

EXHIBIT 2



**U.S. Department of Housing and Urban
Development**

New York State Office
Jacob K. Javits Federal Building
Office of Regional Counsel
26 Federal Plaza, Suite 3500
New York, New York 10278-0068

December 16, 2011

James E. Johnson, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

Dear Mr. Johnson:

Your letter to Assistant Secretary for Fair Housing and Equal Opportunity John D. Trasviña and Assistant Secretary for Community Planning and Development Mercedes M. Márquez, dated November 17, 2011, has been referred to me for a response. Your letter requests that the Department provide its perspective regarding whether the County has taken all possible actions to meet its obligations under the Stipulation and Order of Settlement and Dismissal entered in *United States ex rel. Anti-Discrimination Center of Metro New York v. Westchester County* ("Settlement").

As this letter outlines, the County has not taken all such actions, whether based on the number or significance of the requirements.

On the positive side, the Department is pleased to see that the County has made significant progress in meeting the benchmarks set forth in paragraph 23 of the Settlement. We were also pleased to learn from developer Lou Larizza, during the December 6, 2011 Issue Forum hosted by the League of Women Voters of Rye, Rye Brook, and Port Chester on the subject of Fair and Affordable Housing, that we have had our first closing of a home developed under the terms of the Settlement.

Nonetheless, there are many components of the Settlement where there has been very little progress, including the following major areas of concern:

- education strategy;
- the solicitation of CDBG proposals that would affirmatively further fair housing from community leaders, public interest groups, and others;
- affirmative marketing plan;
- centralized intake;

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- site selection strategy;
- timetables and benchmarks;
- spending, and fund leveraging strategy;
- incentives strategy;
- promotion of model ordinance;
- identification of municipalities that are not supporting the Settlement goals, or that are hindering them;
- revolving fund;
- limitation on number of SRO units; and
- Analysis of Impediments.

These concerns are further discussed below.

Two years into the Settlement, the County only appears to have taken the most minimal of steps towards compliance with the requirements of paragraph 33 of the Settlement, which requires the County to take certain specific actions as part of its obligations to affirmatively furthering fair housing.

Paragraph 33, at subsections (b), (c), (d), and (h), requires the County to educate residents, County agents, realtors, condominium and cooperative boards, and landlords with regards to fair housing issues, and the benefits of living in inclusive communities, among other things. Instead of taking meaningful steps to meet these obligations, the County Executive has engaged in an extensive media campaign where he has complained about the Department's recommendations for actions that the County could take to affirmatively further fair housing. See Monitor's Report and Recommendation Regarding Dispute Resolution (Amended), dated November 17, 2011, at pp. 17-18. The County needs to move forward with this important component of the Settlement.

It also appears that the County has not undertaken any significant effort to solicit CDBG proposals that would affirmatively further fair housing from community leaders, public interest groups, and others, as required by paragraph 33(a) of the Settlement.

Standards for affirmative marketing that ensure outreach to racially and ethnically diverse households, as required by paragraphs 25(a)(ii) and 33(e) of the Settlement, have not yet been completed. While you developed a process for the completion of an affirmative marketing plan template in late 2010, the County withheld its comments on the plan template until September 23, 2011, over two years after the date of the Settlement. As we have previously explained, the County's revised templates did not describe a process that was calculated to reach the least likely to apply, and need to be revised.

The County is apparently purporting to meet the centralized intake requirement of paragraph 33(f) of the Settlement with a website (homes.westchestergov.com/homeseeker-opportunities) that markets both housing units being developed under the Settlement and units in

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communities that do not meet the Settlement criteria. The County's website is available only to highly motivated technologically savvy prospective home buyers who look for housing via the internet, and does not necessarily reach the least likely to apply for the housing being developed under the Settlement. The centralized intake was included in the Settlement as a tool to affirmatively further fair housing, meaning that it is intended to facilitate the mobility of potential applicants living in minority concentrated neighborhoods into areas with low numbers of minorities. That is the reason the Settlement states that the intake would require "working in conjunction with local not-for-profit organizations and community organizations." Having one intake for both Settlement eligible and non-eligible properties is not consistent with that goal, as the least likely to apply populations will differ. Moreover, the Settlement requires the centralized service to provide information regarding jobs and community resources, as well as projects in development. This information is not currently available on the website. We also noticed that the Larchmont project is not available on the County website, while it is on the Housing Action Council website. It would be useful to know the reason for this discrepancy. A well designed website that provides accurate information is a useful tool, but standing alone, it does not affirmatively further fair housing.

When we browsed in the County's Homeseeker website, we also noticed that it does not provide clear information regarding the application process for each project. The Department's staff is available to provide technical assistance to improve the quality of the information being included in the website.

