

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

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| In the Matter of: |
| EDWARD WHITE, JR., |
| Respondent. |

HUDALJ 92-1848-DB (LDP)
Issued: October 9, 1992

Deborah Wellborn, Esq.
Jacklyn Ringhausen, Esq.
For the Department

James Eckert, Esq.
Carole Broderick, Esq.
For the Respondent

Before: WILLIAM C. CREGAR
Administrative Law Judge

INITIAL DETERMINATION AND ORDER

Respondent, Edward White, Jr., appeals the January 28, 1992, Limited Denial of Participation ("LDP") for a one year period issued by Raymond Harris, Regional Administrator-Regional Housing Commissioner, of the Atlanta Regional Office of the U.S. Department of Housing and Urban Development ("the Department" or "HUD"). A hearing on this matter was held in Tampa, Florida on June 24-25, 1992. Following the timely submission of post-hearing briefs, the record closed on July 24, 1992.

The Department alleges that Respondent, while Executive Director of the St. Petersburg Public Housing Authority ("SPHA"), violated HUD regulations and instructions by 1) willfully causing the relocation of tenants from a public housing project, Laurel Park, prior to obtaining HUD approval; and 2) causing the expenditure of funds obtained from the sale of Laurel Park, contrary to statute, regulation and HUD's instructions.

Respondent denies that he willfully authorized the relocation of tenants. He asserts that he reasonably believed that HUD had agreed to permit those tenants who had begun the relocation process to continue that process. He further asserts that he did not cause the improper expenditure of funds from the Laurel Park sale, and that, in fact, any expenditure of funds was proper.

Findings of Fact

1. Respondent, Edward White, Jr., is the former Executive Director of the St. Petersburg, Florida Housing Authority. He was so employed from August 6, 1984, until his removal in January 1992 as a consequence of the LDP. Prior to this employment with the SPHA, Respondent worked as a private consultant in the housing industry and taught a seminar on subsidized housing programs at Yale. From 1968 to 1978 he was the Executive Director of the New Haven, Connecticut Housing Authority. He is a graduate of Princeton University. Res. Ex. 8.¹

2. Prior to Respondent assuming his duties as Executive Director, the SPHA had been mismanaged. Employees of the SPHA, including the former Executive Director, were prosecuted in a criminal proceeding. The former Executive Director was convicted of bribery. Tr. pp. 324-325. In contrast, Respondent restored acceptable management practices at the SPHA, and in 1990, received an award from HUD's Atlanta Regional office for improved management. Tr. p. 328.

3. As Executive Director, Respondent was responsible for the day-to-day operations of the SPHA. Tr. p. 94. The Board of Commissioners of the SPHA relied upon Respondent to assure its compliance with HUD regulations, statutes, and directives. Tr. pp. 192, 220.

4. On April 13, 1989, the SPHA requested HUD approval to dispose of a public housing project known as Laurel Park. Govt. Ex. 1; Tr. p. 26.

5. On October 11, 1989, HUD approved the sale of Laurel Park, conditioned upon use of the sale proceeds for statutorily required one-for-one replacement of subsidized housing units. Govt. Ex. 2; Tr. pp. 28-29.

6. The SPHA did not agree to the HUD conditions. Tr. pp. 336, 473. Instead, Respondent entered into negotiations with HUD to allow the SPHA to keep the sale proceeds and to have HUD, rather than the SPHA, fund the required one-for-one replacement housing. Tr. pp. 30, 32. On January 4, 1990, Respondent met with Assistant Secretary Joseph Schiff² and other HUD officials in Washington. At this meeting a general agreement was reached concerning the statutorily required replacement housing. Tr. pp. 338-339. In a letter dated January 11, 1990, Respondent acknowledged that the issue of meeting the one-for-one replacement requirement

¹ The following reference abbreviations as used in this decision: "Govt. Ex." for Government's or Department's Exhibit; "Res. Ex." for Respondents' Exhibit; and "Tr." for transcript.

² At the time certain events relevant to the issues in this case occurred, Assistant Secretary Joseph Schiff was in the process of being confirmed by the Senate. However, for purposes of this document and the Government's brief, Mr. Schiff will be referred to as Assistant Secretary for Public and Indian Housing.

remained unresolved because the allocation between new public housing and Section 8 certificates had yet to be determined. Respondent's letter also acknowledged that the disposition of the net proceeds from the sale of Laurel Park, after cost of sale and repayment of debt, was subject to HUD approval. Govt. Ex. 3.

