

12/18/96

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CORA MCCOOK,
Plaintiff

V.

HOUSING AUTHORITY OF THE CITY
OF AUSTIN, et al.,
Defendants

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CIVIL ACTION NO.

A-96-CA-331-SC

RECEIVED

SETTLEMENT AND RELEASE

JAN 28 1997

THE STATE OF TEXAS
COUNTY OF TRAVIS

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§

NATIONAL RELIGIOUS FUND
FOR LEGAL SERVICES, INC.

1. This agreement is by and between Cora McCook, of Austin, Travis County, Texas (referred to here as "Plaintiff") and the Housing Authority of the City of Austin and Hyacinth Onyekanne in his official capacity as Director of Housing Management and Admissions for the Housing Authority of the City of Austin (jointly referred to here as "the Housing Authority").

2. Plaintiff McCook originally filed suit against the Housing Authority in County Court at Law Number Two, Travis County, Texas (Cause No. 230,392) on April 25, 1996. The Housing Authority removed the lawsuit to federal court (Civil Action No. A-96-CA-3311 on May 20, 1996.

3. Plaintiff asserts that the Housing Authority violated federal law and the United States Constitution in removing her from

the waiting list for the Section 8 Existing Housing Program. The Housing Authority denies that it has violated Plaintiff's constitutional rights or misapplied federal law.

4. Plaintiff and the Housing Authority desire to compromise and settle all claims and causes of action of any kind that either of them may now have against the other arising out of the facts asserted in Plaintiff's Original Petition on file in Civil Action No. A-96-CA-331-SC.

5. In consideration of the foregoing recitals and the mutual promises and covenants contained in this document:

- a. The Housing Authority, its agents, servants, attorneys, and employees hereby release and forever discharge Plaintiff from every claim or cause of action of any kind whatsoever, at common law, statutory, or otherwise; known or unknown; and now existing, that the Housing Authority has or may have against Plaintiff, directly or indirectly arising out of the facts asserted in Plaintiff's Original Petition on file in Civil Action No. A-96-CA-331-SC.
- b. Plaintiff hereby releases the Housing Authority and its agents, servants, and employees and all natural or corporate persons in privity with one or more of them, from every claim or cause of action of any kind whatsoever, at common law, statutory or otherwise, known or unknown, and now existing, that

she has or may have against the Housing Authority, directly or indirectly arising out of the facts asserted in Plaintiff's Original Petition on file in Civil Action No. A-96-CA-331-SC.

6. Plaintiff and the Housing Authority expressly understand **and** agree that the terms of this agreement are contractual and not mere recitals; that the agreements contained here and the consideration conferred by this agreement are to compromise disputed claims, avoid litigation, and buy peace; that no release or other consideration given shall be construed as an admission of liability; that the Housing Authority expressly denies any wrongful action or liability on its part to Plaintiff; and that Plaintiff expressly denies any liability on her part to the Housing Authority.

7. Plaintiff and the Housing Authority agree:

- a. Plaintiff will present to the federal court, within ten days of the signing of this agreement, a motion and an agreed order dismissing her lawsuit, with prejudice to her right to refile it. Plaintiff and the Housing Authority hereby authorize their attorneys to execute a motion to dismiss Plaintiff's lawsuit pending in federal court (Civil Action No. A-96-CA-331-SC).
- b. The Housing Authority has modified its occupancy policies on tenant selection and removal from the waiting list for failure to respond, **supply**

requested information or appear for an appointment by rewriting Paragraph 3 in Chapter 6 (on page 37 of the policies as revised in October 1996) of its Occupancy Manual as reflected on page 37 which is attached to this settlement agreement as Exhibit 1

c. The Housing Authority will modify its occupancy policies on tenant selection and removal from the waiting list by adding the following language to Paragraph 3 in Chapter 6 (on page 37 of the policies as revised in October 1996):

In deciding whether the applicant should be reinstated, the hearing officer will consider the individualized circumstances in each case, including (a) the efforts made by the applicant to respond, supply information or attend interviews or meetings; (b) the applicant's record, if any, of responding to other information requests from HACA; (d) the reasons offered by the applicant for the failure to timely respond, provide information or attend a meeting, such as illness, transportation, child care, disabilities, and educational or language barriers.

- d. The Housing Authority will immediately reinstate Plaintiff on the Section 8 waiting list and give her an appropriate bedroom size Section 8 Existing Housing Certificate or Voucher by December 31, 1996.
- e. The Housing Authority will pay damages of \$1,000.00 to Plaintiff, as full settlement for personal losses, no later than December 31, 1996.
- f. The Housing Authority will pay attorney's fees to

Legal Aid of Central Texas in the amount of \$2,870.00 on or before December 31, 1996.

(i) Any amount not paid by December 31, 1996, shall bear interest at an annual rate of ten percent;

(ii) If payment is not made by December 31, 1996, Legal Aid of Central Texas may sue to collect and enforce this agreement and the Housing Authority shall be liable for reasonable attorney's fees incurred in collecting the attorney's fees and enforcing this agreement.

g. The Housing Authority will grant hearings to those applicants for conventional public housing or Section 8 housing who have been previously removed from the waiting list for alleged failure to respond to an update request, failure to supply requested information or failure to attend a scheduled appointment with the Housing Authority and who make a written request for a hearing by January 15, 1997. The hearing request must be directed to Brenda Jo Cox at the Housing Authority's main office.

