

LANDMARK COURT SETTLEMENT ON “AFFIRMATIVE DUTY” IN WESTCHESTER COUNTY, NEW YORK

This landmark settlement between HUD and Westchester County in 2009 has had a significant impact on the way in which federal housing and community development funds are used throughout the United States, and it has led to increased scrutiny of local government housing policies. It also signaled a new commitment by HUD to assure that token efforts made by federal funding recipients to "affirmatively further fair housing" will not be acceptable. As a result, all local government units receiving federal funds are expected to actively further fair housing by creating more integrated housing opportunities for people whose housing needs are underprovided locally based on race, ethnicity, disability, familial status, or other protected grounds.

The law suit was filed under the federal False Claims Act in 2006 by the Anti-Discrimination Center of Metro New York and the United States. It charged that Westchester County, a large suburb north of New York City, had falsely certified that it was complying with the requirement to “affirmatively further fair housing” in its applications for HUD Community Development Block Grant (CDBG) funds between the years 2000 and 2006. Federal law requires recipients of certain federal housing and community development funds to certify that they are affirmatively furthering the jurisdiction’s commitment to fair housing by conducting an analysis of impediments to fair housing and by taking appropriate action to overcome those impediments. In particular, a recipient must analyze the impact of race and national origin on housing opportunities and choices within its jurisdiction.

The plaintiffs specifically alleged that the County chose not to analyze impediments to fair housing choice based on race or municipal resistance, and also chose not to take appropriate steps to overcome such impediments. In February 2009, the United States District Court for the Southern District of New York granted the plaintiffs’ motion for partial summary judgment. The District Court ruled that the County had “utterly failed” to meet its obligation to affirmatively further fair housing through creation of equal housing opportunities for all persons in the predominately white municipalities within its jurisdiction. The District Court found that the County had accepted over \$52 million in CDBG funds in that time frame, but had failed to take affirmative steps to create more integrated housing while falsely or fraudulently representing to HUD that it was doing so. In August 2009 a settlement was reached to resolve the suit, and the settlement was approved by the County legislature in September 2009.

Under the broad settlement agreement, the County agreed in part to conduct a new analysis of impediments to fair housing that examines barriers based on race or municipal resistance. It also agreed to “ensure the development” of at least 750 units of affordable housing over the next seven years. At least 630 of those units must be in municipalities with an African-American population of less than 3%, and a Hispanic population of less than 7%, but not in census tracts that are more than 10% African-American or Hispanic. Over \$50 million was to be paid by the County for the development of this affordable housing and in settlement of the claims against it. An independent monitor was appointed by the District Court to oversee implementation of the settlement and to provide regular progress reports to that court. The County also agreed to the appropriateness of taking legal action to compel compliance by any municipality which hinders or impedes the County’s performance of the agreement.

The County's failure to adequately consider race and municipal resistance in its analysis of impediments has continued since 2009. In 2015, on appeal to the Second Circuit Court of Appeals, the Court of Appeals held that HUD appropriately rejected the County's several analysis of impediments submissions because they failed to adequately analyze whether certain restrictive zoning practices impacted disparately on racial and ethnic minorities and low income residents. In response to that ongoing failure, HUD has withheld from the County and reallocated millions of dollars in federal funds.

Among the other key provisions of the settlement agreement was the obligation of the County leadership to establish and implement public outreach campaigns to promote the goals of the settlement. In his report to the District Court dated March 17, 2016, the independent monitor advised that based on his examination, instead of complying with that duty County leadership had through extensive public statements and publications "launched a misinformation campaign" that detracted from the settlement's goal. He asked the District Court to "set to rest misinterpretation of key terms of the Settlement and declare the following facts to be true: (i) that HUD has not attempted to dismantle local zoning; (ii) that the cost of compliance with the Settlement is not \$1 billion, but \$51.6 million; (iii) that HUD never sought to build high-rise apartment buildings in Westchester's residential neighborhoods; and (iv) that Westchester has a duty to ensure the development of at least 750 AFFH units". He also noted the 2015 Court of Appeals finding that HUD's request was for the County to analyze zoning, not to dismantle it. Click here to see the full monitor's report of March 17, 2016 ([Westchester-Housing-Monitor-report.pdf](#)).

By Sheila Mondshein, member and past Chair of the Newton Fair Housing Committee,
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