



August 20, 2001

Matthew Shapiro
Mitch Kahn
New Jersey Tenants Organization
389 Main Street
Hackensack, New Jersey 07601

Helen Hirsch
Annette Illing
98 Park Avenue
Hoboken, New Jersey 07030

Frank Hutchins
HUD Tenants Coalition
944 Broad Street
Newark, New Jersey 07102

Don Lubin
Suburban Essex Development Corp.
32 Woodland Avenue
Glen Ridge, New Jersey 07028

Arnold Cohen
Housing and Community Development Network
145 W. Hanover Street
Trenton, New Jersey 08618

Re: Housing and Community Development Network of New Jersey,
et al. v. Applied Housing Management Co., Inc., et al.
Docket No. A-4832-00T3

Dear Everyone:

I am pleased to inform you that the afore-mentioned matter has been finally resolved on the terms that we had agreed upon last February. Although we had signed a stipulation of dismissal against Applied Housing Management Co., Inc. ("Applied") and Joseph Barry ("Barry"), with an associated Amended Regulatory Agreement at that time, William Connelly and the Department of Community Affairs ("DCA") made formalizing our agreement with DCA a tortuous process.

At the end, DCA finally agreed to recommend an amendment to the current rules regarding Limited Dividend Nonprofit Housing Corporations that will require landlords who seek to enter into a

The Public Interest Law Center of New Jersey
833 McCarter Highway
Newark, New Jersey 07102-5112

Phone: 973.642.8719
Fax: 973.642.5939
E-mail: newjersey@appleseed.net
Website: <http://www.appleseed.net>

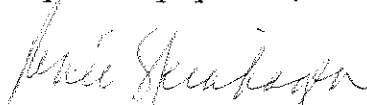
regulatory agreement with DCA to give at least 75 days prior notice to all affected tenants and to the relevant municipality, to permit comments on the proposed regulatory agreements, and to submit any such proposed agreement for publication in the next available issue of the New Jersey Register. We secured the 75 day notice (in contrast to the shorter period initially offered by DCA) to ensure sufficient time for tenants and other groups to comment once the proposed agreement appears in the Register. I am enclosing for your records a copy of the Amended Regulatory Agreement and the letter agreement between all the plaintiffs and DCA.

A review of the Amended Regulator Agreement indicates that Applied has increased the percentage of guaranteed low-income units to 40% and has agreed to lease all vacated apartments in its covered units to an otherwise eligible Section 8 holder who applies within 30 days (increased from 14) of the vacancy. The rent cannot be more than 30% of that tenants income --- an additional limitation that plaintiffs achieved. Although Applied has agreed to notify only the Hoboken Housing Authority in addition to DCA in the event of a vacancy, DCA in turn has agreed to notify all Section 8 field offices in Northern New Jersey of such vacancy. We believe that these procedural requirements, if properly implemented will result in 100% of Applied's units remaining affordable.

Toward this end, New Jersey Appleseed Public Interest Law Center is interested in helping the plaintiffs develop a monitoring system through which we can hold Barry's feet to the fire. We need to direct a steady stream of potential Section 8 tenants to his buildings, and to send "testers" if we do not see rents decreasing upon vacancies-- a trend that should occur as regular Section 8 holders replace those with enhanced vouchers.

If you are interested in organizing such effort, please contact me as soon as possible. I would like to get something in place before November. Thanks very much for all your effort, and I apologize for the delay in getting you copies of the respective agreements.

Very truly yours,



Renée Steinhausen
Executive Director

Enclosures

cc: David Broderick
Laura Leacy Kyler



7/31/02

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
PO BOX 112
TRENTON, NJ 08625-0112
E-Mail: resnimel@law.dol.lps.state.nj.us

JAMES E. MCGREEVEY
Governor

DAVID SAMSON
Attorney General

DOUGLAS K. WOLFSON
Assistant Attorney General
Director

(609) 943-5626

July 10, 2002

Laura A. Leacy, Esq.
McCarter & English, LLP Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102

Re: Housing and Commuhnity Development Network of New
Jersey, et al. V. Applied Housing Management Co.,
Inc., et al.
Docket No: A-4832-00T3

Dear Laura:

This letter shall set forth the terms upon which the plaintiffs, HUD Tenant's Coalition, New Jersey Tenants' Organization, Tenants Preservation Project of New Jersey, Public Interest Law Center of New Jersey and Helen Hirsch ("Plaintiffs") and the State of New Jersey Department of Community Affairs ("DCA") have agreed to settle the claims between them in the above-referenced matter.

1. Within ninety (90) days of the date of this letter, the Division of Codes and Standards shall recommend an amendment to the current rules regarding the Limited Dividend Nonprofit Housing Corporations and Associations Law, N.J.S.A. 55:16-1 et seq. and its regulations, that shall require that a landlord who seeks to enter into a regulatory agreement or any amendment of a regulatory agreement, pursuant to N.J.A.C. 5:13-1.12(a)5, to give at least seventy-five (75) days prior notice to all affected tenants and to the municipality, to the Commissioner and the Office of the Governor. This notice shall be sent to tenants by certified mail, and if not claimed, the notice shall be sent by regular mail. This notice shall include a communication from DCA and information advising tenants as to how they or a representative of their choosing may submit comments on the proposed regulatory agreements to DCA.



2. DCA shall also submit for publication in the next available issue of the New Jersey Register notice of any such proposed regulatory agreement or any amendment of a regulatory agreement as set forth above. This notice shall be for informational purposes only. DCA shall submit the notice for publication as soon as possible, but in no event later than the date notice is sent to tenants as set forth in paragraph 1 above.

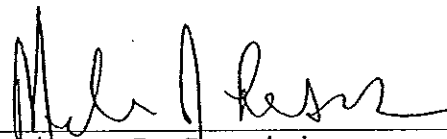
3. Upon receipt by DCA of a vacancy in any of the housing units owned or operated by Applied Housing Management Co., Inc., Mr. Joseph Barry, or the partnerships in which Applied or Mr. Barry is a general partner, Division of Housing and Community Resources, shall notify DCA's Section 8 field offices in Northern New Jersey, including Bergen, Essex, Hudson and Passaic counties, of such vacancy.

Please indicate your agreement with these terms by executing a copy of this letter below.

Sincerely yours,

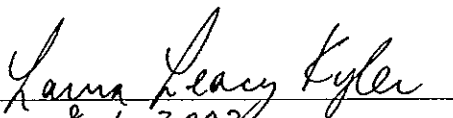
DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY

By:


Melissa J. Resnick
Deputy Attorney General

Agreed to and accepted by:

MCCARTER & ENGLISH, LLP
Attorneys for Public Interest Law Center of New Jersey

By: 
Dated: 8-1-2002

Laura Leacy Kyler, Esq.

PUBLIC INTEREST LAW CENTER OF NEW JERSEY
Attorneys for HUD Tenant's Coalition,

July 10, 2002
Page 3

New Jersey Tenants' Organization,
Tenants Preservation Project of New Jersey, and Helen Hirsch

By: Renée Steinhagen
Dated: July 31, 2002
Renée Steinhagen, Esq.

C:
William Connolly, Director
Division of Codes and Standards

SECOND AMENDMENT TO REGULATORY AGREEMENT

Second Amendment to Regulatory Agreement between Northvale IIIB Urban Renewal Associates, L.P. and the New Jersey Department of Community Affairs (DCA) made as of this _____ day of December, 2001.

WHEREAS, the parties have entered into a Regulatory Agreement (the "Agreement") dated as of December 9, 1998, as amended by an Amendment to Regulatory Agreement (the "First Amendment") dated as of November 28, 2000; and

WHEREAS, the parties desire to further amend the Regulatory Agreement, as amended, by this Second Amendment to Regulatory Agreement;

NOW THEREFORE, the parties agree to further amend the Regulatory Agreement as follows:

1. Paragraph 3 of the Agreement is hereby amended to read as follows:

The Partnership shall notify DCA and the Hoboken Housing Authority at any time an apartment in the Building shall be vacated by a tenant. The Partnership shall not rent such apartment for a period of thirty (30) calendar days from the date Partnership notifies DCA and the Hoboken Housing Authority of the availability of the apartment to anyone other than a household which possesses a Regular Voucher at the Hoboken Payment Standard, and which meets the Partnership's

tenant selection criteria, such criteria to include, without limitation, results of credit checks, home inspection visits to determine the ability of the household to maintain a safe, clean and sanitary home and past or present substance abuse which could disturb the peace and enjoyment of tenants in the Building. If no such potential tenant presents itself to the Partnership prior to the expiration of the aforesaid 30 day period, the Partnership shall be free to rent the apartment to anyone at Market Rent.

2. Paragraph 4 of the Agreement is amended to add thereto Paragraph 4A, reading as follows:

4A - The Partnership shall at all times rent no less than 40% (forty percent) of the total apartments in the Building to Low-Income or Very Low-Income tenants who are eligible for and for whom the Partnership is able to realize government "subsidies". "Subsidies" are defined herein as the payment to the Partnership by government agencies -- on behalf of those tenants who contribute directly towards their rent not more than 30% of their family household income -- an amount equal to not less than 120% of HUD-established Fair

Market Rent (FMR) for the Standard Metropolitan Statistical Area which includes Hoboken, New Jersey. Nothing herein contained shall limit the Partnership's receipt of subsidies to 120% of HUD-established FMR, but that shall be the minimum condition for the commitment contained herein. In the event such "subsidies", as defined above, are not available, or in the event that, despite its best efforts, eligible tenants cannot be located who wish to occupy the apartments, the guarantee contained herein shall be suspended. Units guaranteed pursuant to Paragraph 4 above shall be included in and count towards the total of guaranteed units provided under this Paragraph 4A.

3. Nothing contained herein shall be in derogation of, or shall otherwise be deemed to affect, the obligations of the Partnership set forth in Paragraphs 2.1.1, 2.1.2, 2.2, 4 and 5 of the Agreement as amended by the First Amendment.

4. Except as set forth herein, all provisions of the Agreement and Amendment shall be and remain in full force and effect according to their terms.

NORTHVALE IIIB URBAN RENEWAL
ASSOCIATES, L.P.

Date:

By: _____
Joseph Barry, General Partner

SECOND AMENDMENT TO REGULATORY AGREEMENT

Second Amendment to Regulatory Agreement between Washington Estates Urban Renewal Associates, L.P. and the New Jersey Department of Community Affairs (DCA) made as of this _____ day of December, 2001.