8. The parties understand that the Housing Authority reserves the discretion to alter the policies described in Paragraph 7 as allowed by law.

9. Plaintiff and the Housing Authority understand and agree that each of them will bear court costs, and other litigation costs in this cause to the extent that they have been paid by such party and that neither Plaintiff nor the Housing Authority will reimburse the other party for any such costs.

10. The undersigned Housing Authority or designated representative of the Housing Authority warrants that he has read this settlement and release agreement; that he fully understands it to be a compromise, settlement, and release of all claims, known or unknown, present or future, that the Housing Authority has or may have against Plaintiff arising out of the facts asserted in Plaintiff's Original Petition on file in Civil Action No. A-96-CA-331-SC; and that he is authorized to execute this settlement and release agreement on behalf of the Housing Authority.

11. Plaintiff warrants that she has read this settlement and release agreement; that she fully understands it to be a compromise, settlement, and release of all claims, known or unknown, present or future, that she has or may have against the Housing Authority arising out of the facts asserted in Plaintiff's Original Petition on file in Civil Action No. A-96-CA-331-SC; that she is of legal age and is legally competent to execute this settlement and release agreement; and that she does so of her own free will and accord without reliance on any representation of any kind or character not expressly stated here.

12. Notwithstanding any of the foregoing language in this settlement and release, the parties understand and agree that

neither Plaintiff nor the Housing Authority is granting the other party a release of any claims that may arise in the future relative to Plaintiff's application or participation in the Housing Authority's Section 8 Existing Housing Program.

13. Plaintiff and the Housing Authority understand and agree that this document sets forth the entire settlement and release agreement between them; that no oral understanding, statement, promise, or inducement contrary to the terms of this settlement and release agreement exists; and that this settlement and release agreement cannot be changed or terminated orally.

14. Plaintiff and the Housing Authority understand and agree that this settlement and release agreement shall inure to the benefit of and be binding on each party's heirs, executors, administrators, receivers, successors, custodians, trustees, and assigns. In any action to enforce this settlement agreement, the prevailing party may recover reasonable attorney's fees and costs of court.

15. This settlement and release agreement is being executed in one original to be kept by the Housing Authority. This settlement and release agreement shall be effective when Plaintiff and the designated representatives of the Housing Authority have all signed.

EXECUTED by


Cora McCook

on Dec 18, 1996

Hyacinth Onyekanne
HYACINTH ONYEKANNE, as Director of
Housing Management for the Housing
Authority of the City of Austin

on 12/17/96, 1996

Jim Person
HOUSING AUTHORITY OF THE CITY OF
AUSTIN BY JIM PERSON, BOARD
CHAIRPERSON AND DESIGNATED
REPRESENTATIVE

on December 17, 1996, 1996

APPROVED:

LEGAL AID OF CENTRAL TEXAS
205 W. 9th Street, Suite 200
Austin, Texas 78701
Phone: 512/476-7244, ext. 311
Telefax: 512/476-3940

BY :

Fred Fuchs
FRED FUCHS
State Bar No. 07498000
ATTORNEY FOR Plaintiff

HOUSING AUTHORITY OF THE CITY OF AUSTIN
1640 E. 2nd Street
Austin, Texas 78702
Phone: 512/477-4488
Telefax: 512/478-8516

BY:

Brenda Jo Cox
BRENDA JO COX
State Bar No. 04936500
ATTORNEY FOR DEFENDANTS HOUSING
AUTHORITY OF CITY OF AUSTIN AND
HYACINTH ONYEKANNE

3. Notification and Informal Hearing.

- A. If removal is due to the applicant's request: HACA will notify the applicant in writing of the termination of the application and deletion of the applicant's name and will not be entitled to an informal hearing.
- B. If removal is due to the applicant's: (1) failure to respond or timely respond to an update request; (2) failure to supply or timely supply information required; or (3) failure to attend interviews, meetings or orientation meetings. HACA will notify the applicant in writing of the termination of the application and deletion of the applicant's name for the failure to follow the procedures from the Waiting List and will be entitled to an informal hearing if requested in writing and received by HACA within ten (10) calendar days from the date of the notification of rejection as provided within Chapter 7, Sections 7-10. The files of all deleted applicants will be maintained in accordance with Chapter 17.
- C. Applicants whose applications are terminated and whose names are deleted from the applicable Waiting Lists for other reasons than those set forth above are entitled to an informal hearing if requested in writing and received by HACA within ten (10) calendar days from the date of the notification of rejection as provided within Chapter 7, Sections 7-10. The files of all deleted applicants will be maintained in accordance with Chapter 17.

4. Opening and Closing Waiting Lists.

- A. In order to maintain a balanced application pool, HACA at its discretion, may restrict application taking, suspend application taking, and close waiting lists in whole or in part. If HACA has sufficient applications in its federal preference category to fill anticipated vacancies for the coming 12 months, it may elect to close the waiting list completely.
- B. Decisions about the waiting lists will be based on: (1) the number of applications available for a particular size and type of unit (Conventional Public Housing); (2) the number of applicants who qualify for a Federal Preference; (3) if the ability of HACA to house an applicant in an appropriate conventional unit within a reasonable period of time (Conventional Public Housing), and available funding (Section 8). Closing the waiting lists, restricting intake, or opening the waiting list will be publicly announced.

During the period when the waiting list is closed, HACA will not maintain a list of individuals who wish to be notified when the waiting list is reopened.