

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA *ex rel.* :
ANTI-DISCRIMINATION CENTER OF :
METRO NEW YORK, INC., :

Plaintiff, : 06 CV 2860 (DLC)

-v- :

WESTCHESTER COUNTY, NEW YORK, :

Defendant. :

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DECLARATION OF JERROLD M. LEVY

JERROLD M. LEVY, an attorney admitted to practice before this Court, pursuant to 28 U.S.C. § 1746, declares that the following is true and correct.

1. Since 2001, I have been general counsel to the Enhanced Section 8 Outreach Program (ESOP), Inc.

2. ESOP is a fair housing mobility program in Westchester County¹ that has a decades-long track record of moving poor and working-class families from racially concentrated areas of poverty to housing in neighborhoods of opportunity within overwhelmingly white towns and villages that are among the municipalities where affordable housing with maximum desegregation potential is supposed to be built under the consent decree.

3. These types of moves have been transformative for our clients. For example, ESOP helped a family that consists of a working mother earning about \$50,000 per year, a 23-year-old

¹ ESOP was created pursuant to a consent decree that was entered 1993 in the case of *Giddins et al. v. HUD et al.*, 91-CV-7181 (RPP) (S.D.N.Y.). Westchester’s Planning Department was among the defendants in that case. It was alleged to have operated its Section 8 program in a manner to have perpetuated racial segregation.

daughter, and a 15-year-old son. When the family first came to ESOP for assistance, the mother and her children were living in southwest Yonkers, an area notorious for inferior schools, substandard housing and high crime.

4. First, ESOP helped the family lease an apartment in Mamaroneck; later, we helped the family lease a three-bedroom apartment in Harrison. The current rent, including utilities, is \$2,550 per month, of which the family's share is approximately \$1,240. The children have attended the Rye Neck schools and the Harrison schools. The daughter is graduating from Hunter College this month; the son will be entering his junior year at Harrison High School in September. Both children have done extremely well in school.

5. When I spoke to the daughter recently, she told me that college would never have been a thought to her if she had not left Yonkers. She observed that the main objective of the schools in Yonkers appears to be to churn out students, whereas in Rye Neck and Harrison schools, the teachers and guidance counselors operate on the assumption that each student is preparing to go to college.

6. Another family ESOP assisted consists of a working mother earning just under \$50,000 per year, a 14-year-old son, and two daughters ages 14 and 5. They now reside in Pleasantville in a three-bedroom unit that rents for approximately \$2,350. The family's share of the rent is approximately \$1,000 a month. The children attend school in the Mount Pleasant school district.

7. The mother advised me at a recent Section 8 recertification interview that the children had benefited greatly from attending the Mount Pleasant schools. This family had also lived in southwest Yonkers prior to contacting ESOP. In addition to attending better schools, the family reported that their physical and mental well-being have been much enhanced since relocating

away from Yonkers.

8. The problem we continue to have is that there are many more families seeking to move to neighborhoods of opportunity than there is affordable housing available in such neighborhoods. My office is continually in the process of trying to identify rental housing for which our clients would be eligible. On a daily basis, we review real estate listings from brokers and in publications providing real estate listings throughout the county. Unfortunately, however, the supply of rental housing affordable to our clients in high-opportunity neighborhoods continues to be extremely limited.

9. Indeed, over the years it has become *more* difficult for ESOP to place clients in neighborhoods of opportunity, in significant part because the supply of such units has not expanded. This is reflected in the fact that we are successfully moving fewer families per year than we used to.

10. Over the seven years that the consent decree has been in effect, I have seen no change in the willingness of municipalities with low percentages of African-American residents to promote affordable housing with desegregation potential. Instead, the location of the affordable housing that has been built purportedly pursuant to the consent decree is only consistent with a scrupulous effort to avoid placing such housing in existing, white, low-density, residential neighborhoods.

11. It is common knowledge in Westchester – denied only by those either dependent on County largesse or the continuation of the residential status quo, or else determined to mislead this Court into believing that “progress” is being made – that resistance to affordable housing development with desegregation potential remains extraordinarily powerful.