WHEREAS, the parties have entered into a Regulatory Agreement (the "Agreement") dated as of November 10, 1998, as amended by an Amendment to Regulatory Agreement (the "First Amendment") dated as of November 28, 2000; and

WHEREAS, the parties desire to further amend the Regulatory Agreement, as amended, by this Second Amendment to Regulatory Agreement;

NOW THEREFORE, the parties agree to further amend the Regulatory Agreement as follows:

1. Paragraph 3 of the Agreement is hereby amended to read as follows:

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tenant selection criteria, such criteria to include, without limitation, results of credit checks, home inspection visits to determine the ability of the household to maintain a safe, clean and sanitary home and past or present substance abuse which could disturb the peace and enjoyment of tenants in the Building. If no such potential tenant presents itself to the Partnership prior to the expiration of the aforesaid 30 day period, the Partnership shall be free to rent the apartment to anyone at Market Rent.

2. Paragraph 4 of the Agreement is amended to add thereto Paragraph 4A, reading as follows:

4A - The Partnership shall at all times rent no less than 40% (forty percent) of the total apartments in the Building to Low-Income or Very Low-Income tenants who are eligible for and for whom the Partnership is able to realize government "subsidies". "Subsidies" are defined herein as the payment to the Partnership by government agencies -- on behalf of those tenants who contribute directly towards their rent not more than 30% of their family household income -- an amount equal to not less than 120% of HUD-established Fair

Market Rent (FMR) for the Standard Metropolitan Statistical Area which includes Hoboken, New Jersey. Nothing herein contained shall limit the Partnership's receipt of subsidies to 120% of HUD-established FMR, but that shall be the minimum condition for the commitment contained herein. In the event such "subsidies", as defined above, are not available, or in the event that, despite its best efforts, eligible tenants cannot be located who wish to occupy the apartments, the guarantee contained herein shall be suspended. Units guaranteed pursuant to Paragraph 4 above shall be included in and count towards the total of guaranteed units provided under this Paragraph 4A.

3. Nothing contained herein shall be in derogation of, or shall otherwise be deemed to affect, the obligations of the Partnership set forth in Paragraphs 2.1.1, 2.1.2, 2.2, 4 and 5 of the Agreement as amended by the First Amendment.

4. Except as set forth herein, all provisions of the Agreement and Amendment shall be and remain in full force and effect according to their terms.

WASHINGTON ESTATES URBAN
RENEWAL ASSOCIATES, L.P.

Date:

By: _____
Joseph Barry, General Partner

By: Applied Housing Management Co., Inc.
General Partner

Date:

By: _____
Joseph Barry, President

NEW JERSEY DEPARTMENT OF
COMMUNITY AFFAIRS

Date:

By: _____
William Connolly
Director, Division of Codes and Standards

McCARTER & ENGLISH, LLP

Attorneys At Law
Four Gateway Center
100 Mulberry Street
P.O. Box 652
Newark, New Jersey 07101-0652
(973) 622-4444
Attorneys for Plaintiff
Public Interest Law Center of New Jersey

PUBLIC INTEREST LAW CENTER OF NEW JERSEY

833 McCarter Highway
Newark, New Jersey 07102
(973) 642-8719
Attorneys for Plaintiffs
Housing and Community Development
Network of New Jersey (formerly known as
Affordable Housing Network), HUD Tenant's
Coalition, YWCA of Hudson County, New
Jersey Tenants' Organization, Tenants
Preservation Project of New Jersey, and Helen
Hirsch

Housing and Community Development	:	SUPERIOR COURT OF NEW JERSEY
Network of New Jersey (formerly known as	:	CHANCERY DIVISION, GENERAL EQUITY:
Affordable Housing Network), HUD Tenant's	:	HUDSON COUNTY
Coalition, YWCA of Hudson County, New	:	DOCKET NO.
Jersey Tenants' Organization, Tenants	:	
Preservation Project of New Jersey, Public	:	
Interest Law Center of New Jersey, and Helen	:	Civil Action
Hirsch,	:	
	:	
	:	CERTIFICATION OF
Plaintiffs,	:	LAURA A. LEACY
vs.	:	
	:	
Applied Housing Management Co., Inc.,	:	
Joseph Barry, and State of New Jersey	:	
Department of Community Affairs	:	
Defendants.	:	

LAURA A. LEACY, of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and an associate at McCarter & English, LLP, counsel for plaintiff Public Interest Law Center of New Jersey. I make this Certification in opposition to Defendants' motion to transfer this matter to the Appellate Division pursuant to Rule 1:13-4.

2. Attached hereto as Exhibit A is a true copy of Plaintiffs' Demand to Defendant State of New Jersey Department of Community Affairs for Certified Answers to Interrogatories.

3. Attached hereto as Exhibit B is a true copy of Plaintiffs' Demand to Defendants Applied Housing Management Co., Inc. and Joseph Barry for Certified Answers to Interrogatories.

4. On or about January 19, 2001, Keith A. Costill, Deputy Attorney General, forwarded to all counsel documents in partial response to Plaintiffs' discovery requests. Attached hereto as Exhibit C is a true copy of Mr. Costill's January 19, 2001 cover letter.

5. Mr. Costill's letter states that the documents produced therewith is the "file of the Department of Community Affairs for the Regulatory Agreements at issue." It also states "this material will comprise the record on appeal in the event that the motion is granted."

6. I have reviewed all of the documents produced by DCA. Other than the regulatory agreements themselves, there are only two documents in the file that are dated before the entry of the regulatory agreements at issue. The majority of the file produced are newspaper clippings and correspondence dated after the entry of the regulatory agreements and after the filing of this action. Attached hereto as Exhibit D are true copies of the two documents from DCA's file, a Memorandum dated November 10, 1998 from Director William M. Connolly to Stewart Palilonis and a December 11, 1998 letter from Barbara Oif Stack, General Counsel of the Applied Companies to William Connolly.

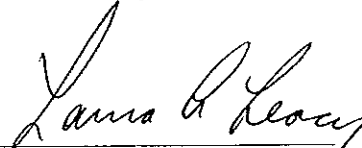
7. Attached hereto as Exhibit E is a true copy of a September 17, 1999 letter from Renee Steinhagen of the Public Interest Law Center of New Jersey to Commissioner Jane Kenny of the DCA.

8. Attached hereto as Exhibit F is a true copy of a October 25, 1999 letter from Commissioner Jane Kenny to Renee Steinhagen, Executive Director of the Public Interest Law Center of New Jersey.

9. Attached hereto as Exhibit G is a true copy of a February 24, 2000 letter from the Public Interest Law Center to Commissioner Kenny.

10. Attached hereto as Exhibit H is a true copy of a Regulatory Agreement entered into between the New Jersey Department of Community Affairs and Northvale Associates IIIA dated December 9, 1998.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



Laura A. Leacy

Dated: February 8, 2001

McCARTER & ENGLISH, LLP

Attorneys At Law
Four Gateway Center
100 Mulberry Street
P.O. Box 652
Newark, New Jersey 07101-0652
(973) 622-4444
Attorneys for Plaintiff
Public Interest Law Center of New Jersey

PUBLIC INTEREST LAW CENTER OF NEW JERSEY

833 McCarter Highway
Newark, New Jersey 07102
(973) 642-8719
Attorneys for Plaintiffs
Housing and Community Development
Network of New Jersey (formerly known as
Affordable Housing Network), HUD Tenant's
Coalition, YWCA of Hudson County, New
Jersey Tenants' Organization, Tenants
Preservation Project of New Jersey, and Helen
Hirsch

Housing and Community Development	:	SUPERIOR COURT OF NEW JERSEY
Network of New Jersey (formerly known as	:	CHANCERY DIVISION, GENERAL EQUITY:
Affordable Housing Network), HUD Tenant's	:	HUDSON COUNTY
Coalition, YWCA of Hudson County, New	:	
Jersey Tenants' Organization, Tenants	:	DOCKET NO. C-141-00
Preservation Project of New Jersey, Public	:	
Interest Law Center of New Jersey, and Helen	:	Civil Action
Hirsch,	:	
	:	PLAINTIFFS' DEMAND TO DEFENDANT
Plaintiffs,	:	STATE OF NEW JERSEY DEPARTMENT
vs.	:	OF COMMUNITY AFFAIRS FOR
	:	CERTIFIED ANSWERS TO
Applied Housing Management Co., Inc.,	:	INTERROGATORIES
Joseph Barry, and State of New Jersey	:	
Department of Community Affairs	:	
Defendants.	:	

TO: Keith A. Costill, Esq.
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Law

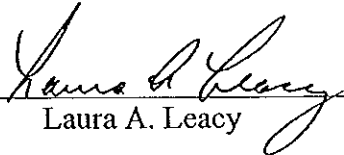
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Richard J. Hughes Justice Complex
25 Market Street
PO Box 112
Trenton, NJ 08625-0112

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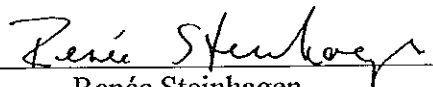
Demand is hereby made of defendant State of New Jersey Department of Community Affairs ("DCA"), for certified answers to the following Interrogatories within the time prescribed by the Rules of Court.

McCARTER & ENGLISH, L.L.P.
Attorneys for Plaintiff
Public Interest Law Center of New Jersey

By: 
Laura A. Leacy

Dated: 12/7/00

PUBLIC INTEREST LAW CENTER OF
NEW JERSEY
Attorneys for Plaintiffs
Housing and Community Development
Network of New Jersey (formerly known as
Affordable Housing Network), HUD
Tenant's Coalition, YWCA of Hudson
County, New Jersey Tenants' Organization,
Tenants Preservation Project of New Jersey,
and Helen Hirsch

By: 
Renée Steinhagen

Dated: 12/7/00

1. With respect to defendant's Third Affirmative Defense in its Answer to the Complaint, set forth the factual basis or bases as to how the defendant was "at all times acting pursuant to lawful authority invested in it by the State."

2. With respect to defendant's Sixth Affirmative Defense in its Answer to the Complaint, set forth the "statutory responsibilities under the laws of the State of New Jersey" with which defendant alleges it was consistent in exercising its "discretionary powers" as to all actions complained of in the Complaint.

3. With respect to defendant's Sixth Affirmative Defense in its Answer to the Complaint, set forth the factual basis or bases as to how or why defendant's exercise of "discretionary powers" was "consistent with statutory responsibilities under the law of the State of New Jersey."

