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August 21, 2001

2001-FW-1808

MEMORANDUM FOR: Eileen Rogers
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FROM: */SIGNED/*
D. Michael Beard
District Inspector General for Audit, 6AGA

SUBJECT: Citizen Complaint
HUD Takeover of the Beaumont Housing Authority
Beaumont, Texas

At the request of the former chairman of the Board of Commissioners (the Board), we performed a limited review of HUD's actions regarding the takeover of the Beaumont Housing Authority (Authority). In the complainant's letter to Inspector General Susan Gaffney, he gave six reasons to substantiate his allegation that the Authority was being singled out for political reasons:

1. HUD cited problems that existed under and were caused by a HUD executive serving as Technical Advisor to the Authority.
2. Various HUD offices failed to coordinate amongst themselves and are not aware of the Authority's efforts to comply with all HUD requirements.
3. HUD cited the Authority's inaction in developing 50 scattered-site units in white neighborhoods as one reason to takeover the Authority. However, HUD led the Authority to believe that HUD was not opposed to the Authority developing 50 units in Charlton Pollard (an all black neighborhood) and later opposed it.
4. HUD was pursuing a vendetta against the Authority for hiring a former HUD employee. The Authority received perfect PHMAP scores annually. All of the problems originated while under the leadership of the previous Executive Director, who was a friend with HUD.
5. There is an "unholy" relationship between HUD officials and Young v. Martinez Plaintiffs' Counsel.

6. HUD was angry because the Authority will not allow Section 8 residents to move into a private market property.

In completing our review, we talked to former members of the Authority's Board of Commissioners and a former employee, as well as representatives of HUD's offices of Public Housing, Fair Housing, and General Counsel in Fort Worth, Texas. In addition, we reviewed correspondence and other documents provided by former Board members and information contained in the files of Public Housing officials in Fort Worth. If you have any questions, please call Theresa Carroll, Assistant District Inspector General for Audit, at (817) 978-9309.

SUMMARY

We were unable to substantiate the overall complaint that the Authority had been singled out and HUD's takeover was politically motivated. HUD assumed control of the Authority in late 2000 after finding it in substantial default of its Annual Contributions Contract (ACC). Since the takeover occurred, HUD contracted with Price Waterhouse Coopers to conduct a comprehensive review. Price Waterhouse Coopers confirmed that substantial problems existed in the Authority's Homeownership and Section 8 Programs. These two issues alone support HUD's finding of substantial default. However, HUD's lack of monitoring at the Authority contributed to or exacerbated some of the problems that existed. In HUD's defense though, the Authority's high Public Housing Management Assessment Program (PHMAP) scores placed the Authority low on HUD's monitoring schedule. Further, once HUD became aware of problems at the Authority, HUD took action that ultimately resulted in HUD declaring the Authority in substantial default.

BACKGROUND

The Beaumont Housing Authority is one of the East Texas Public Housing Authorities governed by the *Young v. Martinez* Final Judgment and Decree (Final Judgment). In the *Young* case, the court issued a liability decision in 1985 that HUD had knowingly and continually maintained a system of segregated housing in a 36-county area of East Texas in violation of Title VI of the Civil Rights Act of 1964. The court's Final Judgment, issued March 30, 1995, approved HUD's desegregation plans for all of the involved Public Housing Authorities, including Beaumont. The Beaumont Housing Authority also signed a Voluntary Compliance Agreement with HUD in April 1994, agreeing to comply with Title VI of the Civil Rights Act. This agreement expired in April 1999.

In January 2000, Fort Worth Public Housing staff conducted its first comprehensive review of the Authority. HUD had not previously targeted the Authority for a comprehensive review because the Authority always had high self-certified PHMAP scores. HUD initiated the review because the plaintiff's attorney in the *Young v. Martinez* lawsuit provided HUD a draft motion of default. The plaintiff's attorney asserted in the draft motion that HUD had violated the Final Judgment and Decree regarding the Authority and the *Young v. Martinez* litigation. Public Housing's review found no substance to some of the charges in the draft motion. However,

HUD identified several violations of the Authority's ACC. One of HUD's most significant findings dealt with the status of the Authority's nonprofit subsidiary Beaumont on the Grow, and the 5(h) Homeownership Program it managed.

