

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

MARIA JUNETTE JOHNSON

Respondent.

HUDALJ 12-F-033-OTH-1

April 13, 2012

ORDER OF DISMISSAL

Currently before the Court is a *Motion to Dismiss* (“Motion”) filed by the U.S. Department of Housing and Urban Development (“HUD”) on April 2, 2012. In the *Motion*, HUD asserts that the Court lacks subject matter jurisdiction under 24 C.F.R. Part 180 to hear Respondent’s claims. (Mot. to Dismiss, 1.) As such, HUD requests that the Court grant this *Motion* and vacate the order contained in the *Notice of Hearing and Order*, dated March 22, 2012. For the foregoing reasons, and without objection from Respondent, the *Motion* is **GRANTED**.

Background

The Section 8 program was originally authorized by the Housing and Community Development Act of 1974 (“1974 Housing Act”). In 1998, the Section 8 program was reformed to merge the certificate program, created by the 1974 Housing Act, and the rental voucher program, authorized by Congress in 1984, into a new housing choice voucher program (for continuity, “the Section 8 program”). HUD’s main duties under the Section 8 program include allocating housing assistance funds, providing technical assistance and training to public housing agencies (PHAs), and monitoring PHA compliance with program requirements and performance goals. HUD HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK, Ch. 1, pp. 1-13. The Section 8 program is generally administered by state and local entities referred to as public housing agencies (PHAs). 24 C.F.R. § 982.1(a)(1). The PHAs are required to administer the program in conformity with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. 24 C.F.R. § 982.53(b)(1). A PHA’s responsibilities under the Section 8 program include, but is not limited to, determining and reexamining each family’s eligibility for the Section 8 program, issuing vouchers to the selected participant families, and making housing assistance payments to owners for the benefit of the selected participant families. 24 C.F.R. § 982.54(d); HUD HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK, Ch. 1, pp.

1-13. Each PHA must also conduct informal reviews and hearings at the request of applicants and participants challenging PHA administrative decisions. 24 C.F.R. §§ 982.554 and 982.555.

On March 13, 2012, Maria Junette Johnson (“Respondent”), filed a request for hearing under 24 C.F.R. § 180.415. Respondent alleged that she received a *Notice of a Proposed Adverse Action*, dated February 27, 2012. (Respondent’s Hearing Request.) As indicated in her request, the proposed adverse action is the withdrawal of her Section 8 program voucher. (*Id.*) She also stated, “I believe that the investigation and its finding, subsequently presented at an informal hearing, lacked proper support of the evidence and was founded on intentional misrepresentation and false accusations by unreliable informants. I also believe that the Public Housing Authority violated my constitutional right to privacy when it shared confidential information with persons outside her department.” (*Id.*)

On March 22, 2012, the Court issued a *Notice of Hearing and Order* that required HUD to file a *Notice of Proposed Adverse Action* by April 2, 2012. On April 2, 2012, HUD did not file its *Notice of Proposed Adverse Action*, but filed the *Motion* instead.

Applicable Law

The procedural framework for non-Fair Housing Act matters, *viz.*, matters arising under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Section 109 of the Housing and Community Development Act of 1974, is provided for under 24 C.F.R. § 180.415 et seq. *See* 24 C.F.R. § 180.100 (defining “non-Fair Housing Act matters”). The relevant implementing regulations for these statutory authorities are found in 24 C.F.R. parts 1, 8, 146, and 6, respectively. These regulations, taken cumulatively, prohibit recipients of federal financial assistance from discriminating because of race, color, national origin, religion, sex, disability, and age. *See* 24 C.F.R. §§ 1.4, 6.4, 8.4, and 146.13. Recipients of federal financial assistance who fail to comply with or violate the regulations set forth in parts 1, 6, 8, and 146 of Title 24 of the Code of Federal Regulations may be refused federal financial assistance, or have such assistance terminated. 24 C.F.R. §§ 1.8(a), 6.12(a), 8.57(a), and 146.39(a)(1).

Prior to the termination or denial of federal financial assistance, recipients/applicants must be afforded the opportunity for a hearing. 24 C.F.R. §§ 1.8(c), 6.12(b), 8.57(c), and 146.39(d)-(e). If a recipient requests a hearing in accordance with the applicable regulations in Parts 1, 6, 8, or 146, HUD must file a *Notice of Proposed Adverse Action* with this Court within 10 days. 24 C.F.R. § 180.415(a).

Discussion

HUD moves for dismissal of the action at bar and claims that neither HUD nor Respondent is a proper party under § 180.415, and Respondent does not have a private right of action to proceed against HUD under Part 180. The Court finds that neither HUD

nor Respondent are proper parties under § 180.415 as HUD has not proposed or taken an “adverse action” within the meaning of the regulation, and Respondent is not a recipient/applicant as intended under the regulation.