4. With respect to defendant's First Separate Defense in its Answer to the Complaint, set forth the factual basis or bases as to why the Complaint fails to state a claim upon which relief may be granted.

5. With respect to Exhibit A attached to defendant's Answer to the Complaint, set forth the factual or legal basis for the statement that the issue raised by plaintiffs does not "fall within the scope of the complaint procedure established by the limited dividend rules."

6. a.) For each of the entities listed in paragraph 10 (a)-(i) of the Complaint, please state whether each is subject to the laws and regulations of the Limited Dividend NonProfit Housing Corporation or Association Law, N.J.S.A. 55:16-1 et. seq.

b.) If not, explain in detail why it is not, and set forth the statute, laws and/or regulations it is subject to.

7. For each of the entities listed in paragraph 10 (a)-(i) of the Complaint, state whether each entity applied to the DCA for approval or requested a release from the provisions of N.J.S.A. 55:16-1 et. seq. For each such entity, state whether DCA granted approval for such a release. Attach all documents related to the request and approval.

8. For each entity DCA granted approval for a release in interrogatory number 7 above, did the city of Hoboken consent, by resolution or otherwise, to DCA's approval of the entity's application for a release, as set forth in N.J.S.A. 55:16-22. If yes, please attach all documents related to Hoboken's consent.

9. Has the city of Hoboken ever passed a resolution stating to the effect that there is no housing shortage in Hoboken? If yes, set forth the date the resolution was passed and attach a copy.

10. Did the DCA enter into any regulatory agreement with any of the entities listed in paragraph 10 (a)-(i) of the Complaint? If yes, for each such entity, set forth in detail (a) the date such agreement was entered into, (b) with whom it was entered, (c) the purpose of the agreement, (d) the content and substance of the agreement, and attach copies of all such regulatory agreements.

11. For each and every regulatory agreement entered into by and between the DCA and any of the entities listed in paragraph 10 (a)-(i) of the Complaint, attach copies of all documents that relate to, describe, concern, or refer to such regulatory agreements.

12. Does DCA possess any correspondence to and/or from the City of Hoboken from 1996 to the present regarding the properties at issue in this lawsuit? If so, set forth in detail a description of all correspondence. In addition, provide copies of all such correspondence.

13. For any entity listed in paragraph 10 of the Complaint that has dissolved under or been released from N.J.S.A. 55:16-1 et seq., has any such entity, Applied Housing Management Co., Inc. ("Applied"), or Joseph Barry made any payment to the State or returned any surplus to the State as set forth in N.J.S.A. 55:16-22 and 55:16-5.1 If yes, set forth the amount of payment, the date of such payment and attach all documents related to such payment.

14. Does DCA possess any correspondence to and/or from Applied, Joseph Barry, or any entities listed in paragraph 10 of the Complaint from 1996 to the present regarding the properties at issue in this lawsuit? If so, set forth in detail a description of all correspondence. In addition, provide copies of all such correspondence.

15. Did DCA meet with Joseph Barry, Applied, or representatives of Applied or any entity listed in paragraph 10 of the Complaint regarding the properties at issue in this lawsuit? For each such meeting, state whether it was in person or via conference call, when it took place, who was present, set forth in detail the content and substance of the discussion, and whether any documents exist that relate to that meeting or conference call. If there are any such documents, please provide copies.

16. With respect to the regulatory agreements between DCA and the properties at issue, did DCA discuss with any other defendant or entity listed in paragraph 10 of the Complaint the procedure to be used to locate new tenants with Section 8 vouchers subsequent to any tenant vacating the premises of any of the properties at issue in this lawsuit. If yes, set forth in detail the procedure. If this procedure is in writing, please attach copies.

17. Does DCA occupy and/or have the use of any offices on the premises of any of the properties at issue in this lawsuit or any other property managed by Applied Housing Management Co., Inc.? If so, please state the address of those offices and/or attach copies of any applicable lease agreements.

18. Do you have any manuals, memoranda, or documents regarding the implementation of N.J.S.A. 55:16-1 et seq. since its inception? If yes, please provide copies of all documents.

19. Has the DCA sent any documents to the legislative or executive branch of the State of New Jersey related to N.J.S.A. 55:16-1 et seq.? If yes, provide copies of all such documents.

20. Has any limited dividend housing corporation or association sought approval from the DCA for a release from the provisions of N.J.S.A. 55:16-1 et seq. since the statute was enacted? If yes, set forth in detail the (a) name of the entity, (b) when the application was made, (c) the content and substance of the application, (d) whether approval was granted, and attach copies of all documents related to the request and approval.

21. Has DCA entered into any regulatory agreements (other than the regulatory agreements at issue) with a limited dividend housing corporation or association since 1996 to the present. If yes, set forth in detail (a) the date the agreement was entered into, (b) the parties to the agreement, (c) the substance and content of the agreement, and provide copies of all such agreements.

22. Has DCA received any complaints pursuant to the procedure set forth in N.J.A.C. 5:13-1.15 since 1996 to the present? If yes, set forth (a) the name of the complaining party, (b) the content and substance of the complaint, (c) the date the complaint was made, (d) the response of DCA, and attach copies of all documents related to the complaint and DCA's response.

23. Explain in detail the calculation of dividends under N.J.S.A. 55:16-1 et seq. and under N.J.S.A. 40A:20-1 et seq. Explain in detail the differences, if any, in those calculations.

24. Since the date the regulatory agreements were entered into between DCA and the entities at issue, has DCA approved any increase in rent for any property at issue in this lawsuit? If yes, was any public hearing held on the rent increase? In addition, set forth in detail (a) which entity sought such approval, (b) the date approval was sought and granted by DCA, and (c) the date any public hearings were held on the rent increase. Attach copies of all documents related to the request for and approval of the rent increase.

25. Has DCA approved a rent increase for any other properties subject to regulation under N.J.S.A. 55:16-1 et seq. If yes, set forth (a) name of property, (b) the name and type of the entity that owns the property, (c) the date approval was sought, (d) the date approval was granted by DCA, and (e) whether any public hearings were held on the rent increase. Attach copies of all documents related to the request for the approval of the rent increase.

26. Have any admissions been made by the party or parties serving these Interrogatories, or any of its agents, servants or employees concerning the subject matter of this litigation.

27. If the answer to the preceding question is yes, set forth in detail (a) the time, date and place of each admission; (b) the content and substance of each admission; (c) the name and address of each person making an admission; (d) if the admission was an oral communication, the name and address of all persons present when the admission was made; (e.) if the admission was made in writing, attach hereto a copy of any such writing; and (f) if the admission was made in an oral communication described verbatim, to the extent possible, what was said by each party to such oral communication.

28. If DCA intends to rely on any statute, rule, regulation, or ordinance in defense of any of the claims made against them, state the exact title and section.

29. Set forth the names and addresses of persons who have assisted in providing the answers to these Interrogatories and set forth the relationship of each person to DCA.

CERTIFICATION

I hereby certify that the foregoing statements made by me are true. I further certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party, and in any event, no later than 20 days before the first trial date in this cause.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: _____

McCARTER & ENGLISH, LLP

Attorneys At Law

Four Gateway Center

100 Mulberry Street

P.O. Box 652

Newark, New Jersey 07101-0652

(973) 622-4444

Attorneys for Plaintiff

Public Interest Law Center of New Jersey

PUBLIC INTEREST LAW CENTER OF NEW JERSEY

833 McCarter Highway

Newark, New Jersey 07102

(973) 642-8719

Attorneys for Plaintiffs

Housing and Community Development

Network of New Jersey (formerly known as

Affordable Housing Network), HUD Tenant's

Coalition, YWCA of Hudson County, New

Jersey Tenants' Organization, Tenants

Preservation Project of New Jersey, and Helen

Hirsch

Housing and Community Development	:	SUPERIOR COURT OF NEW JERSEY
Network of New Jersey (formerly known as	:	CHANCERY DIVISION, GENERAL EQUITY:
Affordable Housing Network), HUD Tenant's	:	HUDSON COUNTY
Coalition, YWCA of Hudson County, New	:	
Jersey Tenants' Organization, Tenants	:	DOCKET NO. C-141-00
Preservation Project of New Jersey, Public	:	
Interest Law Center of New Jersey, and Helen	:	Civil Action
Hirsch,	:	
	:	PLAINTIFFS' DEMAND TO
Plaintiffs,	:	DEFENDANTS APPLIED HOUSING
vs.	:	MANAGEMENT CO., INC. AND JOSEPH
	:	BARRY FOR CERTIFIED ANSWERS TO
Applied Housing Management Co., Inc.,	:	INTERROGATORIES
Joseph Barry, and State of New Jersey	:	
Department of Community Affairs	:	
Defendants.	:	

TO: LAWRENCE ORLOFF, ESQ.
ORLOFF, LOWENBACH, STIFELMAN & SIEGEL, P.A.
101 Eisenhower Parkway
Roseland, New Jersey 07068-1082
(973) 622-6200

B

IRA KARASICK, ESQ.
460 Bloomfield Avenue
Montclair, New Jersey 07402
(973)509-1800

S I R S :

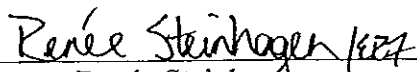
Demand is hereby made of defendants Joseph Barry and Applied Housing Co., Inc. for certified answers to the following Interrogatories within the time prescribed by the Rules of Court.

McCARTER & ENGLISH, L.L.P.
Attorneys for Plaintiff
Public Interest Law Center of New Jersey

By: 
Eric R. Fish

Dated: Nov. 30, 2000

PUBLIC INTEREST LAW CENTER OF
NEW JERSEY
Attorneys for Plaintiffs
Housing and Community Development
Network of New Jersey (formerly known as
Affordable Housing Network), HUD
Tenant's Coalition, YWCA of Hudson
County, New Jersey Tenants' Organization,
Tenants Preservation Project of New Jersey,
and Helen Hirsch

By: 
Renée Steinhagen

Dated: Nov. 30, 2000

1. With respect to defendants' Seventh Separate Defense in its Answer to the Complaint, set forth the factual basis or bases as to why the "affected tenants in each project and the actual owners of the projects" are indispensable parties to this action.

2. With respect to defendants' Seventh Separate Defense in its Answer to the Complaint, set forth the names and most recent addresses of the "actual owners of the projects identified in Paragraph 10 of the Complaint."

3. With respect to defendants' Sixth Separate Defense in its Answer to the Complaint, set forth the factual basis or bases as to why defendants' actions "were properly authorized under the appropriate statutory enactments."

