

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

CARMELIA VELEZ, et al. : CIVIL ACTION
: :
v. : :
: :
MEL MARTINEZ, SECRETARY OF HOUSING :
& URBAN DEVELOPMENT, in his :
official capacity,* et al. : NO. 90-6449

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

June 12, 2002

In June, 1994, this court granted the motion of the Department of Housing and Urban Development ("HUD") for the appointment of a Receiver over the Chester Housing Authority ("CHA"). Order, June 29, 1994 (#209); 42 U.S.C. §§ 1437d(j)(3)(A)(ii),(C). In August of that year, the court selected Robert Rosenberg ("Rosenberg" or "the Receiver") to serve as CHA's Receiver. Order, August 31, 1994 (#212).

Rosenberg was empowered to:

[H]old, protect, and preserve, manage and control all present and after-acquired real and personal property of CHA, including but not limited to financial management, applicant intake and placement, general management and maintenance, contract administration, modernization, lease enforcement, resident relations, and rehabilitation functions. The Receiver shall rebuild CHA's capacity to manage and oversee its public

*Mel Martinez is substituted for his predecessors as the Secretary for the Department of Housing and Urban Development. Fed. R. Civ. P. 25(d)(1).

housing programs in accordance with applicable laws and regulations.

Without objection from the federal defendants, the court established a fixed-fee system to compensate the Receiver: \$40.00 per unit per month ("p/u/m"), plus \$5,000 per month for expenses incurred.¹

Six years later, although acknowledging that the Receiver has "successfully rebuilt" CHA's capacity to manage itself through his "remarkable effort," the federal defendants move to reduce his compensation to \$23.34 p/u/m, with a maximum compensation of \$405,020 a year. They argue the Receiver's successes have so reduced his responsibilities that his pay is disproportionate to his duties.

I. FACTUAL BACKGROUND

CHA administers five separate housing projects. This action was filed by a class of tenants alleging CHA's inability to provide them with safe and sanitary housing. In 1991, while the parties were mediating a settlement, HUD assumed oversight over CHA as a "troubled agency" subject to federal control. Despite this takeover, HUD was unable to effect substantive change in

¹The Court later authorized an eight percent (8%) cost-of-living increase in the Receiver's per unit compensation, to \$43.20 per unit. The Receiver's allotted expenses were reduced to \$2,500 a month.

CHA's operations. In 1994, after holding a bench trial, the court concluded:

The high number of vacancies at CHA before the HUD takeover of November 6, 1991, the policy not to rehabilitate vacant units for occupancy adopted after November 6, 1991, and vacancies planned during the planned modernization and phased reconstruction plans over the next four to five years constitute illegal de facto demolition by CHA. Velez v. Cisneros, 850 F. Supp. 1257, 1278 (E.D. Pa. 1994)

The parties were invited to submit a proposed remedy. The defendants, with the plaintiffs' consent, moved for the appointment of a Receiver. Robert Rosenberg was selected by the court.

In the beginning of the Receivership, defendants agreed the Receiver's private firm initially would provide much of the day-to-day management of CHA: he would pay the managers himself, and would be compensated through the fixed fee arrangement. The defendants understood and agreed that the fixed-fee would not fully compensate the Receiver at first: only if he were able to reduce CHA's dependence on his managers would he later make a reasonable profit. See Tr. Jan. 29, 2001, at 44.

HUD's Public Housing Assessment System ("PHAS") is the official gauge of the performance of housing authorities nationwide. At the creation of the Receivership, in 1994, CHA had a PHAS score of 35 (a distressed agency); in 2002, CHA received a score of 91 (a high performer).