I. HUD has not proposed or taken an adverse action against Respondent.

Respondent alleges the withdrawal of her Section 8 housing choice voucher constituted an “adverse action” as intended under § 180.415. Recipients may be refused federal financial assistance, or have such assistance terminated for failure to comply with federal regulations prohibiting discrimination in the administration of HUD programs. 24 C.F.R. §§ 1.8(a), 6.12(a), 8.57(a), and 146.39(a)(1). Before HUD may deny or terminate federal financial assistance to a recipient/applicant, certain procedural requirements must be met. They include, but are not limited, to the following: (1) HUD must advise the recipient of his failure to comply and HUD’s determination that compliance cannot be secured by voluntary means; (2) the recipient must be afforded an opportunity for a hearing, and (3) if the recipient requests a hearing, there must be a finding on the record that the recipient failed to comply with the regulations. 24 C.F.R. §§ 1.8(c), 6.12(b), 8.57(c), and 146.39(d)-(e).

As previously noted, the PHA is responsible for administering the Section 8 program and issuing housing vouchers. Here, the determination to withdraw Respondent’s housing choice voucher was made by a local PHA after an informal hearing was conducted. The determination of the PHA to withdraw the voucher may be considered “adverse” within the plain meaning of the word. However, the supposed “adverse action” was not what was contemplated or considered under § 180.415, as there is no indication in the record that HUD has made, or contributed to, the determination to withdraw Respondent’s Section 8 housing choice voucher. Therefore, the facts of this case do not demonstrate that the first procedural requirement has been met and Respondent’s hearing request must be denied.

II. Respondent is not a recipient/applicant.

HUD also claims that dismissal of the case at bar is appropriate because Respondent does not qualify as a recipient/applicant as intended by § 180.415. This regulation does not independently afford recipients/applicants the right to a hearing before this Court for “non-Fair Housing Act matters.” Rather, this regulation merely dictates the procedures for conducting a hearing as required by Title 24, Parts 1, 6, 8, and 146 of the Code of Federal Regulations.

Parts 1, 6, 8, and 146 each provide a recipient with the opportunity for a hearing prior to the termination or refusal of federal financial assistance. Section 180.100(c) states that the term “recipient” has the same meaning as provided for in the regulations implementing the individual civil rights statutes covered by Part 180. See 24 C.F.R. §§ 1.2, 6.3, 8.3, or 146.7. Under Part 1, for example, the term “recipient” applies to:

Any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such a program or activity...*but such term does not include any ultimate beneficiary under any such program or activity.*¹

24 C.F.R. § 1.2(f) (emphasis added). 24 C.F.R. Part 1 also explicitly states that Part 1 does not apply to “any assistance to any person who is the ultimate beneficiary under any such program or activity.” 24 C.F.R. § 1.3(c).

The term “ultimate beneficiary” is not defined in § 180.415 or the applicable non-Fair Housing Act civil rights regulations. However, other regulations covering grants and agreements with HUD have included, “subsidized tenants and subsidized mortgagors, such as those assisted under Section 8 Housing Assistance Payment contracts, by Section 236 Rental Assistance, or by Rent Supplement payments” in the definition for “ultimate beneficiaries.” See e.g. 24 C.F.R. § 2424.1017 (defining “ultimate beneficiaries” in the context of debarments, suspensions, and limited denials of participation). Although this definition is not determinative of the meaning as applied to Part 180 of Title 24, this definition is a persuasive indicator of the regulation drafters’ intent. Absent contrary statutory or regulatory language, the Court holds that the term “ultimate beneficiaries” includes persons assisted under the Section 8 program.

With her hearing request, Respondent included a copy of her Housing Assistant Payment Contract (HAP Contract) for the Section 8 Tenant-Based Assistance Housing Choice Voucher Program. The HAP Contract indicates Respondent is a member of a household receiving the benefit of \$913.00 per month in housing assistance payments that are paid by the local PHA to the property owner on the household’s behalf. Based on the facts in this case, Respondent’s participation in the Section 8 program as a member of a participant family receiving subsidized housing brings Respondent within the meaning of the term “ultimate beneficiary.” Therefore, Respondent’s standing as an “ultimate beneficiary” excludes her from the intended meaning of “recipient/applicant” under § 180.415.

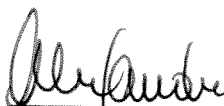
More importantly, HUD does not provide federal financial assistance to individuals such as Respondent. Rather, HUD allocates federal financial assistance to various PHAs for housing assistance to qualified families. The PHA receives its funding from HUD by applying for program funding. 24 C.F.R. §982.103(a). HUD and the PHA enter into an Annual Contributions Contract (ACC) in which HUD agrees to make payments to the PHA for housing assistance payments to owners and for the PHA

¹ Parts 6, 8, and 146 of Title 24 also exclude “ultimate beneficiary” from the definition of the term “recipient.” 24 C.F.R. §§ 6.3, 8.3, and 146.7.

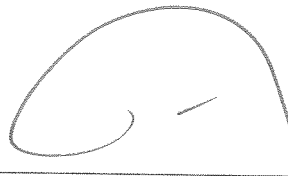
administrative fee, and the PHA agrees to administer the program in accordance with HUD regulations and requirements. 24 C.F.R § 982.151(a)(1). Therefore it is a PHA that has had its federal funding terminated, that may properly invoke the right to a hearing under Parts 1, 6, 8, or 146.

Accordingly, HUD's *Motion* is **GRANTED** and the case at bar is **DISMISSED**.

So **ORDERED**,

A handwritten signature in cursive script, appearing to read "Alexander Fernández".

Alexander Fernández
Administrative Law Judge

A large, stylized handwritten mark or flourish, possibly a checkmark or a large "C" with a horizontal line through it.