4. With respect to defendants' Ninth Separate Defense in its Answer to the Complaint, set forth the factual basis or bases as to why plaintiffs have "unclean hands".

5. With respect to Paragraphs 10 and 11 of defendants' Answer, set forth the new names of the entities enumerated in Paragraph 10 of plaintiffs' Complaint. Please also set forth the nature of these entities (*i.e.*, corporation, partnership, limited dividend corporation/partnership, limited liability corporation/partnership, etc.)

6. Set forth the names and addresses of each and every investor with respect to any of the properties at issue in this lawsuit. Please also set forth (a) the specific properties and/or partnerships in which each investor has an investment, (b) the date on which the investor placed his or her investment, (c) the last known address of each investor, and (d) the actual investment of each investor.

7. Set forth the amount of profits or dividends paid out to each investor of the properties at issue in this lawsuit for each year since 1996.

8. Set forth in detail the method by which profits or dividends for each of the properties at issue are calculated.

9. Set forth in detail the method by which reserves are calculated for each of the properties at issue in this lawsuit.

10. Set forth the rents registered with the City of Hoboken for each of the apartments located in the properties at issue in this lawsuit. Please also set forth whether the rents registered with the City of Hoboken differ with any of the rents actually being charged to and/or collected from

the tenants of the properties at issue. If so, please state the amounts of the rents being charged and/or collected.

11. Set forth the amounts each limited dividend entity at issue in this lawsuit pays in service charges to the City of Hoboken in lieu of taxes since the year 1996.

12. Do defendants possess any correspondence to and/or from the City of Hoboken since the year 1996 regarding the properties at issue? If so, set forth in detail a description of all correspondence. In addition, provide copies of all such correspondence.

13. Do defendants possess any correspondence to and/or from the New Jersey Department of Community Affairs since the year 1996 regarding the properties at issue? If so, set forth in detail a description of all correspondence. In addition, provide copies of all such correspondence.

14. Do defendants possess any correspondence to and/or from the federal office of Housing & Urban Development or any other federal agencies since the year 1990 regarding the properties at issue? If so, set forth in detail a description of all correspondence. In addition, provide copies of all such correspondence.

15. Do defendants possess any correspondence to and/or from investors of the properties at issue since the year 1996 regarding any agreements made with the New Jersey Department of Community Affairs? If so, set forth in detail a description of all correspondence. In addition, provide copies of all such correspondence.

16. Do defendants possess any correspondence to and/or from any state agency besides the New Jersey Department of Community Affairs since the year 1996 regarding the properties at issue? If so, set forth in detail a description of all correspondence. In addition, provide copies of all such correspondence.

17. Did defendants meet with investors regarding any agreements with the New Jersey Department of Community Affairs? If so, please set forth in detail the discussions that occurred during these meetings. In addition, provide any copies of the minutes of such meetings.

18. Do defendants possess any correspondence to and/or from any bank or other lending institution since the year 1996 regarding the mortgages for the properties at issue? If so, set forth in detail a description of all correspondence. In addition, provide copies of all such correspondence.

19. Have the properties at issue in this lawsuit ever undergone any type of renovation? If so, please set forth in detail each renovation project and the dates thereof.

20. Set forth in detail a description of any pilot agreements or any other agreements to pay a service charge in lieu of property taxes for each of the properties at issue in this lawsuit for each of the properties at issue. Please attach copies of all pilot agreements.

21. Set forth Applied Housing Management Co., Inc.'s annual management fee charged for each of the properties at issue for each year since 1990.

22. With respect to the regulatory agreements with New Jersey Department of Community Affairs, set forth the procedure used to locate new tenants subsequent to any tenant vacating the premises of any of the properties at issue in this lawsuit. If this procedure is in writing, please attach copies.

23. How many tenants have vacated the premises of any of the properties at issue in this lawsuit since the regulatory agreements with New Jersey Department of Community Affairs went into effect? Please identify the names and last known addresses of such former tenants.

24. How many new tenants have moved into the properties at issue in this lawsuit since the regulatory agreements with New Jersey Department of Community Affairs went into effect? How many of these new tenants qualify for low or middle income housing (please use the same definition of "low" and "middle" income as used in the regulatory agreements)? How many of these tenants receive Section 8 vouchers?

25. Has either Applied Housing Management Co., Inc. or Joseph Barry given (or caused to have given) to tenants of the properties at issue in this lawsuit any written materials regarding this lawsuit or the regulatory agreements with New Jersey Department of Community Affairs? If so, please attach copies of any such written materials.

26. Does the New Jersey Department of Community Affairs occupy and/or have the use of any offices on the premises of any of the properties at issue in this lawsuit or any other property managed by Applied Housing Management Co., Inc.? If so, please state the address of those offices and/or attach copies of any applicable lease agreements.

27. Have any admissions been made by the party or parties serving these Interrogatories, or any of its agents, servants or employees concerning the subject matter of this litigation.

28. If the answer to the preceding question is yes, set forth in detail (a) the time, date and place of each admission; (b) the content and substance of each admission; (c) the name and address of each person making an admission; (d) if the admission was an oral communication, the name and address of all persons present when the admission was made; (e.) if the admission was made in writing, attach hereto a copy of any such writing; and (f) if the admission was made in an oral communication described verbatim, to the extent possible, what was said by each party to such oral communication.

29. If defendants intend to rely on any statute, rule, regulation, or ordinance in defense of any of the claims made against them, state the exact title and section.

30. Set forth the names and addresses of persons who have assisted in providing the answers to these Interrogatories and set forth the relationship of each person with Plaintiff.

31. Prior to entering into the regulatory agreements with the New Jersey Department of Community Affairs, did either Applied Housing Management Co., Inc. or Joseph Barry take any steps to sell the properties at issue or dissolve the partnerships owning the properties at issue? Please set forth all steps taken and the reasons those steps were taken.

32. Prior to entering into the regulatory agreements with the New Jersey Department of Community Affairs, did either Applied Housing Management Co., Inc. or Joseph Barry take any

steps to obtain a release from the Section 55:16 requirements from the City of Hoboken? Please set forth all steps taken and the reasons those steps were taken.

CERTIFICATION

I hereby certify that the foregoing statements made by me are true. I further certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party, and in any event, no later than 20 days before the first trial date in this cause.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

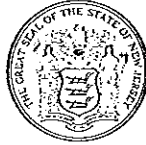
By: _____

RECEIVED

JAN 22 2001

L.A.L.

CHRISTINE TODD WHITMAN
Governor



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
PO BOX 112
TRENTON, NJ 08625-0112
E-Mail: costikei@law.dol.lps.state.nj.us

(609) 292-9302

January 19, 2001

L.A.L.

JAN 19 2001

RECEIVED

JOHN J. FARMER, JR.
Attorney General

JEFFREY J. MILLER
Assistant Attorney General
Director

EXPRESS MAIL

TO: ALL COUNSEL ON ATTACHED SERVICE LIST

Re: Housing and Community Development Network, et al.
v. Applied Housing Management Co., Inc., et al.
Docket No. C-141-00

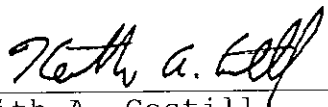
Dear Counsel:

Enclosed please find a true copy of the file of the Department of Community Affairs for the Regulatory Agreements at issue in the above-captioned matter. As you know, I am forwarding the file pursuant to preliminary discovery requirements with respect to the motion of the Department to transfer the complaint to the Appellate Division. Moreover, this material will comprise the record on appeal in the event that the motion is granted. If you have any questions, please contact me at (609) 292-9302.

Sincerely yours,

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY

By:


Keith A. Costill
Deputy Attorney General

Enclosures

C

MEMORANDUM

To: Stewart Palilonis
From: Director William M. Connolly
Re: Regulatory Agreements for Barry Partnership Properties
Date: November 10, 1998

Enclosed please find copies of regulatory agreements that I have approved for seven properties in Hoboken owned by partnerships for which Joseph Barry is the general partner.

We have agreed that the partnership certificates may be revised to take advantage of the more liberal income distribution provisions of the Long Term Tax Exemption Law. Your office will be getting the revised certificates for review shortly. However, the partnerships will remain subject to the restrictions on transfer set forth in the Limited Dividend Housing Law as well, since they will not be new partnerships.

The regulatory agreements satisfy our objectives because they guarantee that 20% of the units will be internally subsidized, if necessary, to maintain them as affordable to persons of low or moderate income, that current tenants will be protected against excessive rent increases and that persons of low and moderate income with rental assistance vouchers will continue to have the first right to rent any vacant units. We believe that this agreement is consistent with the intent of the Limited Dividend Housing Law and that, in an environment of reduced Federal subsidization, it provides a good model for the preservation of housing as affordable and viable.

3333U

D

The Applied Companies

5 MARINE VIEW PLAZA
SUITE 500
HOBOKEN, NEW JERSEY 07030
(201) 963-3194
FAX (201) 963-0148

*pl. c. 11/13/98
11/13/98
11/13/98
11/13/98*

December 11, 1998

Federal Express

William M. Connolly
Director
Division of Standards and Code
New Jersey Department of Community Affairs
101 South Broad Street
6th Floor
Trenton, New Jersey 08625

Re: Northvale Associates IIIA &
Northvale Associates IIIB

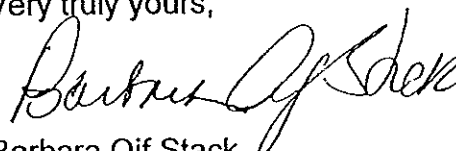
Dear Mr. Tickton:

We have prepared a Regulatory Agreements for two more Section 236 projects which we are refinancing on December 22, 1998. The agreements are identical to the one previously executed by DCA.

Would you kindly have the documents executed and return two copies of each to me at your earliest convenience.

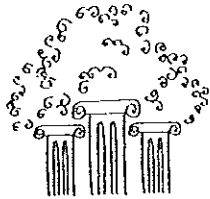
Thanks for your cooperation.

Very truly yours,



Barbara Oif Stack
General Counsel

BOS/gc
Enclosures



New Jersey
APPLESEED

September 17, 1999

Re: Limited Dividend and Nonprofit Housing Associations

The Honorable Jane M. Kenny
Commissioner
Department of Community Affairs
101 South Broad Street
Trenton, NJ 08625-0800

Dear Commissioner Kenny:

On behalf of the Public Interest Law Center of New Jersey, Affordable Housing Network, HUD Tenants' Coalition, YMCA of Hudson County, New Jersey Tenants' Organization and Tenants Preservation Project of New Jersey, we are writing to challenge the recent actions taken by the Department of Community Affairs ("DCA") and The Applied Companies of Hoboken, New Jersey regarding certain limited dividend nonprofit housing corporations located in Hoboken. Please accept this letter as a formal complaint pursuant to N.J.A.C. 5:13-1.15.