12. The idea that voluntary “buy in” can be achieved in the absence of aggressive and

unstinting enforcement of the consent decree is entirely without basis. Exercises in education and the demonstration of “best practices” have had no impact over the course of my 35 years of housing work in Westchester. (I started work as a Legal Services attorney in Westchester in 1974, and continued in that capacity until becoming General Counsel of ESOP in 2001.)

13. If building under the consent decree had knocked down barriers to fair housing choice, most notably exclusionary zoning, construction of mixed-income housing open to our clients would have materially facilitated our efforts – especially in terms of the follow-on (beyond-the-consent-decree) construction that would have been stimulated.

14. That catalytic effect could still be achieved, but only if Westchester is held to its obligation to make clear to municipalities that the only “cooperation” that can avoid their being sued by the County is cooperation that fundamentally changes the residential status quo and removes all barriers to fair housing choice.

15. I noted with interest the fact that the Monitor, in his recently-filed Supplement to his Third Biennial Assessment (ECF No. 602, at 2) asserted the importance of hearing the voices of those with “personal knowledge of individuals in need of affordable housing.” I agree.²

16. I am obliged to point out to the Court that I first made both the Monitor and the Government aware of my (then) 35 years of experience in representing low-income families and my work, since 2001, with ESOP *in the Summer of 2009*. I again made note of this background – along with the continuing resistance to affordable housing with desegregation potential – in a

² See, e.g., the statement of Bart Worden, Clergy Leader, Ethical Culture Society of Westchester, White Plains, New York, part of Exhibit 1 to Monitor’s Supplement to Third Biennial Report (ECF No. 602-1) at 9 (noting that “none of these municipalities are likely to step up their welcome to people of color without firm and definitive action by forces from outside of its municipal government” and that the “very fact that there has been so little change in the past fifteen years tells us that people will permit the status quo to prevail unless faced with concerted opposition and strong consequences,” and calling for the consent decree to be “enforced completely and enforced with passion and with determination”).

declaration I filed in this matter almost five years ago (ECF No. 375).

17. Nevertheless, neither the Monitor nor the Government has at any point: (a) sought information from me; or (b) indicated any interest in working cooperatively with my office.

18. I have attached as Exhibit 1 relevant pages of the Transcript of the May 23, 2016 hearing conducted by this Court.

19. I have attached as Exhibit 2 the relevant pages of the Transcript of the June 7, 2011 conference conducted by this Court.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief. Executed on June 13, 2016.



Jerrold M. Levy

EXHIBIT 1

1 G5NYWESC
1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA ex
3 rel. ANTI DISCRIMINATION
4 CENTER OF METRO NEW YORK ,
4 INC.,

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5 Plaintiff,

6 v. 06 CV. 2860 (DLC)

7 WESTCHESTER COUNTY, NEW YORK,,
8

8 Defendant.
9

9 -----x
10 New York, N.Y.
10 May 23, 2016
11 2:00 p.m.
11

12 Before:

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13 HON. DENISE COTE,
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14 District Judge
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15 APPEARANCES

16 U.S. ATTORNEY'S OFFICE - CIVIL DIVISION
16 Attorneys for Plaintiff
17 BY: DAVID J. KENNEDY
17

18 WESTCHESTER COUNTY LAW DEPARTMENT
18 Attorneys for Defendant
19 BY: ROBERT F. MEEHAN
19 JAMES FRANCIS CASTRO-BLANCO
20 GEORGE BURNS

21 ACTING AS LEGAL COUNSEL TO WESTCHESTER: RICHARD HOLWELL
22 ALSO PRESENT: JAMES E. JOHNSON, MONITOR
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1 Once that special permit was issued back in 2013, it
2 proceeded in accordance with the rules of code, and various
3 agencies had to approve the conditions.

