letter, “[w]e acknowledge that Section 8 landlords have a legitimate concern about holdover proceedings.” However, the Housing Authority contends that it has learned during this protracted litigation, “that any attempt to segregate holdover proceedings that may truly warrant Housing Authority involvement from those that are purely landlord-tenant disputes would embroil landlords in a far more complex and cumbersome procedure than that contained in the proposed settlement.”