I. Introduction

We have recently learned that the Department of Community Affairs has entered into regulatory agreements with The Applied Companies approving the reorganization of nine housing projects in Hoboken, New Jersey. The regulatory agreements appear to have allowed the housing projects to change their regulatory status by simply amending their certificates of incorporation so as to bring themselves under the Long-Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq ("LTTEL"), thereby availing themselves of the higher rate of return, increase in equity base and other benefits afforded by that law. The concern of the Center and the affordable housing advocacy and development community is that these housing projects, which were

The Public Interest Law Center of New Jersey
833 McCarter Highway
Newark, New Jersey 07102-5112

Phone: 973.642.8719
Fax: 973.642.5939
E-mail: newjersey@appleseed.net
Website: <http://www.appleseed.net>

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The Honorable Jane M. Kenny
September 17, 1999
Page 2

created under the Limited Dividend Nonprofit Housing Corporations or Associations Law, N.J.S.A. 55:16-1 (the "55:16 Act"), are no longer controlled by the 55:16 rules and regulations, most importantly the 8% limit on return of investment. The approval of the regulatory agreements will have a devastating impact on low income tenants seeking housing in Hoboken and the efforts of the afore-listed organizations that advocate for the creation and maintenance of affordable housing in Hoboken as well as the rest of the State.

As a preliminary matter, we are aware that the 55:16 Act was replaced by the Long-Term Tax Exemption Law ("LTTEL"), N.J.S.A. 40A:20-1 et seq. We also understand however that the provisions of 55:16 remain in effect and continue to apply to all housing projects formed and operated under the 55:16 Act. Under the LTTEL, 55:16 projects were explicitly exempted from coverage ("no grandfather clause").

Though the correspondence that we have obtained between the Department and Applied indicates that the Department agrees that the provisions of 55:16 continue to apply to the housing projects in question, the regulatory agreements effectively release these projects from the restrictions and limitations imposed upon them under 55:16, most importantly the statutorily mandated 8% limit on return on investment. They have permitted the housing entities to change their regulatory status without following the explicit release provision of the act (55:16-22), thus gaining the benefits of the new law (the higher allowable net profit and an increase in its equity base on which the profit is calculated) without returning any surplus to the State, relinquishing their tax abatements, or recognizing any appreciation for federal and state tax purposes.

II. Purpose of 55:16

Under N.J.S.A. 55:16-1 et seq, limited dividend associations and corporations were established to provide private means for lessening the severe crowding and substandard housing prevalent in blighted areas. N.J.S.A. 55:16-9.1(8) requires that the association's certificate of organization declare:

that the housing association has been organized to serve a public purpose and use; that its operations shall be directed to providing for and making possible the clearance, planning, development or redevelopment of blighted areas; and that it will at all times be subject to the supervision of the authority until and unless released therefrom in accordance with the procedures set forth in section 1 of P.L. 1950, c. 69 (C 55:16-22) (emphasis added).

The 55:16 Act promulgates guidelines for the alleviation of the severe housing shortage for low and middle-income housing. The statute empowers the DCA to supervise the planning, development and management of the housing projects undertaken by an association or corporation under the Act. Use of full authority granted to DCA would require project sponsors to maintain rents and services within the guidelines set by DCA. Limited dividend associations and corporations receive tax incentives and low interest rates on loans to encourage the development of housing in blighted areas. See N.J.S.A. 55:16-2. However, stock holders of limited dividend housing associations and corporations are limited to an eight percent (8%) return on their investment as set forth in N.J.S.A. 55:16-5. Upon the dissolution of any such housing association or corporation, any surplus exceeding the eight percent limit must be forwarded to the State of New Jersey.

Limited dividend entities requesting release from the restrictions and limitations of the 55:16 Act must apply to DCA for approval. Before permission can be granted, the governing body of the municipality must also consent by resolution to the application, after a finding, by resolution, that "there no longer exists any housing shortage in the municipality by reason of which the project was originally approved." N.J.S.A. 55:16-22.

The regulatory agreements are inconsistent with and violate each of the key elements of the 55:16 Act. The regulatory agreements effectively release these projects from the restrictions and limitations imposed upon them under 55:16, most importantly the statutorily mandated 8% limit on return on investment, without following the explicit release provision of the act. They allow the projects to retain the tax benefits of 55:16, while enjoying the higher rate of return under LTTEL. They permit 80% of the housing units to be rented at fair market value at the time current occupants vacate and provide an unrealistic time frame for those with Section 8 vouchers to apply for those available units. The approval of the regulatory agreements will have a devastating impact on low income tenants seeking housing in Hoboken and there is a great chance that these affordable units will be lost forever.

A. Limit on Return of equity v. "net profit"

Under 55:16-5, every stockholder is limited to a rate of return on his or her investment not to exceed 8%. Further, upon dissolution of the housing organization, any surplus in excess of this amount must be paid to the State of New Jersey. The concept of the limited return of 55:16 is based on return of equity actually invested by the stockholder, not net profit. By contrast, 40A:20-3 is based on a calculation of an "allowable net profit" and increases the equity base by including unrealized appreciation. Under LTTEL, the sponsor has a higher allowable rate of return on the investment based on a concept of net profit and a basis that goes beyond actual investment.

In keeping with the true purpose of the 55:16 Act, any "profit" over the 8% limit made on the development or redevelopment or improvement of these housing projects, projects that originally were created under 55:16 to serve a public purpose and which should continue to remain subject to the rules and restrictions under 55:16, should not be retained by the private investor. At the very least, any profits over and above the 8% limited return on actual investment should go back into the reserve account or be earmarked for the public purpose to which these projects have been statutorily dedicated.

Another concern about these new regulatory agreements is that the duration of the regulatory agreement is tied to the term of the new mortgage obtained by Applied (which it secured in order to pay the HUD subsidized mortgage). If the entity prepays the mortgage, there appears to be no more regulatory control. Under 55:16, it is not the life of the mortgage that gives the state the power to regulate, but life under 55:16. Again, the terms of the regulatory agreements conflict with 55:16. If 55:16 is to apply only in certain circumstances, if at all, it is unclear from the face of the agreements what those circumstances are.

B. Release Provision

N.J.S.A. 55:16-22 requires the limited dividend housing corporation to apply to the DCA for permission to be released from the limitations and restrictions under the Act. Before permission can be granted, the governing body of the municipality must also consent by resolution to the application after a finding, by resolution, that "there no longer exists any housing shortage in the municipality by reason of which the project was originally approved."

We are not aware of any such resolution being passed by Hoboken. Instead, the regulatory agreements and correspondence indicate that DCA allowed the properties to change their status by merely amending their certificates of incorporation to include the language required by 40A:20-5. If this is a release from the 55:16 restrictions, then DCA should eliminate their tax abatements and require that any surplus in excess of the 8% limit be paid to the State. We do not understand why DCA entered into these new regulatory agreements which permit these properties to circumvent the explicit release provisions of the Act, yet retain the tax benefits of the 55:16 Act and achieve the higher rate of return under LTTEL.

C. Affordable Rents

Organizations created under 55:16 were formed to serve a public purpose, to provide accommodations for families in need of housing and provide for the development and redevelopment of blighted areas. The organizations have enjoyed property tax exemptions and other benefits in return for serving a public need. The purpose and intent of the Act and its

The Honorable Jane M. Kenny
September 17, 1999
Page 5

regulations is that "tenants whose housing need is greatest receive priority for occupancy in any project under the Act." N.J.A.C. 5:13-1.5.

The regulatory agreements bypass the procedures for controlling rents as provided for in the Act and regulations. See N.J.A.C. 5:13-1.12. Under the Act, any project applying for a rental increase must first give notice to all tenants of the application and their right to submit written comments to the DCA regarding the proposed rent increase. DCA can only approve rent increases after a public hearing and upon a finding "that any such increase is necessary in order to assure the continued viability of the project by allowing the housing sponsor to pay all necessary and reasonable expenses[.]" N.J.A.C. 5:13-1.12 (a)(2), (4). We understand that the regulations exempt changes to a building's regulatory agreement from these notice provisions, but we believe that DCA should not use this exemption to avoid public scrutiny and tenant participation in its decisions to increase rents or deregulate units under DCA's control.

It is also our understanding that 80% of the tenants in the Hoboken housing projects are now receiving project-based Section 8 subsidies and 20% have some subsidy under the 236 Basic rent program or are themselves paying HUD's market rate. The regulatory agreements allow 80% of the units to be rented at fair market value at the time current occupants vacate. Although the agreements provide that the apartments will be kept open for 15 days to enable persons with Section 8 vouchers to apply for available units, after the expiration of this 15-day period, the apartments may be rented to anyone at market rate. Because of the short time period and the lack of guidelines specifying how such potential tenants will be identified, there is a great chance that these affordable units will be lost forever.

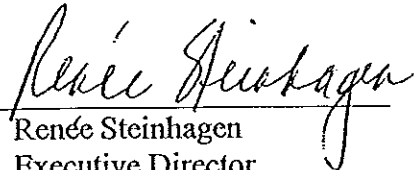
For all the above reasons, we believe the Regulatory Agreements were ultra vires and should be voided.

We and our counsel, McCarter & English, LLP, look forward to discussing these issues with you.

Respectfully,

Public Interest Law Center of New Jersey

By:


Renée Steinhagen
Executive Director



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

CHRISTINE TODD WHITMAN
Governor

JANE M. KENNY
Commissioner

October 25, 1999

Ms. Renec Steinhagen
Executive Director
Public Interest Law Center
of New Jersey
833 McCarter Highway
Newark, New Jersey 07102-5112

Dear Ms. Steinhagen:

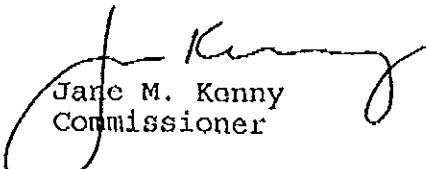
Thank you for your recent formal complaint regarding the Limited Dividend/Nonprofit Housing Corporation Law and certain projects located in the City of Hoboken which are subject to that law.

