

for review of agency action. With a class in place, this court and the defendants will be forced to follow the restrictive and **time-consuming** procedures necessary to control relief, should plaintiffs prevail. This includes monitoring notices to class members, dealing with class objections to relief, holding fairness hearings, and supervising implementation of the remedy to class members. Granting the same relief to the Henry Horner Mothers Guild would **result** in the same benefit to the requested class members, without the down-side problems of micro-management imposed by a class action.

While a lack of need **alone** is insufficient to defeat a motion for class certification, that deficiency, coupled with plaintiffs' inability to meet the Rule 23(a) standards for class certification, require denial of plaintiffs' motion. Vickers v. Trainor, 546 F.2d 739, 747 (7th Cir. 1976).

II. ASSUMING THAT A CLASS IS CERTIFIED, THE ONLY APPROPRIATE CLASS IS ONE COMPOSED SOLELY OF CURRENT TENANTS.

While we agree that the proposed class meets the Rule 23 requirement of numerosity, the components of the class have divergent interests when considering the typicality, commonality of questions, and adequacy of representation issues.

The class has two major sections: current tenants of Henry Horner Developments and all current applicants for public housing in Chicago. Plaintiffs argue that all class members are affected by the issue of whether defendants' conduct violates the United

States Housing Act, the Annual Contributions Contract, and **CHA's** standard dwelling lease. In making this argument, plaintiffs **refer** to the buildings' conditions which **pose a threat to the health,** safety and lives of the residents. However, this issue does **not** impact applicants who are not residents of Henry Horner.

Next, plaintiffs discuss the vacancy rate in **the** development which they claim contributes to the length of the waiting list for public housing. While this is an appealing argument, it is not an issue common to all members of the class. For example, even if relief were granted as requested, it would never benefit **all** members of the applicant group. Since plaintiffs claim that there are 35,000 families on that list, only a small fraction of this portion of the class could expect any actual benefit from the resolution of this case. Recent applicants would have little hope of receiving any tangible benefit from this action, yet defendants would be obligated to include them for all purposes relative to affording class-wide relief. Furthermore, we doubt **that all** members of the tenant class are seeking housing in the Henry Horner Developments or would accept such placement, even if it were offered them. ¹

For the same reasons, the proposed class fails to meet the typicality requirements of Rule **23(a)**. While the tenants are residents of the Henry Horner Development, the applicants are

¹ Plaintiffs do not suggest how much the waiting time on the applicant list would be shortened by filling all the vacant units in Henry Horner, further underscoring the speculative nature of relief for these class members.

seeking public housing generally. Furthermore, there is **no** question but that only a small **percentage of the applicant portion** of the class will be entitled to reside in Henry Horner, even **if** all **the relief** requested were granted. Applicants who seek placement in developments other than Henry Horner will receive no benefit from their participation in this action.

Additionally, the class **does** not satisfy the adequacy of representation requirement for certification. As set forth in detail above, the interests of the current tenants of Henry Horner **are** not the **same as** the interests of those applying for public housing generally. It is **also possible** that granting relief as to Henry Horner could actually work to the detriment of some applicants who seek placement in other projects which also have vacancies caused by units which need repair. This problem exists for all applicant **class** members since plaintiffs offer no justification for giving Henry Horner priority over other buildings within **CHA's** holdings.

While we agree with plaintiffs that **a** district court in Missouri certified a class of applicants and tenants, that decision offers little analysis **to** justify the basis for the court's conclusion. In Tinsley v. Kemp, 750 **F.Supp** 1001 (W.D. Mo. **1990**), the court merely concluded that commonality was satisfied because **"the remedy would apply to all** class members the same as it would apply to the named plaintiffs." Id. at 1005. Because of the size of the Chicago Housing Authority applicant list (particularly **as** compared to the Tinsley applicant group), that is simply not the

case here.

Similarly on the typicality issue, the Tinsley court **conclusorily** states that the deteriorating condition of **the** development affects tenants **and applicants** as well, and that relief would benefit both types of **class** members since applicants would move higher on the **list** if units were rehabilitated.

Adopting this analysis, the class could **be** enlarged to include even non-applicants for public housing, so long as **they were** eligible, but had not yet applied. Residents of other **public** housing developments in Chicago who wish to transfer to Henry Horner could also be added to the class under this **speculative** benefit theory.

If any class is certified in this case, it should only consist of the 925 leaseholders of Henry Horner Developments. If the relief sought is granted to them, it will benefit, nonetheless, some of the proposed additional class members.

CONCLUSION

For these reasons, plaintiffs' motion for class certification should be denied.

Respectfully submitted,

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