7. On February 7, 1990, the SPHA and the City of St. Petersburg, Florida entered into an agreement for the sale of Laurel Park for \$4,000,000 plus accrued interest.³ The Agreement was specifically contingent upon the written approval by HUD of the disposition of the Property. Govt. Ex. 4, p. 6. The Agreement also provided that within 30 days after satisfaction of that contingency, the City would pay the SPHA an additional \$485,000 towards the cost of relocation. The Agreement provided that the closing would occur after satisfaction of the contingency and no more than 30 days from the date the SPHA notified the City that all of the residents had been physically removed from the property and that operations had ceased.⁴ Govt. Ex 4.

8. On February 14, 1990, the SPHA held an informational meeting for all of the residents of Laurel Park. It issued a Notice informing the residents that relocation procedures would be implemented and that the residents would have to move by May 14, 1990, ninety (90) days from the date of the notice. The Notice also referred those residents who wanted to appeal the relocation payment being offered by the SPHA to the HUD Jacksonville Office. Govt. Ex. 5.

9. At the end of February, 1990, Assistant Secretary Schiff telephoned Mr. White. Tr. p. 340. Mr. Schiff was upset with Respondent for starting the relocation of tenants from Laurel Park and required him to submit an amendment to the Application for Disposition of Laurel Park to the Jacksonville Field Office. Tr. 341; Govt. Ex. 6. After the phone call with Mr. Schiff, Bill Flood of Mr. Schiff's staff telephoned Respondent and told him in significant detail what should be contained in the amendment. Tr. 341.

10. On March 1, 1990, Respondent submitted the Amendment to the Application for the sale of Laurel Park requested by Mr. Schiff. Govt. Ex. 6. The Amendment involved changes to six topics in the original application. The Amendment requested quick review and approval so that the SPHA could begin the relocation process at the earliest possible date. It stated that the SPHA would "implement the relocation activity in accordance with applicable regulatory requirements"; and that prior to undertaking any development activity, the SPHA would agree to HUD approval. Id., pp. 2, 4, 6.

11. On March 29, 1990, Michael Janis, General Deputy Assistant Secretary, wrote to Respondent confirming the conversation with Mr. Schiff and Mr. Flood. Not only

³ \$1,515,000 was earmarked to offset the cost of replacement housing.

⁴ Two million dollars was paid in advance of closing to permit the SPHA to use the interest income from that sum towards the payment of operating losses and relocation costs. Tr. 358.

did the letter memorialize the content of the conversation, but it reemphasized that the SPHA would "not begin to relocate any Laurel Park residents because of the disposition until HUD approves the new terms and conditions in the revised application for the sale of Laurel Park." Govt. Ex. 7.

12. The following chart indicates that 1) seventeen Laurel Park households began relocating between February 14, 1990, and May 7, 1990, and 2) three Laurel Park households began relocating after May 7, 1990.

RELOCATION ACTIVITY BETWEEN FEBRUARY 14, 1990, AND MAY 7, 1990

| Name | Date Move Initiated (1990) | Type of Action Initiated | Events Occurring Between 5/7/90 and 6/21/90 | Date Housing Assistance Payment Approval ("H.A.P.") Signed (1990) | Respondent's Exhibit |
|-------------------|----------------------------|----------------------------|---|---|----------------------|
| Catherine Lloyd | April 24 | Request for Lease Approval | Yes ⁵ | June 18 | 28 |
| Loretta Bright | April 18 | Request for Lease Approval | Yes | May 30 | 29, 41 |
| Jamesina Wilburn | April 23 | Request for Lease Approval | Yes | June 18 | 30 |
| Christine Wheeler | April 18 | Request for Lease Approval | Yes | June 18 | 31 |
| Delores Jackson | April 12 | Request for Lease Approval | Yes | June 26 | 32 |
| Penny Thomas | April 18 | Request for Lease Approval | Yes | June 19 | 33 |
| Benita Perry | April 20 | Request for Lease | Yes | May 11 | 34 |

⁵ The events that occurred between May 7, 1990, and June 21, 1990, include inspection of a tenant's potential housing, extension of a tenant's Section 8 certificate, and signing a lease for the tenant's replacement housing.