We don't believe that the issue that concerns you falls within the scope of the complaint procedure established by the limited dividend rules. That process was designed for complaints regarding entities subject to the law. Your concerns seem to more involve the rules adopted by the Department and decisions made by the Department acting under those rules.

We are, nonetheless, very interested to hear your point of view and those of your clients regarding the issue at hand. I have asked William M. Connolly, Director of our Division of Codes and Standards to convene a meeting with you and the affected property owner so that the issues can be fully explored. He will be in contact with you in the near future.

Thank you for bringing your concerns to our attention. I trust that we will be able to resolve them.

Sincerely,


Jane M. Kenny
Commissioner

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February 24, 2000

Jane M. Kenny, Commissioner
Department of Community Affairs
P.O. Box 800
101 South Broad Street
Trenton, New Jersey 08625-0800

Re: Limited Dividend and Nonprofit Housing Associations

Dear Commissioner Kenny:

In September, 1999, the Public Interest Law Center of New Jersey filed a formal complaint with the Department of Community Affairs on behalf of itself and several tenant and housing organizations in the state of New Jersey to challenge the recent actions taken by the Department of Community Affairs and The Applied Companies of Hoboken, New Jersey with respect to certain limited dividend nonprofit housing corporations located in Hoboken.

We received the Department's response by letter dated October 25, 1999, and subsequently met with William Connelly of your office and the counsel for The Applied Companies to discuss the substance of the Center's complaint. However, it is still unclear to us what the Department's position is with respect to our formal complaint. For example, is the Department not accepting our September 17, 1999 letter as a formal complaint pursuant to N.J.A.C. 5:13-1.15? Is it the Department's position that the housing projects at issue are not subject to the rules and regulations of the Limited Dividend Nonprofit Corporations or Associations Law, N.J.S.A. 55:16-1 et. seq.? Please clarify and explain the basis of the Department's position regarding the Center's complaint.

It remains our position that the housing projects at issue herein, which were created under the Limited Dividend Nonprofit Corporations or Associations Law, N.J.S.A. 55:16-1 et. seq., remain subject to the rules and regulations of the 55:16 program. It is also our position that our formal complaint properly falls within the complaint procedure established by the rules and regulations of 55:16.

The Public Interest Law Center of New Jersey
833 McCarter Highway
Newark, New Jersey 07102-5112

Phone: 973.642.8719
Fax: 973.642.5939
E-mail: newjersey@appleseeds.net
Website: <http://www.appleseeds.net>

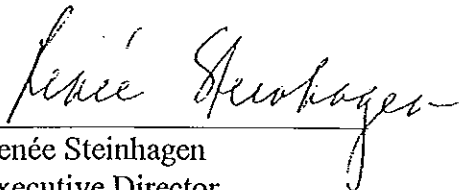
G

We look forward to discussing these issues with you further.

Respectfully,

Public Interest Law Center of NJ

By:


Renée Steinhagen
Executive Director

cc: Ira Karasick, Esq. (The Applied Cos.)
The Affordable Housing Network
HUD's Tenants' Coalition
YMCA of Hudson County
New Jersey Tenants' Organization
Tenants Preservation Project of New Jersey
David F. Broderick, Esq., McCarter & English, LLP

REGULATORY AGREEMENT

REGULATORY AGREEMENT (the "Agreement") dated as of December 9, 1998 between NORTHVALE ASSOCIATES IIIA, having its offices at 5 Marine View Plaza, Suite 500, Hoboken, New Jersey (the "Partnership") and NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, having offices at 101 South Broad Street, Trenton, New Jersey 08625-0802 ("DCA")

W I T N E S S E T H

WHEREAS, the Partnership owns three (3) apartment buildings containing a total of 70 units (the "Building") located at 1310-1311 Bloomfield Street, 215 13th Street and 1233-1241 Park Avenue, Hoboken, New Jersey (the "Premises") which is encumbered by a mortgage (the "HUD- Insured Mortgage") granted to First National State Bank of New Jersey dated July 28, 1977 which mortgage was insured by the U.S. Department of Housing and Urban Development ("HUD") and thereafter assigned by mesne assignment to Morgan Guaranty Trust Company;

WHEREAS, the Partnership currently receives interest subsidy through HUD's Section 236 program (the "Interest Subsidy");

WHEREAS, eligible tenants have received rent subsidy in the Building through HUD's Section 8 project-based rental assistance contracts (collectively, the "Project-Based Rental Subsidy");

WHEREAS, the Partnership intends to borrow approximately \$2,765,000 from Larson Financial Resources, Inc. and to use the proceeds to prepay the HUD- Insured Mortgage and to rehabilitate the Building, which loan shall be secured by a first mortgage on the Premises (the "Larson Mortgage");

WHEREAS, upon satisfaction of the HUD-Insured Mortgage, (the "Prepayment Date"), HUD will no longer be providing Interest Subsidy to the Partnership in the Building;

WHEREAS, the Project-Based Rental Subsidy will expire after the Prepayment Date.

WHEREAS, from and after the Prepayment Date, the Partnership has agreed to restrict the rent it charges tenants of the Building and to limit its allowable profit as hereinafter set forth;

WHEREAS, the Partnership was initially formed as a limited divided entity under N.J.S.A. 55:16-1 et seq, the Limited Dividend Corporation and Association Act (the "Limited Dividend Act") and has amended its Certificate of Organization to qualify itself under N.J.S.A. 40A:20-1 et seq, the Long Term Tax Exemption Act (the "Long Term Act");

NOW THEREFORE, the parties hereto agree as follows:

1. Definitions. The following words when used in this Agreement shall have the following meanings:

1.1 "CPI" shall mean the Consumer Price Index for all Urban Consumers ("CPI-U") for the Northeastern Region for rent and utilities on the then current official reference basis published by the Bureau of Labor Statistics. If the CPI is discontinued at any time during the term of this Agreement, a comparable index which measures inflation shall be used in substitution of the CPI.

1.2 "DCA" shall have the meaning set forth in the recitals.

1.3 "Eligible Tenant" shall mean any Existing Tenant that is either

- (i) Very Low Income
- (ii) Low Income or
- (iii) Moderate Income with an elderly or disabled person in the household.

1.4 "Enhanced Vouchers" shall mean the vouchers made available by HUD for Eligible Tenants of the Building upon the prepayment of the HUD-Insured Mortgage and expiration of the Project-Based Subsidy.

1.5 "Existing Tenant" shall mean any tenant of the Building occupying an apartment and not subject to an eviction proceeding on the Prepayment Date.

1.6 "Hoboken Normal Payment Standard" shall mean the following payment standard established by HUD for vouchers used in Hoboken for different apartment sizes as of the date of this Agreement and which shall be increased annually by increases in the CPI:

Studio:	\$ 673
One bedroom	\$ 799
Two bedroom	\$ 931
Three bedroom	\$1,183
Four bedroom	\$1,302

1.7 "HUD" shall have the meaning set forth in the recitals.

5. Certification of Income. Tenants which are the beneficiaries of the Regular or Enhanced Voucher Program shall be required to comply with all income certification and recertifications required by HUD and DCA. Any other tenants of the Building which do not pay Market Rent shall be required to provide evidence of annual household income prior to reviewing a lease for an apartment in the Building and shall recertify income as required by the Partnership.

6. Profit Limitation.

6.1. Calculation of Return on Investment/Allowable Net Profit. Commencing on the Prepayment Date, the Partnership's allowable net profit shall be calculated in accordance with the Long Term Act. Prior to such time, the Partnership's return on investment shall continue to be governed by the Limited Dividend Act.

6.2. Reserves. The Partnership may maintain a reserve against vacancies, unpaid rentals and contingencies, including without limitation, shortfalls representing the difference between the Market Rent of all Minimum Affordable Apartments and the amount received by the Partnership as rent for each such apartment and capital improvements to the Building required from time to time. Such reserves shall be treated as an expense and calculated on a cumulative basis for the purpose of determining net profit under the Long Term Act.

6.3. Annual Profit Statements. The Partnership shall provide DCA with its calculation of allowable profit, net profit and excess profit as determined in accordance with this Agreement and the Long Term Act, certified by the Partnership's general partner for each fiscal year from and after the date the Prepayment Date completes within ninety (90) days of the close of each fiscal year.

7. Term of this Agreement. The Agreement shall terminate on maturity of the Larson Mortgage December 1, 2028; provided however, the Partnership shall continue to be subject to N.J.S.A. 55:16-22, as modified herein with respect to the Partnership's allowable net profit.

8. Partial Invalidity. If any term, covenant or condition of this Agreement or its application to any person or circumstances shall be invalid or unenforceable, the remainder of this Agreement, or the application to any other person or circumstances shall not be affected, and each term shall be valid and enforceable to the fullest.

9. Paragraph Headings. Paragraph headings are inserted herein solely to facilitate reading this Agreement, and they shall not be utilized to construe, interpret, affect or modify the terms of this Agreement.

10. No Waiver. No waiver of any of the rights hereunder and no modification or amendment of this Agreement shall be deemed to be made by the parties unless the same shall be in writing, duly signed by the parties, and each such waiver, if any, shall

apply only with respect to the specific instance involved and shall in no way impair the rights, liabilities and obligations of the parties in any other respect at any other time.

11. Notices. Any notice given hereunder shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, by overnight courier service or by fax, telecopy or similar telecommunications equipment to the parties at the addresses set forth below:

New Jersey Department of Community Affairs
101 South Broad Street
Trenton, New Jersey 08625
Attention: Director of Code and Standards

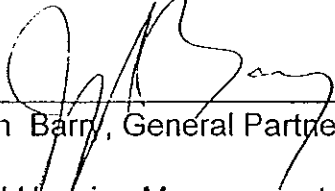
Northvale Associates IIIA
5 Marine View Plaza
Suite 500
Hoboken, NJ 07030
Attention: Joseph Barry

Any party may change the person or address to whom or which notices are to be given hereunder, by notice duly given hereunder; provided, however, that any such notice shall be deemed to have been given hereunder only when actually received by the party to which it is addressed. Any notice or other communication given hereunder shall be deemed to have been given or delivered, if personally delivered upon delivery, if sent by overnight courier, on the first (1st) business day after being sent, and if sent by mail, on the fifth (5th) business day after mailing. Each party shall be entitled to rely on all communications which purport to be given on behalf of any other party hereto and purport to be signed by an authorized signatory of such party or the above indicated attorneys.

