

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

MAURICE SHANNON, CAROLYN BECK,  
BASIL H. LOSTEN, IRENE SISK,  
THOMASENE MACK, MILDRED BATES,  
LUCILLE WEEKS, TYRONE BEAL,  
BRENDA PARKER, FRANCES MCCARTHY,  
CATHERINE M. P. TAYLOR, JAMES W.  
WILLIAMS, JUANITA WILLIAMS, CHARLES  
JOHNSON, SAMUEL D. BROG, LIBERTY  
PLACE CIVIC ASSOCIATION, FRIENDS  
NEIGHBORHOOD GUILD, FRIENDS HOUSING  
COOPERATIVE, THE GERMAN SOCIETY OF  
PENNSYLVANIA, for themselves and all  
others similarly situated

vs.

UNITED STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT, : GEORGE ROMNEY,  
Secretary of Department of Housing  
and Urban Development; WARREN P.  
PHELAN, Regional Administrator, Region II,  
Department of Housing and Urban Development;  
and THOMAS J. GALLAGHER, Regional Administrator,  
Federal Housing Administration, Department of  
Housing and Urban Development.

CIVIL ACTION NO.

## COMPLAINT

### I. Jurisdiction

1. This action is brought by Negro and white residents, tenants, would-be homeowners, and representatives of private civic organizations in the East Poplar area in the City of Philadelphia. They seek to prevent the Department of Housing and Urban Development from providing financial and other assistance to the East Poplar Redevelopment Area:

(a) because the plaintiffs were not afforded an appropriate opportunity to demonstrate to the federal officials why the redevelopment project as proposed to be amended should not receive federal approval or assistance;

(b) because appropriate procedures were not followed by the federal officials approving that assistance;

(c) because that assistance will destroy the present economic and racially balanced integration which characterizes the neighborhood and would increase economic and racial segregation in Philadelphia;

(d) because that assistance will prevent the construction of a meaningful number of owner-occupied homes in the community; and

(e) because that assistance encourages a breach of contract between some of the plaintiffs and the redeveloper of the redevelopment area.

due process and equal protection under the 5th Amendment to the Constitution and procedural and statutory rights established and secured by the Housing Act of 1949, as amended, 42 U.S.C. §1441 et seq.

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1361, 28 U.S.C. §1331, 28 U.S.C. §1343. The amount in controversy exceeds the sum of \$10,000 exclusive of interest and costs. This is a suit for declaratory and injunctive relief under 28 U.S.C. §2201 and for relief in the nature of mandamus under 28 U.S.C. §1361.

## II. Class Action

4. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Rules 23 and 17(b) of the Federal Rules of Civil Procedure. The members of the class represented by plaintiffs are individuals resident in and organizations operating in the East Poplar area of North Philadelphia, who are affected by the illegal actions of the defendants. They wish to act both individually and in connection with each other. All plaintiffs seek identical relief and all have been equally affected by the illegal actions of the defendants. The members of the class are so numerous as to make it impracticable to bring them all before the court. The interests of said class are adequately represented by the plaintiffs.

## III. Plaintiffs

5. Plaintiffs Shannon, Beck, Taylor, Johnson, and Williams have been residents of Liberty Place, a moderate

The Liberty Place Civic Association (hereinafter "Association") is an unincorporated association formed in January 1966 and includes all residents of Liberty Place.

6. Plaintiff Losten is a Roman Catholic priest and has lived in East Poplar since 1964.

7. Plaintiffs Sisk, Bates and Mack are residents of the Spring Garden Apartments, a 203 unit public housing project in East Poplar. Sisk and Mack have lived there for ten years and Bates for seven years. Mack is seeking to buy a home in the community.

8. Plaintiffs Beal and Weeks are residents of Penn Towne Apartments. Beal has lived in the community for twenty-four years and Weeks for nine years. Penn Towne was the first federally aided urban renewal project to be completed in the United States. It contains 174 garden-type apartments for middle income persons.

9. Plaintiff Parker is a resident of Richard Allen Homes, a 1324 unit public housing project adjacent to East Poplar. She has lived in the community for fourteen years. She, her husband and her family of six children must move from Richard Allen and are seeking to buy a home in the community.

10. Plaintiff McCarthy is being displaced by the Philadelphia Redevelopment Authority, (an agency of the City of Philadelphia hereinafter "Redevelopment Authority") from his home across Spring Garden Street from East Poplar. He has lived in the community all his life and is seeking to buy a home in the community.