| Name | Date Move Initiated (1990) | Type of Action Initiated | Events Occurring Between 5/7/90 and 6/21/90 | Date Housing Assistance Payment Approval ("H.A.P.") Signed (1990) | Respondent's Exhibit |
|----------------|----------------------------|-------------------------------------|---|---|----------------------|
| | | Approval | | | |
| Lucy Lane | May 4 | Lease Signed with Housing Authority | Yes | Not in File | 35 |
| Cynthia Perry | May 4 | Request for Lease Approval | Yes | June 4 | 36 |
| Deidra Burrows | May 21 ⁶ | Request for Lease Approval | Yes | July 3 | 38 |
| Rhonda Sutton | April 25 | Request for Lease Approval | Yes | July 11 | 40 |
| Gloria Johnson | April 26 | Request for Lease Approval | Yes | June 25 | 42 |
| Darlene Miller | March 6 | Request for Lease Approval | Yes | June 19 | 43 |
| Lillie Miller | April 23 | Request for Lease Approval | Yes | June 15 | 44 |
| Oretha Seay | April 25 | Request for Lease Approval | Yes | June 5 | 45 |
| Evelyn Stokes | March 24 | Request for Lease Approval | Yes | June 6 | 46 |
| Tracy Wynn | April 16 | Request for Lease | Yes | June 19 | 47 |

⁶ The Request for Lease Approval is dated May 21, 1990. However, Ms. Burrows records are incomplete. Her original Section 8 request was made on February 20 and expired sixty days later on April 20. A notation shows an extension was made on June 20, implying one was also made on April 20, but there is no record of this first extension. I do not conclude that Ms. Burrows' relocation activity began after May 7 because her files are incomplete.

| Name | Date Move Initiated (1990) | Type of Action Initiated | Events Occurring Between 5/7/90 and 6/21/90 | Date Housing Assistance Payment Approval ("H.A.P.") Signed (1990) | Respondent's Exhibit |
|------|----------------------------|--------------------------|---|---|----------------------|
| | | Approval | | | |

RELOCATION ACTIVITY BETWEEN MAY 7, 1990, AND JUNE 21, 1990

| Name | Date Move Initiated (1990) | Type of Action Initiated | Events Occurring Between 5/7/90 and 6/21/90 | Date H.A.P. Approval Signed (1990) | Respondent's Exhibit |
|------------------|----------------------------|----------------------------|---|------------------------------------|----------------------|
| Harriet Bradley | June 11 | Request for Lease Approval | Yes | Not in File | 37 |
| Tracie Butler | May 30 | Request for Lease Approval | Yes | July 1 | 39 |
| Valarie Williams | May 31 | Request for Lease Approval | Yes | July 11 | 48 |

13. On May 3, 1990, Donald Higgs, an employee of the Jacksonville HUD Office, telephoned Respondent. Higgs told him that HUD Headquarters had ordered the Jacksonville Office to require Respondent immediately to stop relocating residents from Laurel Park. Tr. p. 347.

14. Respondent discussed the SPHA's potential liability with Mr. Higgs stemming from physical threats to tenant's health and safety resulting from Laurel Park's condition.⁷ They also discussed liability for failure to honor promises made to tenants who had already incurred financial obligations as a result of starting relocation. Tr. 348-349.

⁷ Tenants in public housing projects are subjected to a greater risk of vandalism and physical harm as the project loses residents. HUD had previously approved funds to maintain the Laurel Park property, but after the sale had been approved, this funding was cancelled. Respondent believed that the cancellation of these funds would increase the SPHA's exposure to liability resulting from physical harm to the tenants. Tr. pp. 348-349.

15. In response, Mr. Higgs told Respondent to develop a Notice to tenants that addressed these concerns and to send it to him for his review and approval. Tr. 349.

16. Respondent personally drafted the Notice to the Laurel Park tenants informing them that the relocation process would be delayed. The Notice excepted tenants who had already "secured replacement housing," but had not yet moved. The relevant portion of the Notice stated:

The Jacksonville Field Office of HUD and the Atlanta Regional Office have already provided their respective approvals of the reapplication. However, the Washington office of HUD is still reviewing the matter and has since asked us to *delay any further relocation* until the relocation is fully and finally approved.

Accordingly, this is a formal notice that the Authority will no longer make benefit payments available or otherwise assist Laurel Park residents to relocate. For any family who has *already secured replacement housing, including entering into a lease and/or incurring financial obligations, the Authority will continue to honor its commitments to you.* For those families who have not reached that stage, you may move if you choose but without any interim assistance from the Housing Authority.

Govt. Ex. 9. (emphasis added).