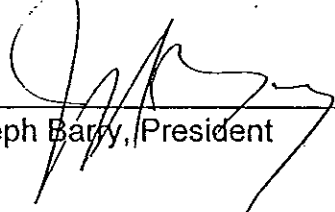
12. Governing Law. This Agreement shall be construed, enforced and interpreted according to the laws of the State of New Jersey, without giving effect to the principals of conflicts of law.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement
on the day and year first written above.


NORTHVALE ASSOCIATES IIIA

By: 
Joseph Barry, General Partner

By: Applied Housing Management Co., Inc.,
General Partner

By: 
Joseph Barry, President

NEW JERSEY DEPARTMENT OF
COMMUNITY AFFAIRS

By: 
William Connolly
Director, Division of Codes and Standards

Housing and Community Development	:	SUPERIOR COURT OF NEW JERSEY
Network of New Jersey (formerly known as	:	CHANCERY DIVISION, GENERAL EQUITY:
Affordable Housing Network), HUD Tenant's	:	HUDSON COUNTY
Coalition, YWCA of Hudson County, New	:	DOCKET NO. C-141-00
Jersey Tenants' Organization, Tenants	:	
Preservation Project of New Jersey, Public	:	
Interest Law Center of New Jersey, and Helen	:	
Hirsch,	:	Civil Action
	:	
	:	
Plaintiffs,	:	
vs.	:	
	:	
Applied Housing Management Co., Inc.,	:	
Joseph Barry, and State of New Jersey	:	
Department of Community Affairs	:	
Defendants.	:	

**PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER
TO THE APPELLATE DIVISION PURSUANT TO RULE 1:13-4**

McCARTER & ENGLISH, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07101-0652
(973) 622-4444
Attorneys for Plaintiff
Public Interest Law Center of New Jersey

**PUBLIC INTEREST LAW CENTER OF NEW
JERSEY**
833 McCarter Highway
Newark, New Jersey 07102
(973) 642-8719
Attorneys for Plaintiffs
Housing and Community Development Network of
New Jersey (formerly known as Affordable
Housing Network), HUD Tenant's Coalition,
YWCA of Hudson County, New Jersey Tenants'
Organization, Tenants Preservation Project of New
Jersey, and Helen Hirsch

Of Counsel:

Renée Steinhagen, Esq.
David F. Broderick, Esq.

On the Brief:

Renée Steinhagen, Esq.
Laura A. Leacy, Esq.

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	2
LEGAL ARGUMENT	
POINT 1	
THE REGULATORY AGREEMENTS BETWEEN DCA AND APPLIED ARE NOT AMENABLE TO APPELLATE REVIEW.....	4
POINT II	
PLAINTIFFS' CLAIMS AGAINST BARRY AND APPLIED ARE PROPERLY BEFORE THIS COURT.....	11
CONCLUSION	13

TABLE OF AUTHORITIES

CASES

<u>Bd. of Ed. v. Dept. of Treasury</u> , 279 N.J.Super. 489 (App. Div. 1995), <u>aff'd</u> , 145 N.J. 269 (1996)	5
<u>Cohen v. Bd of Trustees of The University of Medicine and Dentistry of New Jersey</u> , 240 N.J.Super. 188 (Ch. Div. 1989).....	10
<u>Colon v. Tedesco</u> , 125 N.J.Super 446 (Law Div. 1973).....	5, 7
<u>Frapaul Const. Co., Inc. v. State, Dept. of Transportation</u> , 175 N.J.Super 84 (App. Div. 1980)	4, 5
<u>Jersey City v. State Department of Environmental Protection</u> , 227 N.J.Super. 5 (App. Div.), <u>cert. denied</u> , 111 N.J. 640 (1988),	9
<u>Montclair Township v. Hughey</u> , 222 N.J.Super. 441 (App. Div. 1987).....	4, 6
<u>Pfleger v. N.J.State Highway Dept.</u> , 104 N.J.Super 289 (App. Div. 1968).....	4, 7

STATUTES

N.J.S.A. § 59:13-1 <u>et seq</u>	6
N.J.S.A. § 55:16-1, <u>et seq</u>	2, 3
N.J.S.A. § 40A:20-1, <u>et seq</u>	2

RULES

Rule 1:13-4.....	1
Rule 2:2-3(a)(2)	1, 4-7
Rule 4:3-1.....	11

OTHER AUTHORITIES

Pressler, Current N.J. Court Rules, Comment R. 2:2-3	5, nt. 1
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PRELIMINARY STATEMENT

The State of New Jersey, Department of Community Affairs ("DCA") seeks to transfer this action to the Appellate Division pursuant to Rule 1:13-4 on the basis that the regulatory agreements entered into between DCA and Applied Housing Management Inc. ("Applied") are final agency decisions. However, these regulatory agreements are not the types of final decision or action of a state agency contemplated by Rule 2:2-3(a)(2) that are amenable to appellate review.

There is no record below upon which the Appellate Division can make a determination. There was no notice of the proposed regulatory agreements, there was no opportunity for interested parties to be heard or present their views to public officials, no opportunity for public comment or discussion, and no formal or informal hearings. There was no proceeding conducted within the state administrative agency. There was clearly no quasi-judicial proceeding or adversarial type hearing that is required for an action to be amenable to appellate review. And from the file produced by DCA, it can accurately be concluded that the Agency did not make any factual findings or conclusions of law.

Rule 2:2-3(a)(2) contemplates appellate review only of administrative actions that are quasi-judicial or quasi-legislative in nature and are based on a record. It does not contemplate that a full plenary proceeding among adversaries be held before the Appellate Division in order to frame the factual and legal issues to be determined. This is precisely what would be required here if the Court were to grant DCA's motion.

STATEMENT OF FACTS

Plaintiffs, a Hoboken taxpayer and a group of non-profit and tenant advocacy organizations with the mission of creating, preserving, and advocating for affordable housing in Hoboken for their members and other low-income citizens, brought this action against Applied Housing Management Co., Inc. ("Applied"), Joseph Barry ("Barry"), and the New Jersey Department of Community Affairs ("DCA") to seek redress for the violations of Defendants' fiduciary and public trust duties with respect to the operation of their properties governed by the Limited Dividend Nonprofit Housing Corporation or Association Law, N.J.S.A. § 55:16-1, et seq. These nonprofit limited dividend entities have received subsidies and tax abatements over the years that were designed to ensure the provision of affordable rental units in the community for the benefit of current low-income tenants, low income New Jersey residents looking for affordable housing, and the general public. Complaint, ¶ 1.

Specifically, plaintiffs allege that Applied and Barry have violated their fiduciary and public trust duties by operating their entities in violation of the purpose and provisions of N.J.S.A. § 55:16-1, et seq. Plaintiffs also allege that the DCA violated its public trust duties by apparently permitting Applied and Barry to operate their entities in violation of the purpose and provisions of N.J.S.A. § 55:16-1, et seq. With the invalid consent of DCA, Applied and Barry have wrongly amended the certificates of organization of the entities created under the statute so as to bring themselves under the Long-Term Tax Exemption Law, N.J.S.A. § 40A:20-1, et seq., thereby availing themselves of a higher rate of return, increased equity base, and other benefits afforded under that law. These regulatory agreements purport to permit Applied and Barry to receive a return on their actual investment above and beyond the 8% limitation as required by N.J.S.A. § 55:16-1, et seq. Moreover, DCA has given Applied and Barry permission to

deregulate 80% of apartments and rent them at market rate. Finally, prior to obtaining release from the restrictions of N.J.S.A. § 55:16-1, et seq., Applied and Barry never obtained a finding from the Hoboken City Council that there no longer was a need for affordable housing, as required by N.J.S.A. § 55:16-22. Compl., ¶ 2.

The crux of this Complaint is against Applied and Barry for operating the entities in violation of their fiduciary duties. DCA was added as a necessary party.

LEGAL ARGUMENT

POINT I

THE REGULATORY AGREEMENTS BETWEEN DCA AND APPLIED ARE NOT AMENABLE TO APPELLATE REVIEW

New Jersey Court Rule 2:2-3(a)(2) provides that “appeals may be taken to the Appellate Division as of right . . . to review final decisions or actions of any state administrative agency or officer.” The regulatory agreements entered into between DCA and Applied are not the type of final agency decision or action contemplated by this rule providing for appeals to be brought directly to the Appellate Division. There is no record of any proceedings before the agency that would make these regulatory agreements amenable to appellate review. Plaintiffs were not a party to the regulatory agreements. There was no notice, public hearing, or opportunity for comment or discussion. There was no quasi-judicial proceeding below and no record upon which the Appellate Division can adjudicate this action. In such cases, the courts have held that the agreements are not final decisions that can be appealed to the Appellate Division.

Rule 2:2-3(a)(2) contemplates appellate review only of administrative actions that are quasi-judicial or quasi-legislative in nature and are based on a record. Montclair Township v. Hughey, 222 N.J.Super. 441, 448 (App. Div. 1987). This limitation on the applicability of Rule 2:2-3(a)(2) is one of two limitations that are clearly recognized in caselaw. Montclair Township v. Hughey, 222 N.J.Super. 441 (App. Div. 1987). The first is where “the authority of the state administrative agency is limited to a particular locality.” Id. at 446. This limitation does not apply. The other is “where the proposed administrative action has not been preceded by the creation in the agency of a record which is amenable to appellate review.” Id.; Frapaul Const. Co., Inc. v. State, Dept. of Transportation, 175 N.J.Super 84, 90 (App. Div. 1980); Pfleger v.

N.J.State Highway Dept., 104 N.J.Super 289 (App. Div. 1968); Colon v. Tedesco, 125 N.J.Super 446 (Law Div. 1973). This is precisely the case here.

