

1 THE STATE OF OHIO,)
) SS: Russo, N. M., J.
 2 COUNTY OF CUYAHOGA.)

3 IN THE COURT OF COMMON PLEAS

4 CIVIL DIVISION

5 GLORIA BLACKMOND,)

6 Plaintiff,)

7 -v-)

Case No. CV-541895

8 CUYAHOGA METROPOLITAN HOUSING)
 9 AUTHORITY,)

Defendant.)

11 TRANSCRIPT OF PROCEEDINGS

13 Whereupon the following proceedings were had in
 14 Courtroom No. 18-C, The Justice Center, Cleveland, Ohio,
 15 before the Honorable Nancy M. Russo, on Thursday, October 21,
 16 2004, upon the pleadings filed heretofore.

18 APPEARANCES:

19 Legal Aid Society of Cleveland, by
 20 Jennifer R. Stoller, Esq. and Carol Eisenstat, Esq.,

On behalf of the Plaintiff;

21 Michael P. McGuire, Esq.

On behalf of the Defendant.

24 Mary Jean Cooley, RMR
 25 Official Court Reporter
 Cuyahoga County, Ohio

OFFICIAL COURT REPORTERS
 Cuyahoga County, Ohio

1 THURSDAY, MORNING SESSION, OCTOBER 21, 2004

2 - - - - -
3 THE COURT: We're here today in the matter
4 of Gloria Blackmond vs. CMHA. We're here today for a
5 hearing.

6 Jennifer Stoller.

7 MS. STOLLER: Yes, your Honor.

8 THE COURT: Hello.

9 MS. STOLLER: Hi.

10 THE COURT: Are you with your client?

11 MS. STOLLER: Yes. This is my client,
12 Gloria Blackmond.

13 THE COURT: And who is the other lady?

14 MS. STOLLER: Carol Eisenstat is a
15 colleague of mine from Legal Aid.

16 THE COURT: Okay. And, sir, you're here on
17 behalf of CMHA?

18 MR. MCGUIRE: Yes, I am, your Honor.

19 THE COURT: And I'm looking --

20 MR. MCGUIRE: I don't -- there's probably
21 nothing in there. I didn't respond to the --

22 THE COURT: What's your name, sir?

23 MR. MCGUIRE: Michael McGuire,
24 M-c-G-U-I-R-E.

25 I have a card, if you want to --

1 THE COURT: Okay. All right. This is an
2 appeal from the administrator's decision terminating
3 Ms. Blackmond's participation in the Housing Choice
4 Voucher Program. And I wanted to allow you the
5 opportunity to place evidence on the record today.

6 Would you give me some idea how many witnesses
7 we're going to have?

8 MS. STOLLER: Your Honor, I just plan to
9 call my client and the custodian of the records from
10 CMHA.

11 THE COURT: Okay. And, sir?

12 MR. MCGUIRE: No, just -- basically the
13 same two people, yeah.

14 THE COURT: Would either of you like to
15 make any kind of an opening?

16 MS. STOLLER: No, your Honor.

17 MR. MCGUIRE: No. That's okay.

18 THE COURT: It seems pretty
19 straightforward.

20 MR. MCGUIRE: Yeah. I -- I don't -- the
21 only opening I would -- I think this comes down to
22 basically one issue, and that's the -- the federal regs
23 say that we have to terminate people who have been
24 evicted from assisted housing. We have a court order
25 that says that she was evicted from the premises.

1 And that's pretty much the -- I don't know
2 what Ms. Stoller is going to present, but pretty much
3 that's our case.

4 THE COURT: You're relying upon the
5 statutory --

6 MR. McGUIRE: Yeah.

7 THE COURT: -- mandate?

8 MR. McGUIRE: Pretty much, yeah.

9 THE COURT: Okay. Ms. Stoller.

10 MS. STOLLER: Can I call my first witness,
11 your Honor, or would you like a brief --

12 THE COURT: Yeah. No, whatever you
13 choose. This is your proceeding.

14 MS. STOLLER: Thank you.

15 I would call Gloria Blackmond.

16 - - - - -

17 (The PLAINTIFF, to maintain the issues on her part
18 to be maintained, called as a witness GLORIA BLACKMOND,
19 who, being first duly sworn, was examined and testified
20 as follows:)

21 - - - - -

22 THE COURT: Thank you. Please take the
23 seat.

24 - - - - -

25

1

- - - - -

2

DIRECT EXAMINATION OF GLORIA BLACKMOND

3

BY MS. STOLLER:

4

Q Please state your name.

5

A Gloria Blackmond.

6

Q Can you spell your last name for the --

7

A B-l-a-c-k-m-o-n-d.

8

Q How long have you been a participant in the Housing

9

Choice Voucher Program, formally known as Section 8?