HUD's review resulted in a series of meetings, various letters of findings and contentious correspondence between the Board and the Fort Worth Public Housing Office. Consequently, due to the seriousness of the problems and HUD's potential liability in the *Young v. Martinez* case, Headquarters Public Housing officials became involved. Both the Deputy Secretary of HUD and the Assistant Secretary of Public Housing concluded that new leadership was needed at the Authority and began attempting to negotiate the resignation of the Board. The Board initially resisted all efforts to force them to resign. Eventually, after the direct involvement of the Secretary of HUD and two Congressmen, the Board members resigned from their positions. Since the Board resigned without approving a HUD requested Cooperative Agreement, HUD declared the Authority to be in substantial default of its ACC by letter dated September 22, 2000. HUD substantial default letter classified the Authority's violations into two major categories: Low Rent ACC Violations and Section 8 ACC Violations. Under the Low Rent Violations, HUD cited the Authority for violating regulations regarding the 5(h) Homeownership Program and failing to submit annual audits to HUD. Under the Section 8 Violations, HUD cited the Authority for failing to maintain and provide HUD required program records and documents. On October 3, 2000, HUD assumed possession of all of the assets of the Authority and contracted with the Port Arthur Housing Authority to conduct the day-to-day operations of the Authority.

RESULTS OF REVIEW

Allegation 1: HUD cited problems that existed under and were caused by a HUD executive serving as technical advisor to the Authority.

Results: This allegation was not substantiated.

The Authority did not provide specific documentation that the HUD executive actually caused the problems HUD cited in its takeover letter. The problems HUD identified in the Declaration of Substantial Default existed for some time. Although, Fort Worth Public Housing staff acknowledged that it was possible that the HUD executive could bear some of the blame, ultimate responsibility for management of the Authority rested with the Board and their Executive Director not HUD's executive. In addition, the Authority had significant problems prior to and after the HUD executive departed in 1995. Apparently, the Board did not have a good understanding of, involvement in, or control of what was going on at the Authority. A major factor in HUD's takeover decision was the length of time the problems had existed and the Board's apparent resistance to make some changes. Therefore, the allegation is without merit.

Allegation 2: Various HUD offices failed to coordinate amongst themselves and are not aware of the Authority's efforts to comply with all HUD requirements.

Results: This allegation was not substantiated.

Communications and coordination problems existed between the previous HUD offices that oversaw the Authority. OIG noted this problem in its 1997 audit report of the HUD offices.¹ However, the Authority provided no documentation to show that it received approval from any of HUD's offices for the various improper actions cited in the substantial default notice. For example, HUD did not approve the improper selling of houses on the open market as discussed further in "Allegation 4." As a result, this allegation is not supportable.

Allegation 3: HUD cites the Authority's inaction in developing 50 scattered-site units in white neighborhoods as one reason to takeover the Authority. However, HUD now opposes a 50-unit development in Charlton Pollard (an all black neighborhood) that the Authority had been working to develop. HUD had concurred with this development in the past.

Results: This allegation was not substantiated.

The Authority provided no documentation to support their allegation that HUD agreed to construction in a racially impacted area: Charlton Pollard. In one of the Board's complaint letters, the Authority specifically mentioned support from a former Acting Assistant Secretary. However, they provided no letters or other documentation. HUD however stated it advised the Authority since June 1997 that construction in an impacted area would not be acceptable without court approval. HUD issued a letter from the Acting Public Housing Director, dated November 14, 1997, that reminded the Authority of this fact. The Authority did provide a copy of a letter dated December 21, 1995, to the former Director of the Beaumont Public Housing Office requesting HUD's approval of construction in Charlton Pollard. In this letter, the Authority's former Executive Director cited the court-mandated restriction that prohibited building in a racially impacted neighborhood. Considering the Authority's knowledge of this restriction and the gravity of the Young Decision, the Authority should have ensured it received written approval from the proper HUD officials before attempting to proceed. The Authority's failure to obtain written HUD approval validates HUD's assertions of ineffective management by the Board.

The Authority's complaint also asserted that even the Plaintiff's attorney did not object to construction in Charlton Pollard during court proceedings. However, the 1999 court decision denying permission to build in Charlton Pollard specifically stated that the Plaintiff opposed construction at this site. In addition, the Plaintiff's attorney opposed the Authority's motion to build the units in October 1998. Thus, the Authority's allegation that both HUD and the Plaintiff agreed to construction in Charlton Pollard is without merit.

¹ See Audit Report 97-FW-174-0001, Beaumont Fair Housing and Public Housing Offices, June 3, 1997.