The appellate review provided for by Rule 2:2-3(a)(2) is “basically a substitution for the common law writ of certiorari. That writ was predominantly a form of appellate review to correct errors of law apparent on the face of the record of proceedings in a lower judicial or quasi-judicial tribunal.” Frapaul Const. Co., Inc. v. State, Dept. of Transportation, 175 N.J.Super 84, 90 (App. Div. 1980). One of the purposes of Rule 2:2-3(a)(2) is to provide a “speedy review of a proceeding conducted within the state administrative agency itself and involving parties who are given an opportunity to be heard.” Colon v. Tedesco, 135 N.J.Super. 446, 452 (Law Div. 1973). “In such cases a record is made on the basis of which the Appellate Court’s review will result in a definitive determination.” Id. at 452. Rule 2:2-3(a)(2) does not contemplate that a “full plenary proceeding among adversaries” be held before the Appellate Division. Id. The proper place is the trial court. Where there is no judicial type of hearing or adversarial proceeding below, no discovery, and no opportunity to present witnesses, cross-examine other witnesses, or introduce evidence, there is no record upon which the Appellate Division can adjudicate a dispute. Frapaul, 175 N.J.Super. at 90-91. Thus, instituting the action in the trial court is proper.¹

In Frapaul, the Appellate Division held that conclusions of the Department of Transportation Claims Committee are not final decisions within the contemplation of R. 2:2-3(a)(2) because the Claims Committee does not provide a “judicial type of hearing such as in

¹ It is important to note that whether an action should be instituted in the Trial Court or the Appellate Division is one of the “allocation of the business of the courts rather than jurisdictional in any strict sense.” Pressler, Current N.J. Court Rules, Comment R. 2:2-3, (Gann); Bd. of Ed. v. Dept. of Treasury, 279 N.J.Super. 489, 496-98 (App. Div. 1995), aff’d, 145 N.J. 269 (1996). Because the Appellate Division may remand to the trial court for a factual hearing, an action erroneously instituted and heard in the trial court, with a subsequent appeal, is not “jurisdictionally” defective. Pressler, Current N.J. Court Rules, Comment R. 2:2-3, (Gann).

necessary to adjudicate a construction contract controversy.” Id. at 91. Frapaul involved a dispute as to payment under a contract between Frapaul Construction Company and the State. Although the regulatory scheme established by the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., contemplated that contract actions against the State should be instituted in the trial division of the Superior Court, the court’s analysis of Rule 2:2-3 is nonetheless instructive here.

The proceedings before the Claims Committee do not provide for discovery, permit the introduction of evidence, or an opportunity to present witnesses or cross-examine DOT personnel. The claimant is permitted to submit a claim to the Committee, and the Committee reviews the file, listens to the claimant’s position and then decides whether or not to recommend approval to the Commissioner. Frapaul, 175 N.J.Super. at 87-88. There is no procedure by which a record may be made before the DOT upon which the Appellate Division can review its decision. Thus, the conclusions of the Claims Committee are not final decisions and jurisdiction is properly in the Trial Court. Id.

In Montclair Township v. Hughey, the township and the county filed actions in the Law and Chancery Divisions against the Department of Environmental Protection to enjoin the DEP from implementing its administrative order to move barrels of contaminated soil to a wildlife area. 222 N.J.Super. at 444-445. In holding that Rule 2:2-3(a)(2) did not apply, the Court found that the action was brought “to halt an alleged threatened breach of public and private rights, not to review an administrative proceeding. Disposition thereof calls for the exercise of trial court functions such as gathering of evidence, findings of facts and the applications of legal conclusions.” Id. at 448. The action was therefore properly instituted in the Law and Chancery Divisions.

In Colon v. Tedesco, 125 N.J.Super. 446 (Law Div. 1973), an action in lieu of a prerogative writ brought by a migrant farm worker against the Department of Labor and Industry, among others, plaintiffs sought to compel the Department to initiate proceedings against owners of a labor camp and declare the camp to be a public nuisance. The court recognized the two limitations on the applicability of Rule 2:2-3(a)(2) and found there was no procedure within the Department to consider complaints. In concluding that the Law Division had jurisdiction to hear the action, the court found:

In the case at bar there has been no adversary type of proceeding in the Department of Labor and Industry. There is no provision for same. This is not a quasi-judicial matter before said Department. No intramural record of any kind has been made. The Appellate Division cannot obtain a record to review, absent a plenary hearing before a judge. Plaintiffs seek performance of ministerial duties.

Id. at 452. Plaintiffs were entitled to the aid of the court, including discovery and a hearing, to see if the agency had acted in accordance with their obligations.

As the cases above establish, it is not merely the identity of the governmental defendant that determines which Division of the Superior Court has jurisdiction. See, Pfleger v. State Highway Dept., 104 N.J.Super. 289 (App. Div. 1968) (“this line of division is not absolute”). Rather, the determinative factor is whether there is a record compiled or proceedings before the agency prior to review by the Appellate Division so that there is some basis upon which the Appellate Division can make a decision. See, Pfleger, 104 N.J.Super. at 291-292.

None of the cases cited by Defendant are therefore analogous to the situation here. In fact, all but one of the cases cited were cases in which either hearings were held, the parties had an opportunity to be heard, or they were able to proceed through the administrative appeal process and receive a decision from the agency based on a record compiled by the agency prior to its determination.

In the instant matter, there is clearly a need to develop a record. Plaintiffs were not given an opportunity to present their views to the DCA before the regulatory agreements were entered into. No interested parties (including the tenants or any organizations involved in the preservation of affordable housing in Hoboken or New Jersey) were given notice or an opportunity to be heard. There was no mechanism for an adversarial or quasi-judicial proceeding within the agency before the agreements were signed. In fact, there was no notice whatsoever to anyone other than defendants, either before or after the regulatory agreements were entered into.

Plaintiffs, after learning of the existence of the regulatory agreements through a third party, attempted to understand the factual and legal basis for the decision to enter into these agreements. Plaintiffs sent a letter dated September 17, 1999 to the Commissioner of the DCA requesting some information. See Certification of Laura A. Leacy, Exhibit E. Commissioner Kenny responded by saying that the issues raised were not subject to the administrative complaint procedure established under the statute. Leacy Cert. Ex. F. Plaintiffs requested clarification of the Commissioner's response by letter dated February 24, 2000. Leacy Cert. Ex. G. Although the Commissioner responded, Plaintiffs still do not know or understand the factual basis for the decision to enter into the regulatory agreements.

Plaintiffs need discovery. There is no record of what the DCA and Applied considered, reviewed or investigated in entering into the agreements. Plaintiffs served discovery requests upon Applied and DCA. Leacy Cert. Ex. A, B. The DCA produced, in partial response to plaintiffs' discovery requests, what it considers to be the "record" should this matter be transferred to the Appellate Division. A review of the documents produced lends further support to plaintiffs' position that there is a need to develop a record and that this action should not be

before the Appellate Division. There is nothing in the “record” to show what DCA relied upon or what was the basis of their decision to enter into the regulatory agreements. The bulk of the materials produced include newspaper clippings and documents that are dated after the entry of the regulatory agreements and after the filing of plaintiffs’ complaint. The “record” is devoid of citations to any authority, regulations, manuals, advisory opinions, factual investigation, analysis, or discussion as to what led up to the decision to enter into the regulatory agreements at issue. Leacy Cert., ¶ 5-6. There is nothing that explains or even attempts to support the view that what DCA did was in accordance with their obligations pursuant to the statute.

This is not a situation as in Jersey City v. State Department of Environmental Protection, 227 N.J.Super. 5 (App. Div.), cert. denied, 111 N.J. 640 (1988), where the court found that the facts were clear and legal issues were sharply defined because interested persons had the chance to present their views to public officials who made the decision through the many public hearings, and other formal and informal avenues. Here, it is difficult to define the legal issues because the facts are simply unknown. There has been no opportunity to develop a record, there have been no factual findings or conclusions of law, there is virtually a dearth of information as to how or why DCA and Applied entered into these agreements.

The legal issues here are not clearly defined because they need to be framed by factual findings currently unknown in the record. For example, the record should include information on the following:

- 1) whether DCA made any factual findings as to the need of affordable housing units in Hoboken;

- 2) whether DCA made factual findings as to the level of rents needed to maintain or improve the relevant units in contrast to simply permitting an increase in rents to allow greater profits to investors;
- 3) whether a decision to deregulate 80% of the units was based on detailed submissions of need such as that required by rent control boards when considering requests for rent increases; and
- 4) whether DCA made any factual or legal conclusions that deregulation of 80% of the units was within its statutory authority under the 55:16 statute.

The “record” is similarly deficient on facts necessary to fashion a remedy, in particular the remedy of restitution. Areas of information that should be in the record include the dividends issued to investors and the percentage of actual investment such dividends represent; which tenants are currently in the buildings and receive federal subsidies; which tenants were compelled to leave because of an increase in out-of-pocket rental payments; what tenants are actually paying; and what are the registered rents on the units. These factors argue in favor of this Court retaining jurisdiction so that a reviewable record can be created. See, Cohen v. Bd of Trustees of The University of Medicine and Dentistry of New Jersey, 240 N.J.Super. 188, 199 (Ch. Div. 1989) (where record is not clear as to what process, if any, UMDNJ employed in deciding to pay employees and internal decision-making process was not open to formal or informal challenges prior to adoption, a judicial type hearing is required; thus, matter should be retained in the trial court to create a reviewable record).

Without such a record, DCA’s decision to enter into the regulatory agreements and plaintiffs’ Complaint are not amenable for appellate review.

Joseph Barry for Certified Answers to Interrogatories, Leacy Cert., Exhibit B., plaintiffs will be unable to establish that defendants Applied and Barry are *in fact* violating their fiduciary and public trust duties in the operation of the low and moderate income housing entities they currently control and operate. As a matter of law, these duties are imposed on defendants in their capacity as general partners , and the question of whether their actions constitute fiduciary violations is independent from whether they received government approval to do so. It is this claim that is the crux of plaintiffs' Complaint, and is properly before this Court; and it is clear that this claim cannot be heard by the Appellate Division in the first instance.

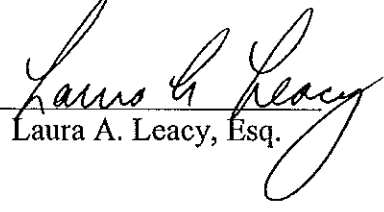
CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny defendants' motion to transfer this matter to the Appellate Division.

Respectfully submitted,

MCCARTER & ENGLISH, LLP
Attorneys for the Public Interest Law Center
Of New Jersey

By: _____

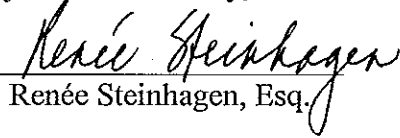

Laura A. Leacy, Esq.

PUBLIC INTEREST LAW CENTER
OF NEW JERSEY

Attorneys for Plaintiffs

Housing and Community Development
Network of New Jersey (formerly
known as Affordable Housing Network),
HUD Tenant's Coalition, YWCA of
Hudson County, New Jersey Tenants'
Organization, Tenants Preservation
Project of New Jersey, and Helen Hirsch

By: _____


Renée Steinhagen, Esq.

Dated: February 8, 2001