17. A copy of the Notice was sent by facsimile machine to Mr. Higgs who approved the Notice, thereby giving Respondent permission to continue relocating tenants who had begun relocating.⁸ This is the first and only time Respondent was told to stop the relocation. Tr. p. 349.

18. Shortly after the May 3, 1990, Notice was issued, Respondent met with Carole Duckworth and told her to stop relocating everyone except those that were "in process." Tr. p. 169. Respondent left the determination of which tenants had "secured replacement housing" or were "in process" to Ms. Duckworth and her subordinate, Shawanda Austin. Respondent made no decisions concerning the relocation of Laurel Park residents after May 3, 1990. Tr. p. 353.

19. On May 7, 1990, Respondent wrote Mr. Schiff that the SPHA had aborted the

⁸ Mr. Higgs did not testify, nor was any witness called to contradict Respondent's account of the conversation. Accordingly, I have credited his explanation of the circumstances surrounding the issuance of the Notice.

relocation process. Respondent also acknowledged that he was aware that Schiff thought relocation had started prematurely. Govt. Ex. 8, p. 4.

20. On June 17, 1990, HUD approved the amended application for the sale of Laurel Park, subject to the approval of the SPHA Board. HUD allowed the SPHA to retain the net proceeds from the sale, after disposition costs and payment of the outstanding debt, subject to HUD approval of the use of those proceeds. The SPHA had proposed to use the proceeds through a nonprofit entity and HUD required a detailed plan for the use of the proceeds to be approved by HUD. On the afternoon of June 21, 1990, the SPHA Board accepted the terms of HUD's approval of the Laurel Park sale. Govt. Ex. 13.

21. Closing of the Laurel Park sale occurred at some point subsequent to June 21, 1990. The remainder of the \$4,485,000 was paid to the SPHA by the City of St. Petersburg.⁹

22. By letter dated August 2, 1990, Respondent sent Mr. Schiff additional information on the SPHA's intended use of the net proceeds. On August 6, 1990, Respondent sent a copy of the August 2 letter to James Chaplin, Manager of the HUD Jacksonville office. Govt. Ex. 14. Respondent acknowledged in the cover letter to Mr. Chaplin that the SPHA would take no action to utilize any of the net proceeds until it received written approval from HUD. Govt. Ex. 15.

23. On October 17, 1991, at a regular meeting of the SPHA, Respondent distributed a list of investments made with the Laurel Park proceeds. Respondent reported that with regard to the Laurel Park proceeds, approximately \$400,000 had accrued in interest. Govt. Ex. 25, p. 2. Respondent told the Board that he had received approval from HUD to use the additional \$485,000 secured from the City of St. Petersburg. Respondent informed the Board that approximately \$430,000 of the proceeds from Laurel Park was being borrowed for the SPHA's operations. See Ex. 11 to the LDP.

⁹ The record does not reflect the date of closing.

24. On November 5, 1991, Respondent, on behalf of the SPHA, entered into a Contract for Sale and Purchase of Real Property in order for the SPHA to purchase property known as Leisure Manor. The Contract provided for an earnest money deposit of \$10,000 payable immediately upon execution of the contract. Res. Ex. 2.

25. At a December 5, 1991, meeting of the George F. Meehan Community Affordable Housing Investment Corp. ("CAHIC"), Respondent stated that the SPHA had received HUD approval in August 1991 of a generic plan for the uses of the Laurel Park net proceeds, and that specific projects were to be submitted for review. The minutes of the meeting show that Respondent stated that the SPHA had: "(1) used funds for the purpose of paying relocation expenses related to Laurel Park and expenses resulting from operating losses that had to be absorbed into the budget; and (2) borrowed money for cash flow purposes, i.e., approximately \$250,000 for the scattered site project." Res. Ex. 21., p. 3. The CAHIC Board also authorized Respondent to execute a conditional sales contract for Leisure Manor, conditioned on five itemized requirements including obtaining HUD approval. Res. Ex. 2.

26. During the week of December 9-13, 1991, HUD sent a review team to investigate the SPHA. Tr. p. 82. At a meeting held with Respondent, one of the team members, Joyce Carter, reminded Respondent that he was not to use the proceeds from the sale of Laurel Park until he received HUD approval. He responded that he understood. Tr. p. 83.

27. On December 12, 1991, Respondent submitted two specific proposals to HUD for the use of the proceeds from the sale of Laurel Park. The Letter acknowledges that the August 9, 1991, approval by HUD was generic in nature and not an approval of specific proposals. Govt. Ex. 21.