Allegation 4: HUD is pursuing a vendetta against the Authority for hiring a former HUD employee. The Authority received perfect PHMAP scores annually. All of the problems originated while under the leadership of the former Executive Director, who was a friend with HUD.

Results: This allegation was not substantiated.

HUD admitted to advising the Authority against hiring the former HUD employee. HUD's staff expressed concern about possible violations of HUD's Ethics restrictions. In addition, OIG's 1997 audit of two former HUD offices specifically addressed this former employee, and recommended that he not be allowed to manage the successor HUD offices. Given these reasons, HUD's advice does not seem inappropriate nor does it appear to be a "vendetta".

Receiving perfect PHMAP scores does not mean that conditions did not exist which violated the Authority's ACC. HUD's PHMAP scoring system was a self-certification system, meaning the Authority graded and certified its own performance in meeting HUD's requirements. Even if the Authority awarded itself a perfect score, such a score apparently did not reflect the true conditions at the Authority. As previously stated, HUD's first comprehensive monitoring visit in early 2000 found significant problems in the Authority's Section 8 Program, Homeownership program, and its compliance with the Young v. Martinez decision.

Some of the problems cited by HUD in its substantial default letter did originate under the leadership of the former Executive Director. For example, HUD cited the Authority for improperly selling houses under its Homeownership Program on the open market. Although the former Executive Director informed HUD of this action by letter dated February 25, 1998, the Authority cannot document any approval by HUD. Board members were aware of the sale of these houses on the open market. Board members did not appear to question the propriety of such a sale or whether HUD approval had been obtained. Thus, even though the former Executive Director failed to get written approval from HUD, the Board of Commissioners must bear final responsibility for this and all other actions of its management.

Allegation 5: There is an "unholy relationship" between HUD officials and Plaintiff's Counsel.

Results: This allegation was not substantiated.

The "unholy relationship" the Authority referred to was the relationship between the plaintiff's counsel and a former HUD Assistant Secretary. Before becoming an Assistant Secretary, this individual was an attorney for the plaintiffs. However, an "unholy relationship" did not exist because, as a requirement to being confirmed, she recused herself from all business between her law firm and HUD, including the Young v. Martinez litigation.

The Authority also asserted that because of this "unholy relationship", Beaumont was being held to a higher standard than the Authority governing Vidor, Texas. In support of this

assertion, the complainant stated that the plaintiff's counsel had purposely overlooked the situation in Vidor. This statement is not valid. As stated in the complainant's letter, HUD controlled the Orange County Housing Authority, which governed Vidor, for several years. Further, HUD made a very publicized effort to desegregate this area, even though it failed. Additionally, in court documents concerning the Authority, the plaintiff's counsel still refers to the problem of segregation in other East Texas cities. And in a newspaper article related to the takeover, the plaintiff's counsel is quoted as saying that he doesn't trust HUD or the Beaumont Housing Authority.

As part of the Authority's double-standard allegation, it also alleged that \$50,000 in tenant accounts had been missing in Vidor for several years. However, the Authority provided no evidence to support this allegation. Therefore, the allegation that the Authority has been held to a higher standard of accountability because of a relationship between the plaintiff's counsel and a former HUD Assistant Secretary is without merit. Instead, it could be argued that due to the long-standing problems in East Texas and HUD's potential liability, HUD should have taken action sooner.

Allegation 6: HUD is angry because the Authority will not allow Section 8 residents to move into a private market property.

Results: Although this allegation is substantiated, it is without merit. HUD did not take over the Authority merely because it was "angry" with it. Instead, serious deficiencies existed.

The Authority's refusal to allow Section 8 residents to move into its Lexington on the Lake Apartments was a serious issue with HUD. The Authority built the Lexington on the Lake Apartments in a non-impacted area using its tax-free status and was responsible for appointing its governing Board. Even though the *Young v. Martinez* Final Judgment required the Authority to provide housing in non-impacted areas, the Authority refused to allow Section 8 residents to move in saying it had no authority to do so. The Authority's refusal raised serious questions about the Board's commitment to desegregation. The complainant also alleged that HUD wanted to turn this private market property into a Public Housing property. However, HUD appeared willing to settle for 15 units of the 150-unit complex to be set aside for Section 8 residents. Thus, HUD had reason to be frustrated by and concerned about the Board's refusal to open the development to Section 8 residents. Yet, HUD did not take over the Authority merely because the Board did not want to allow Section 8 residents into Lexington on the Lake Apartments. Rather, the Authority had significant problems in other areas.

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