4 So while there was opposition, it has proceeded to the
5 point now where it's basically -- my understanding is the
6 construction plans have been fully submitted now. They have to
7 be reviewed. As long as -- there are some minor changes that
8 could occur, but at some point in time, the building permits
9 will be issued.

10 All during this period of time, while there was a view
11 that this was not the right location, they proceeded in
12 accordance with the original permit issued in 2013 by the town
13 of New Castle.

14 THE COURT: I think the opposition of the community
15 during at least a period of time here has been, as you
16 acknowledge, vocal, including opposition from elected
17 officials.

18 But, in any event, I am trying to stay forward
19 looking. So I want to know if you have any update or changes
20 to make to the county's description of the approval process
21 that was given to me in the last few weeks.

22 Does it remain reliable?

23 MR. MEEHAN: Yes, your Honor. The plans -- I think
24 the last submission, which was the week of May 11, indicated
25 that some plans had to be submitted that week. Those plans

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1 Paragraph 33C of the consent decree imposes yet
2 additional obligations on the county, which it freely took upon
3 itself. They are in connection with its obligation to
4 affirmatively further fair housing and further the goals.

5 As a result, under 33C, it had to create and fund a
6 campaign to broaden support for fair housing. In March of this
7 year, the monitor made a recommendation that I find that the
8 33C obligation had been breached and that I require the county
9 to take five different steps to address the breach.

10 As I see it, there are essentially two different ways
11 in which the monitor is asserting there was a breach of the 33C
12 obligation.

13 One relates to the statements made by county officials
14 essentially in 2013, three years ago, during the period between
15 January and September. The monitor's view is that the county
16 executive misrepresented the duties imposed upon the county in
17 the consent decree.

18 The county responds, if I understand it, by
19 essentially saying that those statements that the monitor is
20 focusing on were not a discussion of the consent decree but a
21 discussion of the very much failed process that we call the AI
22 process, the analysis of impediments process, that has been
23 part of the failed effort by the county to make a submission to
24 HUD that could be approved.

25 In connection with those statements in 2013, the

EXHIBIT 2

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2 UNITED STATES OF AMERICA ex
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3 CENTER OF METRO NEW YORK,
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5 Plaintiff,

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6 v. 06 CV 2860 (DLC)

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7 WESTCHESTER COUNTY, NEW YORK,

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8 Defendant.

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9 New York, N.Y.
9 June 7, 2011
10 2:30 p.m.

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11 Before:

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12 HON. DENISE COTE,
12
13 District Judge

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14 APPEARANCES

14
15 CRAIG GURIAN
15 Attorney for Intervenor

16
16 ROBERT H. STROUP
17 Co-counsel for Intervenor

17
18 U.S. ATTORNEY'S OFFICE - CIVIL DIVISION
18 Attorney for Plaintiff

19
19 BENJAMIN H. TORRANCE

20
20 ROBERT F. MEEHAN
20 JAMES CASTRO-BLANCO
21 Attorneys for Defendant

22 Also Present:
23 James E. Johnson, Monitor

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25

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1 moment, no, your Honor.

2 THE COURT: Good. So, Mr. Gurian, do you wish to be
3 heard with respect to the sequencing issue?

4 MR. GURIAN: Yes. Thank you, your Honor. I
5 appreciate it. We oppose the application to delay the Court's
6 ability to examine the substance of the matter. We are now two
7 days shy of 22 months after your Honor's entry of the consent
8 decree, and unfortunately we haven't seen any progress. It's
9 as if the litigation, your rulings, the consent decree all
10 never occurred.

11 Westchester has the same policies, the same excuses
12 and continues to be interested in avoiding making change that
13 affirmatively further fair housing, AFFH's. This is really
14 across the board.

15 THE COURT: I appreciate that that that's your
16 position, but in terms of the sequencing issue, why shouldn't I
17 address the motion to intervene first?