28. In January 1992, HUD issued a Limited Denial of Participation (LDP) against Respondent. The LDP charged that Respondent willfully violated approval requirements in the relocation of residents from Laurel Park, that Respondent caused unauthorized expenditures from the proceeds from the sale of Laurel Park, and that Respondent willfully violated the real property acquisition regulations. HUD subsequently dismissed the charge of willful violation of the real property acquisition regulations.

29. In February 1992, Fran Cote, then Controller of the SPHA, provided HUD a copy of a document entitled Source and Uses of Funds, Proceeds from Sale of Laurel Park as of December 31, 1991. Govt. Ex. 23. This document was presented to Respondent on February 12, 1992, at his LDP Conference. Tr. 85. The document was prepared by Ms. Cote based upon her review of the general ledger. It documents total expenditures of \$862,041.37 from the "proceeds account" as of December 31, 1992. It also indicates that during this same period HUD made advances to the SPHA. This document does not demonstrate that the balance in the "proceeds account" ever fell below four million dollars. As of December 31, 1991, \$4,097,728.94 remained in the account. Govt. Exs. 23, 24. By letter dated February 27, 1992, Respondent questioned

the accuracy of the Source and Uses Statement. Govt. Ex. 24.

Discussion

Applicable Statutes and Regulations

A Limited Denial of Participation must be based upon "adequate evidence" that cause exists for its imposition. These causes include 1) irregularities in a participant's past performance in a HUD program, 2) failure to honor contractual obligations or proceed in accordance with HUD regulations, 3) falsely certifying in connection with any HUD program, and 4) violation of any law, regulation, or procedure relating to the performance of obligations incurred pursuant to a grant of financial assistance. 24 C.F.R. §§24.705 (a) (2), (4), (7), (9).

Applicable HUD regulations provide the following: 1) HUD must approve, in writing, any transaction to demolish or dispose of public housing units; 2) a public housing authority may not take any action to demolish or dispose of public housing units until it receives HUD approval; 3) HUD cannot approve an application to demolish or dispose of public housing units unless the public housing authority submits a plan which includes provision for additional units; 4) tenants become eligible for assistance as of the date of receipt of an official notice to move; and 5) net proceeds from the disposition can only be used to retire outstanding debt on the original project or for housing assistance to lower income families. 24 C.F.R. §§ 970.5, 970.8, 970.11, 970.12.

Respondent's Alleged Failure to Stop the Relocation of Laurel Park Tenants

Any relocation activity undertaken before HUD approval of the public housing disposition plan clearly violates the applicable statutes and regulations. However, the LDP is *not* based upon Respondent's mistaken decision to begin the relocation on February 14, 1990, or on any mistake Respondent made prior to May 7, 1990. See Complaint, ¶¶ 22, 23; Govt. Post-hearing Brief, pp. 11, 15; Tr. 477.

Rather, the gravamen of the first LDP charge is that, even after learning that the relocation of the Laurel Park tenants was premature, Respondent willfully persisted in permitting the relocation to continue while representing to HUD on May 7, 1990, that the relocation had stopped. Evidence for this claim is based on HUD's reading of the text of the May 3 Notice and statements Respondent purportedly made to Ms. Duckworth and Mr. Reiser to resume relocation despite HUD's orders to the contrary. The Government also relies upon data from the files of the SPHA evidencing tenant activity between May 7 and June 21, which is summarized at Finding of Fact 12.

HUD asserts that Respondent disregarded the following language contained in his own Notice:

Accordingly, this is a formal notice that the Authority will no longer make benefit

payments available *or* otherwise assist Laurel Park residents to relocate. For any *family* who has *already secured replacement housing, including entering into a lease and/or incurring financial obligations, the Authority will continue to honor its commitments to you.* (emphasis added).

HUD claims Respondent willfully disregarded its instructions and ignored the Notice by accepting requests for lease approval, allowing the inspection of units, permitting the signing of leases for replacement units, and extending a certificate for one Laurel Park resident between May 7 and June 21. HUD focuses on the phrases "honor its commitments" and "secured replacement housing" which it contends are terms of art with a technical, legal meaning. HUD asserts that a "commitment" arises and replacement housing is secured only after the SPHA has incurred a financial commitment, i.e., after it approves a tenant's lease for new housing and signs a housing assistance payments contract (HAP).¹⁰

HUD's reading of the Notice ignores both the context in which the Notice was written, and the fact that the phrases "commitments" and "secured replacement housing" are not limited to the technical meanings asserted by HUD. When Respondent and Mr. Higgs reached their understanding about delaying relocation, they knew some tenants were already "in process" and both agreed that those tenants would be permitted to continue relocation. The tenants "in process" included those who had already initiated their relocations. Accordingly, Respondent drafted the Notice to reflect the understanding he had with Mr. Higgs.