The County has not developed, and is not following, a strategy for the selection of development sites in compliance with paragraph 22 of the Settlement, which requires, among other things, that the County identify sites that "provide or have the potential to provide access to services and facilities that will promote sustainable, inclusive communities, such as employment and educational opportunities, medical and other family services, and public transportation[.]" and that the County seek to "maximize the development of units in the eligible municipalities and census blocks with the lowest concentrations of African American and Hispanic residents." The County's role in site selection appears to be passive, and limited to the review of proposals by developers for the purposes of determining whether the site is in a Settlement eligible location. This has resulted in the selection of sites that are either isolated from residential areas, or situated closer to the center of a non-eligible community than to the center of an eligible municipality. Note that census blocks with zero residents, while technically compliant with the location requirement, do not necessarily further the goal of the Settlement to promote inclusive communities.

The County has not developed a strategy to ensure that there is a pipeline of projects sufficient to meet the final benchmarks in paragraph 23 of the Settlement. This is required by paragraph 19 of the Settlement. And neither has the County developed a spending strategy that ensures that the funds created under the Settlement are sufficiently leveraged to complete the number of units to be developed, as required by paragraph 7(i). The only actions that the County

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appears to have taken in this regard are to support various developers' requests for funding from New York State.¹

Under paragraphs 7(i) and 25(d) of the Settlement, the County is required to develop financial or other incentives for other entities to take steps to promote the development of units, and to condition or withhold the provision of County funds depending on whether actions are taken to promote the development of eligible units. The County appears to not have taken any meaningful steps to comply with these requirements.

The County's minimal efforts to promote the model inclusionary zoning ordinance, required under paragraph 25(a) of the Settlement, have not resulted in its adoption by many jurisdictions. It does not appear that the County's efforts have yielded a single unit, two years into the Settlement implementation.

The County has failed and refused to identify any municipalities that are not taking the actions necessary to support the development of units under the Settlement, or that are taking actions to hinder the development of units, as required by paragraph 7(j) of the Settlement.

The Settlement requires the County to meet with various parties in order to ensure that the goals of the Settlement are met. See, e.g., ¶22(b)-(d). While the County includes in its quarterly reports the number of meetings it has held, and identifies some of the parties, the County is not identifying the purpose of those meetings, the specific individuals attending these meetings, and what is being accomplished in them, therefore making it difficult to assess the County's effort and progress. Among other things, the County should be facilitating and promoting discussions within the eligible communities on the improvement of infrastructure and other vital services, to support the successful development of units. We are not aware of any efforts in this regard.

The Settlement, at paragraph 22(e), requires the County to explore and implement mechanisms by which a portion of the Settlement funds (and the proceeds from the activities for which the funds are used) are placed in a revolving fund dedicated to the development of Settlement eligible units. On or about April 19, 2011, the County submitted a proposal for an Acquisition and Rehabilitation program establishing a \$2.5 million Revolving Loan Fund for the acquisition of foreclosed and abandoned properties (including municipal in rem properties), rehabilitation, and marketing and selling of units in accordance with an approved Affirmative Fair Housing Marketing Plan. After the sale of the property, the sales proceeds would be returned to the Revolving Loan Fund, and would be available for additional rounds of acquisition, rehabilitation and sale. The County has reported that it submitted a legislative package requesting authorization to use \$2.5 million from the Settlement funds for this revolving loan

¹ The County is including in its quarterly reports the various amounts that the County is obligating toward projects. The County, however, does not identify the projects to which these funds are being obligated. In order to ascertain the status of the various projects, it would be helpful for the County to identify the projects to which the funds are going, as the funds are being obligated.

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fund. We have no information regarding whether the plan received legislative approval, and is being implemented.

We also remind you of your proposal to amend the Settlement to explicitly limit the number of SRO units that will count towards the Settlement goals. The County had objected to that proposal as premature. This should be revisited at this point. As the Settlement states, at page 1, its purpose is to "promote sustainable and integrated residential patterns" and "increase[] fair and equal access to economic, educational and other opportunities" in the County. These goals are best served by housing types that promote more inclusive communities, most particularly that which serves families.

Finally, as you know, the County has not developed an Analysis of Impediments to Fair Housing Choice ("AI") acceptable to the Department, as required by paragraph 32 of the Settlement. As you also know, the AI has not been acceptable because the County has not addressed deficiencies in its AI submission regarding the promotion of legislation banning source of income discrimination, and plans to overcome exclusionary zoning practices. The deficiencies have persisted even though HUD has provided extensive technical assistance over a period of several months. We look forward to having the County address these deficiencies as soon as possible, and continue to be available to assist the County in the completion of an acceptable AI submission.

Thank you for the opportunity to provide the Department's views on whether the County has taken all possible actions to meet its obligations under the Settlement. We stand ready to continue to assist you and the County in this regard.

Sincerely,



Glenda L. Fussá

Deputy Regional Counsel for
New York/New Jersey

cc: Robert F. Meehan, Westchester County Attorney
Benjamin Torrance, Assistant U.S. Attorney for the Southern District of New York