IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JONATHAN DAVIS, a minor, by and through his parent and natural guardian, WENDY DAVIS, and WENDY DAVIS in her own right, Plaintiffs, v. PHILADELPHIA HOUSING AUTHORITY, et al., Defendants.	CIVIL ACTION No. 96-1665

MEMORANDUM

ROBERT F. KELLY, J. DECEMBER 3, 1998

Presently before the Court is the Plaintiffs' Motion to Vacate Orders of Dismissal. This Motion was originally filed on February 4, 1998, but due to a filing error was never conveyed to the Court for a ruling.

By Memorandum and Order of July 3, 1996, this Court dismissed the Plaintiffs' claims against Philadelphia Housing Authority ("PHA") for lack of standing. On July 24, 1996, this Court issued an Order dismissing all claims against Miriam Shaw. On appeal, the Third Circuit reversed this Court's dismissal of the claims against PHA. See Davis v. Philadelphia Housing Auth., 121 F.3d 92 (3d Cir. 1997). The Plaintiffs filed the instant Motion to vacate both previous orders of dismissal. The Plaintiff's claims against PHA have been addressed in a separate Memorandum by this Court, and the instant Motion will be denied

as moot to the extent it requests that the Memorandum and Order of July 3, 1996, be vacated.

Regarding the Order of July 24, 1996, the Plaintiffs apparently argued before the Third Circuit that this Court's dismissal of their claims against Miriam Shaw should also be reversed. In its opinion, the Third Circuit stated: "we are uncertain as to whether the [district] court dismissed these claims because it determined that it lacked jurisdiction after having dismissed the Davis's federal claims against the Housing Authority or rather because the Davises chose not to pursue their claims against Miriam Shaw." Davis, 121 F.3d at 101 n.10. The claims were in fact dismissed for the latter reason. On July 22, 1996, Plaintiffs' counsel sent a letter to this Court stating: "I do not intend to seek a default judgment against defendant Miriam Shaw in the above matter. Therefore, I would not regard it as inappropriate for you to dismiss the case against her." (See Letter of July 22, 1996 from Robert Savoy, attached as Appendix A to this Memorandum.) Thus, the claims against Miriam Shaw were dismissed with prejudice on July 24, 1996, because the Plaintiffs indicated that they did not intend to pursue them. It is unclear how the Plaintiffs' counsel could have raised this issue in good faith before the court of appeals when he was fully aware that the dismissal was in response to his own letter to this Court. Should the Plaintiffs appeal this Order, Plaintiffs' counsel

should explain to the appellate court why, on the previous appeal, he did not clarify the reason for this Court’s Order of July 24, 1996.

An appropriate Order follows.

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ORDER

AND NOW, this 3rd day of December, 1998, upon consideration of Plaintiffs' Motion to Vacate Orders of Dismissal, it is hereby ORDERED that said Motion is DENIED.

BY THE COURT:

Robert F. Kelly, J.