Despite this objective measure of the Receiver's efficiency

and success, his pay has been reduced as the number of occupied units he oversees has decreased. The Receiver did not object to these reductions, as they were consistent with the parties' agreement at the beginning of the Receivership. In 1997, the Receiver's compensation (without expenses) fell from \$819,360 to \$761,280 as the number of units declined from 1,707 to 1,587. In 1999, his compensation was decreased again, to \$749,606.40. In January, 2002, after this Motion was filed and argued, the Receiver's compensation was reduced again to \$645,926.40 to reflect declining housing stock.² Over the course of the Receivership, his annual expense allowance has been reduced by half, to \$30,000.

In 2000, the HUD Office of the Inspector General ("HUD-OIG"), initiating an inquiry into the Receivership, recommended that HUD petition the Court for a reduction in the Receiver's fee as a result of a "substantial shift in the level of services, from the Receiver and his temporary staff to the CHA and its permanent staff." The present motion would cap the Receiver's fee at \$405,020 a year,³ with a revised rate of \$23.34 p/u/m.⁴

²There are currently 1246 units.

³The federal defendants arrived at a fixed ceiling for compensation by reducing the Receiver's original compensation by \$410,280 (currently paid by CHA to its managers).

⁴The defendants divided their proposed cap by the then total number of units to arrive at a unit fee of \$23.34/month.

As applied to CHA's current housing stock, the Receiver's compensation would decrease to \$348,979.68.

The Receiver (and the plaintiffs)⁵ oppose the defendants' motion. According to the Receiver, his staff did not occupy the majority of those CHA positions now filled by CHA employees. His duties and commitment to CHA have not significantly decreased over time. The nature of the Receiver's role has changed; he now focuses on long term planning and economic development, as well as a sustainability program, designed to protect the gains realized by CHA during the Receivership. The parties and the court expect the Receivership to terminate in June, 2003.

II. DISCUSSION

A. The Court's Power to Set the Receiver's Compensation is Not Subject to HUD's Approval

When the Receivership was established, CHA became the temporary property of the court. The appointing court, has complete, if not exclusive, control over both the Receiver and CHA. See Taylor v. Sternberg, 293 U.S. 470, 472 (1935) (property receiver controls is property of court during pendency of receivership); United States v. Stephens, 208 F.2d 105, 107 (5th Cir. 1954) (stating that receiver is officer of appointing

⁵ Plaintiffs acknowledged that they lacked standing to object, but hoped to inform the court's deliberation. Their comments were appreciated.

court); United States v. Wayne County Dep't of Health-Air Pollution Control Div., 571 F. Supp. 90, 92 (E.D. Mich. 1983) (court which imposes receivership has supervisory control over those who administer it).

The power to control the Receiver implies the power to set his compensation, within reasonable limits. As the Supreme Court stated:

Nor is there any doubt of the power of courts of equity to fix the compensation of their own receivers. That power results necessarily from the relation which the receiver sustains to the court; and, in the absence of any legislation regulating the receiver's salary or compensation, the matter is left entirely to the determination of the court from which he derives his appointment. The compensation is usually determined according to the circumstances of the particular case, and corresponds with the degree of responsibility and business ability required in the management of the affairs intrusted to him, and the perplexity and difficulty involved in that management.

Stuart v. Boulware, 133 U.S. 78, 10 S.Ct. 242, 33 L.Ed. 568 (1890); see also Little Earth of the United Tribes, Inc. v. HUD, 807 F.2d 1433, 1443 (8th Cir. 1986) ("the appointing court has not only the authority but also wide discretion to determine who shall bear the costs of the receivership"); 2 R. Clark, Treatise on the Law & Practice of Receivers § 641(a) (1969 supp.) ("the court should consider the "labor and acts involved, the prices usually paid for similar services in connection with a particular kind of business, also the magnitude of the case, and the amount realized" (internal citation omitted)). Here, 42 U.S.C. §§

1437d(j)(3)(A)(ii),(C), the underlying statute, provides no guidance to fix the amount of the Receiver's compensation: it has been left to the court's reasoned discretion.

As the Receiver's compensation is left to the court's discretion, the defendants have no fixed legal entitlement to reduced compensation.⁶ However, because the court's duty to maintain the Receiver's compensation at a reasonable level is continuing, HUD's motion is not frivolous.