18 MR. GURIAN: Because the Court has an independent
19 juridical interest in seeing that its orders are enforced, and
20 we really have two possibilities here; simultaneous briefing
21 and sequential briefing. If we were to have simultaneous
22 briefing, which is more efficient in any event, since the
23 substantive issues are intertwined with the question of how
24 well the government and its monitor have or have not
25 represented the public interest here, if we have simultaneous

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1 briefing the government and Westchester have a complete
2 opportunity to be saying, your Honor, defer your consideration
3 for the arguments that have been made. At the same time, when
4 your Honor sees the scope of the violations that Westchester
5 has, and I won't recite them now, when your Honor sees the
6 scope of the violations, we believe your Honor will be inclined
7 to exercise that independent judicial interest and your
8 interest pursuant to paragraph 58 of the consent decree to
9 compel Westchester to comply.

10 If, your Honor, there is sequential briefing, you have
11 a circumstance where we get to the end of the road on
12 intervention briefing, and you will have seen whether it's on
13 unit specific obligations or broader obligations that
14 Westchester hasn't been following what it's supposed to do, and
15 Westchester will then, I'm sure, pop up and say hang on, Judge,
16 we need now first to brief this other issue. It's inefficient,
17 it deprives the Court of the ability to get this process back
18 on track.

19 And if I may add just one thing in about ten or
20 fifteen more seconds. Something that has really marked this
21 process has been treating it as though it were a running
22 negotiation of some dispute in a foreign hot spot trying to get
23 people to cooperate or to talk with one another, perhaps one of
24 the parties might be able to walk away. That's not what we're
25 talking about here. We're talking about a lawful federal court

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1 order where even after the filing of the motions last week,
2 even after the filings of the motion, Westchester has said
3 publicly it will not comply with a core obligation of the
4 decree, and your Honor will recall writing, very famously now,
5 that the obligation to affirmatively further is not mere
6 boilerplate, but is a substantive obligation rooted in the
7 purpose and function of the Fair Housing Act in implementing
8 regulations, and again just this week after the filing of the
9 motions asked about two core requirements, an implementation
10 plan, an analysis of impediments to fair housing choice,
11 Westchester characterized those as, quote, "simply bureaucratic
12 documents."

13 There's really urgency here, because as the process
14 goes on in an unsupervised way, it's not simply a neutral
15 process where perhaps we can fix things later. Time and
16 precious consent decree dollars are being spent in ways that
17 they shouldn't be. So we respectfully submit that simultaneous
18 briefing really serves the Court's interests and the interests
19 of justice.

20 THE COURT: Thank you very much. Before I referred to
21 Mr. Johnson as a mediator and of course he's not. He's a
22 Court-appointed monitor. So I don't think it's fair to say
23 this consent decree is marching forward in a totally
24 unsupervised way. But in any event, I don't want to make
25 judgments about the merits of either motion. I will look with

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1 care at the briefing when it's before me.

2 I think, Mr. Gurian, your eloquent plea to do this in
3 concurrent briefing has some attraction, but I think it would
4 actually be far more efficient for all of us to know whether or
5 not the Antidiscrimination Center is empowered at this point to
6 ask me to take substantive intervention with respect to the
7 County's activities, and if the United States is going to
8 oppose the intervention, of course that is a second voice. I
9 am assuming that Westchester is going to oppose the
10 intervention, so two voices here in opposition. And while I'm
11 not trying to do a head count, it just does say to me again I'm
12 going to really have to take these issues seriously and I think
13 it would be best for us to do the briefing sequentially.

14 Now, let's set a schedule for the opposition and have
15 the government, not that you would be doing a joint opposition,
16 but has the government and has Westchester, have the two of you
17 talked about a briefing schedule so you're able to tell me,
18 give me a joint request?

19 MR. CASTRO-BLANCO: Yes, your Honor. I've spoken with
20 Mr. Torrance and compared notes on our ongoing manpower
21 shortages, vacation schedules and the like, but in order to do
22 this as efficiently as possible we would suggest to the Court
23 that the County's papers and the government's papers be
24 submitted to the Court on July 15, your Honor. That would also
25 for another reason -- I'm sorry, July 29. Because the AI is