12. Plaintiff Friends Neighborhood Guild, a non-profit Pennsylvania corporation, was founded in 1869 and engages in charitable, social, philanthropic, welfare, and religious work in the East Poplar area, in accordance with the social testimony of the Religious Society of Friends.

13. Plaintiff Friends Housing Cooperative, a non-profit Pennsylvania corporation, is an eighty-three unit integrated housing project located in East Poplar which was the first cooperative in the United States insured by the Federal Housing Administration. It was built in the early 1950's through self-help labor as planned integrated housing. Many of the residents have lived in the Cooperative since its inception.

14. Plaintiff The German Society of Pennsylvania is a non-profit Pennsylvania corporation, which was founded in 1764, and which has been located at Marshall and Spring Garden Streets in East Poplar since 1880.

#### IV. Defendants

15. The defendants are as follows:

(a) The Department of Housing and Urban Development (hereinafter "HUD") is an agency of the United States;

(b) George Romney is Secretary of HUD (hereinafter "the Secretary");

(c) Warren P. Phelan is Regional Administrator for

Pennsylvania.

(d) Thomas J. Gallagher is Regional Administrator, Federal Housing Administration (hereinafter "FHA") with offices in Two Penn Center Plaza, Philadelphia, Pennsylvania.

V. Facts Constituting the Cause of Action

16. The East Poplar Urban Renewal Area (hereinafter "East Poplar") located between Spring Garden and Girard, Fifth and Ninth Streets, in Philadelphia, Pennsylvania, was certified for redevelopment by the City Planning Commission on February 11, 1948; and the detailed plan was approved by City Council on December 24, 1959. There have been a number of amendments which, except for the action complained of, have not changed the character of the Plan.

17. The Urban Renewal Plan (hereinafter "the Plan"), prepared in 1959 by the Redevelopment Authority, was approved by City Council and a loan and grant contract was authorized between the Redevelopment Authority and the defendant HUD (or its predecessor agency) and became a public record, under the terms of which \$7,833,457 in Federal funds was made available to the Redevelopment Authority in consideration of its proceeding expeditiously with the Plan.

18. In 1960, the Redevelopment Authority advised the East Poplar residents of the contents of the Plan (and the contract with the defendant HUD) indicating, inter alia, that the Plan provided new modern two story row houses for sale which

or over 600 existing apartments and houses. The Redevelopment Authority specifically assured the East Poplar residents that there would be no additional low rent public housing in the area.

19. The representations by the Redevelopment Authority set forth in paragraph 18 were repeated during the next several years, together with a forecast that all construction under the Plan would be completed by 1963-65.

20. In accordance with the Plan, the Redevelopment Authority contracted with Abram Singer & Sons (hereinafter "Singer") to redevelop both Liberty Place (1961) and Fairmount Manor (1964), specifically requiring the erection of 244 single family dwellings and rehabilitation of existing buildings as single family and duplex homes in accordance with site plans attached to the contracts and the Plan.

21. In reliance upon the representations of Singer (supported and confirmed by the Redevelopment Authority and buttressed by the Redevelopment Authority's Loan and Grant Contract with HUD) some of the plaintiffs expended large sums of money and made substantial investments in the community as follows:

(a) Plaintiffs Shannon, Beck, Taylor, Williams, Johnson, and the members of the Association bought homes in Liberty Place;

(b) Plaintiff Brog relocated his drug store in the commercial portion of Liberty Place; and

(c) Plaintiff German Society decided to expend \$300,000 to renovate and remain in East Poplar.

None are presently under construction.

23. Starting in April 1966, Singer, already in breach of his contract by reason of his failure to proceed with both construction and rehabilitation of houses, attempted further to breach his contract with the Redevelopment Authority and with the plaintiffs by having the existing houses in the Fairmount Manor area demolished rather than rehabilitated as required by the contract. Singer projected a subsidized one- and two-bedroom apartment project substituted for single family dwellings.

24. Since adoption of the Plan and in violation of its purpose, East Poplar has become a low rent subsidized community as follows:

(a) Only 90 privately owned single family dwellings exist;

(b) Within its borders is Spring Garden Homes, a 203 unit public housing project;

(c) Adjacent to the west is Richard Allen Homes, a 1324 unit public housing project (the largest in Philadelphia);

(d) One block from its border to the west is Cambridge Plaza, a 372 unit public housing project;

(e) The projects listed in sub-paragraphs (b), (c), and (d) represent 13% of all existing public housing projects in Philadelphia;

(f) 1000 additional subsidized rental housing units for low income families exist or are projected within a



(g) North Philadelphia as a larger segment of the community of which East Poplar is a part, has over 8000 units of public housing representing 47% of such units within the City of Philadelphia.