The language of the Notice reflects Mr. White's intent to except from HUD's order to stop the relocation those tenants who had already initiated their moves. Read in its context, "commitments" means not only financial commitments, but also promises to families to continue the SPHA's relocation efforts for those who had already initiated their relocation. The first sentence of the above quoted language clearly leads to this result. The Notice tells tenants that "the Authority will no longer make benefit payments *or* otherwise assist Laurel Park residents to relocate" (emphasis added). The Government argues that only the first half of that sentence is the referent of "commitment," and it ignores the second half. The phrase "who has already *secured* replacement housing, including *entering into a lease* and/or *incurring* financial obligations," also permits those families who had begun relocation to continue to process their moves. The verb "secure" not only means "to put beyond hazard of losing," but also to "bring about" or "effect." The Notice states that one way to "secure" housing is by "entering" into a lease. Another way is by "incurring financial obligations". The Notice does not preclude more informal methods of "securing" replacement housing. The word, "including," presupposes that there are several events which qualify as securing replacement housing, and not solely

¹⁰ The HAP contract is signed after a tenant locates another apartment, submits a request for lease approval, the SPHA reviews the lease to insure that it complies with Section 8 requirements, the lease meets the requirements, and the apartment passes a physical inspection. Tr. pp. 48-49.

the last event, in a chain of events, i.e, the signing of the HAP contract.

The Government also contends that upon issuance of the Notice, Respondent told Ms. Duckworth and Mr. Reiser to discontinue relocation but later, at some time before the June 21, 1990, approval of the disposition plan, told them to resume the relocation. Two versions of this conversation have been recounted in this hearing. Mr. Reiser testified that sometime in May 1990, Respondent told him to stop inspecting housing units for relocation, due to an order from HUD. Tr. p. 157. According to Reiser, "two, two and a half weeks" after being told to discontinue inspections, Respondent called Ms. Duckworth and Reiser into his office and told them to resume relocation of all the tenants, not only those in process. When either Mr. Reiser or Ms. Duckworth brought up the HUD restriction on relocation, Respondent purportedly told them "to let [Respondent] worry about HUD and just do what [Duckworth and Reiser] were supposed to do." Tr. pp. 158-159, 165. Ms. Duckworth had only an approximate recollection of the date Mr. White told her to resume the relocation. She testified that the conversation occurred "near the end of May," but could not be more specific than this general recollection. Tr. p. 170.

Respondent had a different recollection. He recalls an "impromptu hallway meeting" with Mr. Reiser to discuss the propriety of driving relocating tenants to potential new housing. Mr. Reiser felt that this practice was prohibited by HUD Section 8 restrictions that limit such proactive involvement. Respondent replied that when the SPHA is involved in relocation, that type of involvement is allowed and that he (Respondent) "would take care of HUD on this issue." Tr. pp. 365-366. Respondent did not indicate when this impromptu meeting occurred.

The date of this purported conversation is significant. By June 21, 1990, all of the impediments to tenant relocation had been removed. Thus, it would have been logical for Mr. White to have given SPHA employees the instruction to resume the relocation of tenants after June 21, 1990. On the other hand, if he had given this instruction prior to June 21, 1990, his instruction would provide strong evidence that he was knowingly ignoring HUD's direction to stop the relocation. Both Mr. Reiser and Ms. Duckworth testified imprecisely about the timing of an event that occurred two years previously. In his deposition, Mr. Reiser could not recall when this conversation occurred. Tr. p. 164. At the hearing Mr. Reiser testified that, after he had reflected on the matter, he recalled that this conversation occurred within "two to three" weeks after issuance of the May 3, 1990, Notice. Tr. p. 159. Ms. Duckworth also had only an approximate recollection of the date Mr. White told her to resume the relocation. She testified that the conversation occurred "near the end of May," but she does not state the basis for her recollection of this approximation. Tr. p. 170. Since it is uncontroverted that Respondent did tell Ms. Duckworth to stop the relocation with the exception of those tenants "in process," the record establishes that as of May 3, 1990, he intended to comply with HUD's explicit instruction. There is no apparent reason for him to reverse himself between May 3, 1990, and June 21, 1990. In view of the conflicting testimony, Mr. Reiser's and Ms. Duckworth's imprecise recollection of the timing of a two year old event, and the

incongruity of Respondent's initial halting of the relocation if he intended to disobey HUD's order, I conclude that the Government has failed to prove by adequate evidence either the occurrence or the date of the purported instruction to resume the relocation.

