

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., :

ECF CASE

Plaintiff/Relator, :

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. From 1974 through 2001, I served as a Legal Services staff attorney in Westchester County focused on family law, government benefits, and affordable housing issues. From 2001 through the present, I have been general counsel to the Enhanced Section 8 Outreach Program (ESOP), a Section 8 fair housing mobility program in Westchester that has a demonstrated track record of moving Section 8 recipients to economically and racially mixed neighborhoods of opportunity. I have successfully litigated major cases securing the right to emergency housing for homeless families, expedited food stamps for homeless families, prohibiting a private housing development in East Yonkers from excluding Section 8 voucher holders, and requiring federal, state, and local Section 8 programs to comply with their fair housing and equal opportunity obligations. I make this declaration in support of Anti-Discrimination Center's (ADC's) motion to intervene.

Lack of an inclusive process

2. Because of the promise of the Consent Decree to bring sorely needed structural change to Westchester and begin the process of desegregating what all in Westchester know has been and is a segregated county, and because I am familiar with decades of resistance to such change on the part of Westchester and its municipalities, I wrote to the Monitor in Aug. 2009, shortly after the entry of the Decree.

3. As I explained to the Monitor, Westchester County had been the defendant in numerous lawsuits.

4. In a Section 8 fair housing case, *Giddins v. HUD*, I noted, Westchester County was a major offender: it utilized its Section 8 Program to assign minority families to minority-impacted areas of Westchester County. When the *Giddins* case was conceived, the primary objective of the plaintiffs was to have an enforcement remedy wherein an independent fair housing mobility office would be established. The reason this decision was made was because of the history of discrimination by Westchester government officials against low-income minority families and the belief that if enforcement were left in the hands of Westchester County, any remedy would be obstructed and diluted by the County. During the settlement negotiations, all parties except Westchester County attempted to frame a settlement that would ensure fair housing opportunities for Section 8 participants, including adequate funding for a mobility program. Westchester County stood alone in obstructing the settlement. Although a settlement was ultimately reached and a fair housing mobility program was established, the initial funding for the office was substantially decreased because of Westchester's obstruction.

5. I went on to explain to the Monitor that, after the funding under the Consent Decree

had expired, all parties except Westchester County agreed to continue funding the mobility program. Even to the point at which the letter was written, Westchester County was operating a Section 8 program which was in contravention of the *Giddins* settlement in that Westchester provides no housing mobility outreach, it refuses to request rent exceptions to enable minority families to live in racially integrated areas, and the overwhelming majority of their participants reside in segregated areas of Westchester County.

6. I also cautioned the Monitor that the independence of numerous advocacy groups in the housing field in Westchester was compromised by longstanding financial and political ties to the County. I noted, *inter alia*, the failure of any of these groups or their leaders to publicly support ADC's litigation, and the readiness of the groups to rally to the County's defense when HUD briefly cut off funds to the County for a short time in the period after this Court's summary judgment decision and before a negotiated resolution to the litigation was reached. "Leaving the enforcement to Westchester County and their hand-picked 'housing advocates.'" I suggested, "will surely result in the false claims litigation being a mere pyrrhic victory for the plaintiffs."

7. I have also advised the Government both of my concerns that the Consent Decree might be undermined, and of my experience both fighting resistance to affordable housing that has desegregation potential, and actually accomplishing pro-integrative moves.

8. At no time has the Monitor sought my participation in the process of enforcing and implementing the Decree. On the contrary, it is plain that the process of collaboration and consensus that the Government and the Monitor describe actually reflects collaboration and consensus between and among those who have historically collaborated with Westchester County through years of accepting municipal resistance to affordable housing in white neighborhoods, and others unprepared to challenge Westchester or its municipalities to make

change.

Assertions of “progress” are a charade

9. I monitor developments in terms of barriers and opportunities to affordable housing in Westchester very closely, and there is simply no evidence that overwhelmingly white municipalities have changed their traditional resistance to “outsiders” or to affordable housing, and no evidence that profoundly exclusionary zoning is being dismantled in material ways (like permitting multiple dwellings as-of-right where they are now prohibited), let alone that there is a groundswell of municipal “cooperation” in working to end segregation in the county.

10. What is striking is how little resemblance claims of “progress” have to any reality here on the ground in Westchester. While the County Executive’s opposition to implementing the Decree has most recently been expressed on national television, it is equally well known that County and local officials — Democrats and Republicans — are, almost to a person, unresponsive to the goals of the Decree.

11. No one in Westchester County believes that there is cooperation towards meeting the housing desegregation goals of the Decree: it is well understood that the idea is to cooperate to try to avoid making change. In other words, to hope that the Monitor will continue to allow Westchester to “count” units on parcels where no one else would choose to live.

12. Real mobility work involves finding housing that actually integrates people into a community. We have seen that when that is done — when families (low-income families in the case of our clients) are moved into homes that are located in places within white neighborhoods of opportunity where the existing residents themselves would be happy to live — there is a real and positive impact on people’s lives. The overall health and well being of these families

improves, and the children of these clients tend to do better in high school and go on to college in ways that those who have not had integrated residential doors opened do not.

Avoiding the obligation to use housing policies and programs to end segregation

13. As noted, the history of the County's Section 8 program prior to the entry of the Consent Decree was to locate people in ways that perpetuated segregation. Once the Decree was entered, however, the County had an additional obligation: it had to have as a goal in all of its housing policies and programs the ending of segregation throughout Westchester.

14. But instead of continuing the program and using it to help create opportunities for integration, Westchester took a different road: ending its administration of its Section 8 program altogether.

15. Indeed, I have seen absolutely no evidence that *any* County housing policy or program has taken steps to have as a goal the ending of residential segregation. This failure is even more consequential than Westchester's failure to comply with its unit-specific obligations.

16. Unit-specific obligations are, relatively speaking, a drop in a very big bucket (of almost a million people). If the broader barriers to inclusion — like exclusionary zoning — are not tackled, then private developers will continue to avoid building the type of mixed-income multiple dwelling housing so desperately needed to create affordable housing opportunities in white Westchester.

17. One major barrier to ending segregation in Westchester, of course, is the prevalence of discrimination on the basis of lawful source of income, something that has over the years kept numerous doors closed to my clients.

18. Compared to the state of affairs that would have existed were such discrimination proscribed by Westchester (as contemplated by the Decree), we remain hobbled. ESOP has found that, while Section 8 is readily accepted in minority concentrated areas, resistance to Section 8 participants is endemic in communities with low minority and poverty concentrations, and that landlords in these areas use Section 8 as a subterfuge to deny housing to black and Latino families. The failure by political and business leaders in Westchester County to support ESOP's goals has further frustrated efforts to secure housing for its clients. The County Executive's veto of the source of income legislation has tangibly impaired our work, as we continue to face landlords unwilling to rent to qualified and responsible clients on the basis of their Section 8 status.

19. The impact falls most heavily on blacks and Latinos.

The Consent Decree must be vindicated

20. I remember the hope engendered by the entry of the Decree, and remember a high-ranking HUD official being quoted as promising to hold Westchester's feet to the fire.

21. More than two years later, Westchester continues to openly defy the Decree. Notably, it has been ADC — not the Government or the Monitor — who has consistently and accurately been ringing the alarm.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief. Executed on Sept. 13, 2011.



Jerrold M. Levy