B. The Receiver's Compensation Remains Reasonably Related to His Responsibilities

Even if the federal defendants' premise (that CHA has directly assumed many of the responsibilities once held by the Receiver) were accepted, the Receiver's compensation would still be reasonable. The Receiver' 2001-2002 Report illustrates the wide scope of his new responsibilities: developing a positive working relationship with CHA's resident leadership; applying for grants and tax credits;⁷ managing and inspiring economic

⁶This limited authority over the Receiver's compensation is contrasted to the wide authority HUD retains to audit CHA's finances and to measure its performance.

⁷Through the Receiver's efforts, CHA has received two Hope VI federal grants during the Receivership. These grants, complemented by additional public and private funding, infused over sixty (60) million dollars into CHA and the City of Chester.

development in the surrounding community;⁸ recruiting a permanent board; marketing; creating and managing an effective police force; developing a new financial structure that complies with HUD guidelines; and planning for the termination of the Receivership.⁹ The work involved is highly complex, and utilizes all the Receiver's formidable administrative, political, economic, legal and social skills. While it may be true that the Receiver (or surrogates he employs) makes a smaller proportion of CHA's daily management decisions, his role in ensuring a bright future for CHA is still critical and central.

As noted at oral argument, "it seems a peculiar reward for someone who has suffered through the bad days to have his compensation reduced when, by his efforts, he finally makes a success of something. That isn't usually the way the American system works." Tr. Jan. 29, 2001, at 45 (statement of the court). The Receiver, having almost completed his onerous

⁸For example, the Receiver engaged Kramont Realty Trust to develop a shopping center near the Authority. The center will provide consumer outlets for tenants as well as employment opportunities. The Receiver is responsible for supervising the legal and economic aspects of this development program. He has also created a "One Stop Shop" in CHA to spur resident employment and community-wide economic development.

⁹For example, in 2001 the Receiver convened a "sustainability retreat" to commence a planning process to sustain CHA's existing programs upon termination of the Receivership. He formed a thirty-three (33) member Sustainability Committee, which commenced regular meetings in September, 2001.

remedial tasks, now focuses his efforts on preserving and building on CHA's transformation while earning a reasonable profit. After consideration of all the evidence, the Receiver's current unit rate (\$43.20 p/u/m) is reasonable, and no absolute cap is needed.

However, the Receiver's monthly expense allowance of \$2,500 is no longer necessary. This allowance was originally created to help defray the costs of the Receiver's employees who commuted to, and temporarily lived near, the Authority. As the Receiver's role has changed, these needs have abated, and the review of the Receiver's expenses has become increasingly burdensome for the court.

III. CONCLUSION

The defendants' motion to reduce the Receiver's compensation will be denied in part and granted in part: the Receiver will continue to be compensated at \$43.20 p/u/m until further order of the court, but he no longer will receive \$2,500 per month in extra expenses.

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ORDER

AND NOW, this 12th day of June, 2002, on consideration of the Federal Defendants' Motion to Reduce the Compensation of the Court-Appointed Receiver (#406), Robert Rosenberg's Response (#412), the Federal Defendants' Reply (#417), after hearing argument on January 29, 2001, in which all parties had the opportunity to be heard, and for the reasons given in the foregoing memorandum, it is **ORDERED** that:

1. The Federal Defendants' Motion to Reduce the Compensation of the Court-Appointed Receiver (#406) is **DENIED IN PART AND GRANTED IN PART**.

2. The Receiver's compensation shall remain at \$43.20 per unit per month.

3. The Receiver shall no longer be compensated an

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additional \$2500 per month for expenses, although expenses incurred in the production of the Receiver's report or other verified direct costs (such as travel and lodging to attend conferences at HUD's request, placing newspaper ads on behalf of CHA, etc.) will be reimbursed by CHA.

Norma L. Shapiro, S.J.