

**Enhanced Section 8 Outreach Program
Equal Justice Society
Erase Racism**

August 11, 2014

VIA PRIORITY MAIL

Hon. Eric H. Holder, Jr.
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: U.S. ex rel. Anti-Discrimination Center, 06-CV-2860 (SDNY, Aug. 10, 2009)

Dear Mr. Attorney General:

We write to express our deep concern about the continued failure of the U.S. Attorney for the Southern District of New York to enforce each and all of the provisions of the consent decree in *U.S. ex rel. Anti-Discrimination Center v. Westchester County* (06-CV-2860). The decree, entered five years ago as the result of False Claims Act litigation brought on behalf of the Government by the Anti-Discrimination Center (ADC), had unparalleled housing desegregation potential in what was and remains a wealthy and deeply segregated county. That potential has been squandered.

As documented in ADC's recent report, *Cheating On Every Level* (antibiaslaw.com/coel), Westchester has been in brazen violation of several decree obligations, including the following:

- (1) The obligation to take legal action, as appropriate, against individual Westchester municipalities that retain barriers to fair housing choice (Consent Decree ¶ 7(j));
- (2) The obligation to have as a goal in all its housing policies and programs the ending of residential segregation in the county (Consent Decree ¶ 31);
- (3) The completion of an Analysis of Impediments to Fair Housing Choice (AI) deemed satisfactory by the Department of Housing & Urban Development (HUD) (Consent Decree ¶ 32); and
- (4) The construction of 750 units of housing that affirmatively further fair housing (AFFH), with at least 300 units of such units having financing in place by the end of 2013 (Consent Decree §§ 7, 23).

Nevertheless, the U.S. Attorney has never sought to have the Hon. Denise Cote, the District Court judge who retains jurisdiction over the matter, find Westchester in contempt or issue supplemental orders in connection with any of these violations. As to units that clearly do

not AFFH, the Government has collaborated with the defendant in counting units that should not be counted.

The response of the U.S. Attorney has been remarkable in two respects. First, it has taken the position (first in a May 2nd court conference, and later in response to criticism from a number of our sister organizations) that the enforcement of *any* part of parts of the consent decree somehow relieves it of the obligation to make sure that the defendant is held to account to meet *all* of its obligations. Thus, its cites action it took to force Westchester to pass a law temporarily making discrimination on the basis of lawful source of income unlawful.¹ It also cites its defense of HUD in litigation brought by Westchester challenging HUD's cut-off of federal housing funds.

These steps were justified, but **they in no way relieved the U.S. Attorney from its obligation to see that all of Westchester's violations are remedied in court, including the ones referenced above.** As ADC wrote to Judge Cote in advance of the May 2nd conference, the source-of-income dispute "is instructive now insofar as it should have made clear to the Government that only the most firm posture has any chance of moving this defendant to act."

Most troubling, the U.S. Attorney has taken the position that it is defendant Westchester, not the Court, that decides whether its most critical obligations have been triggered. Those obligations are set forth under paragraph 7(j) of the consent decree and require Westchester to take action against those of its municipalities that retain barriers to fair housing choice.

In open court on May 2nd, the Assistant U.S. Attorney told the court that Westchester is only obliged to take action "when it sees barriers [to] fair housing" and that **"because the county says that none of the municipalities within its areas have exclusionary zoning the obligation to file a lawsuit is not triggered."**²

In fact, the obligations to act pursuant to paragraph 7(j) do not depend on defendant Westchester's subjective view of the circumstances. See the May 6, 2014 letter from ADC to the Assistant U.S. Attorney (attached). As ADC wrote, "A defendant cannot avoid a duty by pretending that the conditions giving rise to the condition do not exist."

All of this occurs against a backdrop of the county executive's brazen and repeated statements rejecting the requirements of a lawful federal court order and inciting race-based

¹ In addition to the fact that the law has an automatic sunset after five years (remarkable in the civil rights context), it is chock full of loopholes: rentals in any owner-occupied building with *six* or fewer units; *any* rental in *any* cooperative or condominium; and an open-ended defense for the exercise of "reasonable business judgment" are the most noteworthy.

² Transcript of conference proceedings, May 2, 2014, pp. 17-18.

fear. *See* *Cheating On Every Level*, pp. 15-19. It also occurs in a case that is being watched by more than 1,000 other jurisdictions across the country.

In short, the U.S. Attorney's failure to enforce all the provisions of the consent decree is fostering disrespect for the rule of law and makes clear to other jurisdictions that the Government is not prepared to force structural change even where it has the maximum leverage provided by a court order. It is imperative that the Justice Department alter course and vindicate the integrity of the consent decree.

Very truly yours,

ENHANCED SECTION 8 OUTREACH PROGRAM

Jerrold M. Levy, General Counsel
20 South Broadway, Suite 1102
Yonkers, New York 10701-3724

EQUAL JUSTICE SOCIETY

Eva Paterson, President
1999 Harrison Street, Suite 800
Oakland, California 94612

ERASE RACISM

V. Elaine Gross, President
6800 Jericho Turnpike
Syosset, New York 11791

cc: Hon. Preet Bharara, United States Attorney for the Southern District of New York
Hon. Mollie J. Moran, Acting Assistant Attorney General for Civil Rights
Hon. Julián Castro, Secretary, U.S. Department of Housing & Urban Development
David J. Kennedy, Esq., Chief, Civil Rights Unit,
U.S. Attorney for the Southern District of New York
Steven H. Rosenbaum, Chief, Housing & Civil Enforcement, Civil Rights Division
James E. Johnson, Esq., Monitor pursuant to paragraph 9 of the Consent Decree