25. In October 1967, plaintiff East Poplar Neighborhood Committee (hereinafter "the Committee") was formed to act as a formal, all inclusive community group to consult with and advise local and Federal authorities on the redevelopment of the community.

26. Unable to gain a hearing from local housing officials, the East Poplar residents appealed to the Federal defendants in an effort to convince them to suspend Federal approval of and financial assistance to the proposed amended Redevelopment Authority Plan for East Poplar. The East Poplar residents also offered a proposed alternative plan for the development of the community.

27. Neither the Regional Administrators nor the Secretary ever granted the residents' request for a procedural opportunity to demonstrate that the Redevelopment Authority's proposed amended plan did not satisfy the constitutional and statutory standards governing Federal approval of and assistance to urban redevelopment projects. Regional Administrator Phelan refused to review the issues raised by the Committee, stating that any action by him or by HUD would be "inappropriate", and beyond his authority.

28. In spite of plaintiffs' discussions and requests, the

permit substitution of one- and two-bedroom subsidized rental units (requiring a change in zoning from R10 to R13) in place of the private sale houses provided by the Plan and the Loan and Grant Contract between HUD and the Redevelopment Authority and the Redevelopment Authority's contract with Singer.

29. In spite of plaintiffs' repeated requests, the defendants have refused to retract their approval of the amendment to the Singer-Redevelopment Authority contract.

30. In furtherance of his breach of contract with plaintiffs and in anticipation of favorable action by local authorities and by defendants, Singer submitted for approval an agreement with the Philadelphia Housing Development Corporation (hereinafter "PHDC") to act as non-profit sponsor of his proposed one- and two-bedroom subsidized rental apartment project at a time when he was a vice-president of PHDC.

31. On November 20, 1968, defendant Gallagher endorsed for insurance a \$1,408,500 mortgage executed by PHDC covering Fairmount Manor and the commercial portion of Liberty Place in favor of the First Pennsylvania Banking and Trust Company. At the same time, a formal rent supplement contract was entered into by FHA with PHDC.

32. On January 3, 1968, excavation was started on the Fairmount Manor site, and will presumably continue unless stopped by Order of this Court.

33. The Housing Act of 1949, as amended, 42 U.S.C. §1441 et seq., places decisional responsibility upon the Secretary for protecting and goals and standards devised by Congress for Federally-funded urban redevelopment projects. The Secretary must decide whether the local planning agency's proposed program satisfies the Housing Act's goals and standards. Both the Housing Act and the due process clause of the 5th Amendment demand that the Secretary's decision be rational and fair.

(a) Plaintiffs do not contest the fairness or substantive correctness of the Secretary's original approval of the Plan in 1959, which assured both HUD and the East Poplar residents that the Plan would not further increase the heavy amount of public housing in the East Poplar area.

(b) However, plaintiffs do contend that when the Redevelopment Authority, after acquiring and clearing the land in the project with Federal funds, breached its promise and contracted for Fairmount Manor in the East Poplar area, the project changed significantly in character and no longer was consistent with the goals and standards of the Housing Act of 1949, as amended, or equal protection of the laws under the 5th and 14th Amendments to the Constitution.

(c) The plaintiffs gave notice to the Secretary of HUD that the Redevelopment Authority's project was no longer consistent with the policy of the Housing Act and the Constitution. The Secretary was then required to afford the plaintiffs an opportunity to demonstrate why the changed plans for the area

(d) The Secretary failed to perform his procedural duty under the Housing Act and under the 5th Amendment as defined by this Court in Powelton Civic Homeowners Association v. Department of HUD, 284 F. Supp. 809 (E.D. Pa. 1968, Body, J.) by failing even to consider whether approval was consistent with the substantive provisions of the Housing Act and to afford the plaintiffs the procedural opportunity to which they were entitled.