Finally, the Government contends that the SPHA's files show that Respondent improperly allowed relocation to continue. However, the files concerning the relocation of seventeen tenants show that relocation activity began before May 7 and was within the scope of HUD's permission. Only three tenant files, those for Harriet Bradley, Tracie Butler, and Valarie Williams, show that activity appears to have begun between May 7 and June 21. No evidence established that Respondent was aware that Ms. Duckworth was allowing these three households who were apparently not in process to commence relocation after Respondent's May 7, 1990, representation to Mr. Schiff that the relocation has ceased.¹¹

Accordingly, the Government has failed to show by adequate evidence that Respondent willfully caused the relocation of the three tenants in violation of the Notice. Respondent's Alleged Unauthorized Expenditure of Disposition Proceeds

¹¹ I am unable to posit a convincing motive for Respondent's purported willful disobedience. The Government opines that Respondent desired to clear Laurel Park of all occupants as soon as possible in order to obtain the cash infusion which would result from the sale. Govt. Brief p. 3. Respondent, however, testified credibly that he knew of tenants who had not begun the relocation process. Tr. p. 352. Even if only one family remained, the sale would still be delayed until that family had been relocated. Therefore, there has been no demonstration that any violation of a HUD directive, with all of the attendant risks to Respondent's career, would have hastened the sale.

Title 42 U.S.C. § 1437p(a)(2)(B) requires that the net proceeds from the disposition of a public housing project be used for development costs, the retirement of debt on the disposed property, and, if any of the proceeds remain, for housing assistance for low income families. In his August 6, 1990, letter to Mr. Chaplin, Respondent agreed that the SPHA would not use any net proceeds from the Laurel Park sale until it had received HUD approval for the Housing Authority's plan to distribute the funds through a non-profit corporation. Govt. Ex. 15. Nevertheless, the Government contends that Respondent caused the expenditure of the net proceeds prior to the approval from HUD. Under 24 C.F.R. § 24.705 (a) (2), (4), and (9), this conduct, if proved by adequate evidence, is grounds for the LDP.

"Net proceeds" is defined at 24 C.F.R. § 970.9 (b) as gross proceeds remaining "after payment of HUD-approved costs of disposition and relocation." By agreement with the City of St. Petersburg, the SPHA received \$4,485,000 for the Laurel Park sale with \$485,000 earmarked for the relocation of tenants and to offset projected operating losses from the disposal of Laurel Park units. Therefore, the net proceeds are four million dollars.¹² In order to demonstrate an expenditure from the net proceeds, the Government must show that the gross proceeds fell below four million dollars at any point in time.¹³ For the reasons shown below, the Government has failed to make that demonstration.

The Government relies upon a document, prepared by Fran Cote purporting to represent the sources of funds from the Laurel Park sale and the use of those funds as of December 31, 1991. Govt. Ex. 23. This after-the-fact reconstruction of the SPHA's income and expenditures divides the four million dollar fund and the \$485,000, plus their respective earned interest into two columns. Beneath each column heading, Ms. Cote listed various expenses, debiting them from either the four million dollars or the \$485,000. Infusions of HUD grant money are also shown together with the uses. Dates are not provided for either the expenditures of the funds or the HUD infusions, nor is a running balance shown for any specific date prior to December 31, 1991. In fact, the only amount associated with a fixed date is the final total of \$4,097,728.94, which is the balance as of December 31, 1991, and which exceeds four million dollars. Ms. Cote

¹² The \$485,000 figure and SPHA's approval to spend this amount was negotiated with the City of St. Petersburg after a January 1990 meeting with Mr. Schiff concerning the proceeds from the Laurel Park sale. Tr. 358-359.