34. If the Secretary had afforded the plaintiffs the procedural opportunity to which they were entitled, he would be unable to find that the Redevelopment Authority's East Poplar project should continue to receive Federal approval and financial assistance in the form of continued certification under 42 U.S.C. §1451(c), rent supplements under 12 U.S.C. §1701s, and insurance benefits under 12 U.S.C. §17151, because of the failure of local officials to observe the following statutory procedural requirements:

(a) Section 105(a) of the Housing Act of 1949, as amended, 42 U.S.C. §1455(a), requires that a public hearing be held by the local governmental authority on the merits of the urban renewal plan prior to submission to HUD of an application for a Loan and Grant Contract. The only hearing held on the change in plan in this case was before the Rules Committee of City Council, (instead of the Development and Zoning Committee as in the case of other urban renewal plans) which hearing dealt only with an ordinance to approve the amended contract between Singer and the Redevelopment Authority and an ordinance for a

contract change was no more than a rubber stamp acquiescence in the decision by local housing officials who had made their decision without consulting members of the community. Such a hearing violated the spirit and letter of the statute and was a sham and a fraud on the plaintiffs.

(b) The Secretary's regulations, 24 C.F.R. section 5.15(d) require that the workable program requirement of 42 U.S.C. §1451(c) be satisfied when rent supplements are approved for a 221(d)(3) project. The workable program includes a requirement for citizen participation in the process of planning and developing urban renewal projects. Similarly, Section 103(a)(2) of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. §3303(a)(2), requires that the Secretary give assistance under the Act only if there is widespread and meaningful citizen participation in planning projects in a Model Cities neighborhood so that neighborhood views can influence policy, planning and program decisions. East Poplar is within the Philadelphia Model Cities neighborhood, but the city housing officials have failed to assure the required participation in the planning of Fairmount Manor, and have failed even to consult with the Area Wide Council, the community organization established under the Demonstration Cities and Metropolitan Development Act to participate in planning all projects administered by HUD in the Model Cities neighborhood.

35. Even if the above procedures required of the Secretary and of the local officials had been followed in this case, the Secretary would still be compelled to conclude that the proposed change in the Fairmount Manor project was incon-

(a) The change violates the equal protection clause of the Constitution and the Housing Act's objectives of economically and racially balanced neighborhoods, including a significant number of owner-occupied homes, most recently reaffirmed in Sections 101, 102 and 107 of the Housing and Urban Development Act of 1968. See 42 U.S.C. §1441, 12 U.S.C. §1715z, and 12 U.S.C. 1715z-2. The subsidized low rent one- and two-bedroom apartment project proposed will further increase the already dramatic and potentially disastrous over-concentration of segregated public housing in East Poplar and in North Philadelphia.

(b) The project as approved violates Section 101 of the Housing and Urban Development Act of 1968, which requires the Secretary to assure that in all 221(d)(3) projects steps are taken to assure maximum employment of residents from the affected area. There is no such requirement in the present contract.

(c) The change violates the contractual rights between Singer and those plaintiffs who are residents of Liberty Place without due process in violation of the 5th Amendment. The Secretary has permitted Singer and the Redevelopment Authority to vary from the Plan, which was a covenant running with the land.

(d) The change violated Section 105(b)(ii) of the Housing Act of 1949, as amended, 42 U.S.C. §1455(b)(ii) which requires a redeveloper to begin within a reasonable time any improvements required by the Urban Renewal Plan. Singer

...the Redevelopment Authority, in violation of the law and his covenant with those plaintiffs who are residents of Liberty Place.

WHEREFORE, plaintiffs pray that:

(a) This Court hold an immediate hearing in this case.

(b) This Court issue an order directing defendants Romney, Phelan and HUD to afford plaintiffs an adequate procedural opportunity to demonstrate why the amended contract violates the requirements of the equal protection clause of the Constitution; the Housing Act of 1949, as amended, 42 U.S.C. §1441 et seq.; the Civil Rights Act of 1964, 42 U.S.C. §2000d; and the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. §3301 et seq.

(c) This Court issue, after hearing, a preliminary injunction, restraining and enjoining defendants from making any rent supplement payments, from endorsing for insurance any advances under its insurance contract with The First Pennsylvania Banking and Trust Company, from certifying the East Poplar Urban Renewal Project as in compliance with the law, and from making available any financial assistance to the East Poplar Urban Renewal Project unless and until the above order is carried out. Unless the prayer for preliminary relief is granted this Court will be deprived of jurisdiction of this case by reason of mootness..

(d) In the alternative, in lieu of the relief prayed for in (b) and (c), that the Court proceed and decide to hear all questions presented in this complaint on the merits and grant plaintiffs such relief as justice and equity may require.

Respectfully submitted,

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