¹³ The record fails to establish that the SPHA was required by statute, regulation or HUD directive to segregate the four million dollars from the routine operating and project account of the SPHA. Funds for the SPHA's programs are kept in one master account and are tracked in a general ledger. Tr. 237. This account is referred to as the "Proceeds Account." Tr. 205, 238. The ledger was not introduced into evidence.

testified that she decided under which column each expenditure was placed and that Respondent had neither reviewed nor seen the document. She also testified that the document was created just prior to Respondent's removal from the SPHA in January 1992. Tr. 241-242.¹⁴ Without dates for the expenditures, infusions or a running balance, there has been no demonstration that the balance in the proceeds account ever fell below four million dollars.¹⁵

¹⁴ Ms. Cote failed to satisfactorily explain or justify the manner in which she decided to allocate the expenditures between the four million dollar column and the \$485,000 column. The document merely reflects Ms. Cote's opinion regarding the allocation of income and expenses and not necessarily the actual entries in the SPHA's books.

¹⁵ For the same reasons, the Government has failed to demonstrate that the \$10,000 earnest money deposit on Leisure Manor was improperly removed from net proceeds.

Conclusion and Order

The Government had not shown by adequate evidence that Respondent 1) willfully caused any improper relocation of tenants from Laurel Park, or 2) caused the improper expenditure of funds obtained from the sale of Laurel Park. HUD has not established any irregularities in Respondent's past performance in a HUD program, his failure to honor contractual obligations or proceed in accordance with HUD regulations, his falsely certifying in connection with any HUD program, or his violation of any law, regulation, or procedure relating to the performance of obligations incurred pursuant to a grant of financial assistance. Accordingly,

it is ORDERED that the Limited Denial of Participation is hereby rescinded.

_____/s/_____
WILLIAM C. CREGAR
Administrative Law Judge

Issued: October 9, 1992

APPENDIX

Statutory and Regulatory Agreement Provisions

42 U.S.C. § 1437p. Demolition and disposition of public housing

(2) in the case of an application proposing disposition of real property of a public housing agency by sale or other transfer---

(B) the net proceeds of the disposition will be used for (i) the payment of development cost for the project and for the retirement of outstanding obligations issued to finance original development or modernization of the project, which in the case of scattered-site housing of a public housing agency, shall be in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition and (ii) to the extent that any proceeds remain after the application of proceeds in accordance with clause (i), the provision of housing assistance for low-income families through such measures as modernization of low-income housing, or the acquisition development, or rehabilitation of other properties to operate as low-income housing.

24 C.F.R. § 24.705 Causes for a limited denial of participation.

(a) Causes. A limited denial of participation shall be based upon adequate evidence of any of the following causes.

(2) Irregularities in a participant's or contractor's past performance in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD.

(9) Violation of any law, regulation or procedure relating to the application for financial assistance, insurance or guarantee or to the performance of obligation incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee.

24 C.F.R. § 970.5 Relocation of displaced tenants on a nondiscriminatory basis.

(a)(1) Tenants who are to be displaced as a result of demolition or disposition must be relocated to other decent, safe, sanitary, and affordable housing (at rent no higher than permitted under the Act) which is to the maximum extent practicable, housing of their choice.

(2) Relocation may be other publicly assisted housing, including housing assisted under Section 8 of the Act and housing available as a result of the Section 8 Housing Voucher Program, provided the PHA ensures that the rent paid by the displaced tenant following relocation will not exceed the amount permitted under Section 3(a) of the Act. The PHA shall be responsible for providing assistance to the displaced tenant in this regard and may use vouchers or certificates to ensure that the rent paid by the tenant does not exceed the amount permitted under section 3(a) of the Act.

24 C.F.R. § 970.8 PHA application for HUD approval.

Written approval by HUD shall be required before the PHA may undertake any transaction involving demolition or disposition.

24 C.F.R. § 970.9 Disposition of property: Use of Proceeds.

(b) Net proceeds (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section) shall be used, subject to HUD approval, as follows:

(1) For the retirement of outstanding obligations, if any, issued to finance original development or modernization of the project; and

(2) Thereafter, to the extent that any net proceeds remain, for the provision of housing assistance for lower income families through such measures as modernization of lower income housing or the acquisition, development or rehabilitation of other properties to operate as lower income housing.

24 C.F.R. § 970.11 Replacement Housing Plan.

(a) HUD may not approve an application or furnish assistance under this part unless the PHA submitting the application for demolition or disposition also submits a plan for the provisions of an additional decent, safe, sanitary, and affordable dwelling unit (at rents no higher than permitted under the Act) for each public housing dwelling unit to be demolished or disposed of under the application.

24 C.F.R. § 970.12 Required and permitted actions prior to approval

A PHA may not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining HUD approval under this part.

Until such time as HUD approval may be obtained, the PHA shall continue to meet its ACC obligations to maintain and operate the property as housing for lower income families.