10

A September of 1978.

11

Q When did you reside at 3970 Pinecrest Drive, Cleveland,

12

Ohio, 44122?

13

A Approximately from November 15th of '03 till February

14

21st of '04.

15

Q Who was your landlord?

16

A Salena Mowafy.

17

Q What was your portion of the monthly rent for 3970

18

Pinecrest Drive?

19

A \$97.

20

Q Over the period of time that you lived there, how much

21

total did you pay Ms. Mowafy for rent at 3970 Pinecrest Drive?

22

A \$291.

23

Q That represented three months' rent?

24

A Uh-huh.

25

Q How did you pay her?

1 A With checks.

2 Q All right. I'm going to hand you --

3 MS. STOLLER: Your Honor, may I approach
4 the witness?

5 THE COURT: Yes.

6 Q I'm going to hand you a copy of something that's been
7 marked Appellant's Exhibit 1 for identification purposes.

8 MS. STOLLER: I provided a copy to defense
9 counsel.

10 Your Honor, would you like a copy now or when
11 it's admitted into evidence?

12 THE COURT: Wait.

13 Q Are these true and accurate copies of the checks you
14 gave to Ms. Mowafy for rent?

15 A Yes.

16 Q How much are the checks?

17 A \$359.74 and \$81.15.

18 Q The checks total \$440.89, which is obviously more than
19 291. What was the additional money for?

20 A Because I paid the security deposit in installments
21 because I didn't have the whole security deposit.

22 Q So are you sure that the 291 of that was for rent?

23 A Uh-huh.

24 Q Do you have receipts from Ms. Mowafy for these payments?

25 A No, only this.

1 Q Why not?

2 A Well, because I had to evacuate the place in an
3 emergency. I had, like, two feet of water in the basement,
4 fire shooting out of sockets, televisions on fire, microwave
5 on fire. And Section 8 placed her in abatement and I had to
6 leave, and the receipts and a lot of stuff that I had packed
7 was downstairs and was destroyed.

8 Q How did you pay -- actually, what are the dates on the
9 checks that you're holding, Appellant's Exhibit 1?

10 A 10/10/03 and -- they're both 10/10/03.

11 Q Why did you pay Ms. Mowafy for so many months in
12 advance?

13 A Because these were paychecks. One is -- belonged to my
14 15-year-old daughter.

15 MR. MCGUIRE: I'll have to object. I'll
16 have to object to that. There's no proof that this
17 was -- this was advance payments. I don't understand
18 her --

19 THE COURT: Well, she's allowed to testify
20 to it. You can object to admission later, though.

21 MR. MCGUIRE: Okay.

22 THE COURT: And I'm not sure, why are you
23 standing?

24 MR. MCGUIRE: I can't hear.

25 THE COURT: Oh, okay.

1 Can you speak up for us?

2 THE WITNESS: Sure.

3 MR. MCGUIRE: I just couldn't hear.

4 THE COURT: That's okay. I'm going to turn
5 the microphone up and --

6 THE WITNESS: Does this --

7 THE COURT: He needs to be able to hear
8 you.

9 THE WITNESS: Oh, okay.

10 THE COURT: So speak up for us.

11 Q Why did you pay Ms. Mowafy so many months in advance?

12 A Because I was -- this was a check from my daughter and
13 from me. We had a job at Baskin-Robbins, found out that it
14 was going out of business right around Christmas, and I was
15 waiting on disability payments that I knew that I wasn't going
16 to receive until after the first of the year. So in order to
17 get me past the holidays and past knowing that we wouldn't
18 have very much income, I paid her the deposit and three
19 months' rent in three installments.

20 MS. STOLLER: Okay. I have no more
21 questions for this witness, your Honor.

22 THE COURT: Do you have any questions,
23 Mr. McGuire?

24 MR. MCGUIRE: Yeah. Just briefly.

25

1 CROSS-EXAMINATION OF GLORIA BLACKMOND

2 BY MR. MCGUIRE:

3 Q You just said that this payment in October was for three
4 months, which would be October, November, and December?

5 A Which would have been -- I didn't move in until November
6 15th. I started paying her in installments in September
7 because I couldn't pay a security deposit and rents all at
8 once.

9 Q Do you have any proof of what these payments were for,
10 what months they were for, for what time periods?

11 A No.

12 MR. MCGUIRE: I don't have anything else,
13 your Honor.

14 THE COURT: Redirect.

15 MS. STOLLER: No, your Honor.

16 THE COURT: You may step down, ma'am.
17 Thank you.

18 MS. STOLLER: Your Honor, I would now
19 call the custodian of the records for the Cuyahoga
20 Metropolitan Housing Authority.

21 - - - - -

22 (The PLAINTIFF, to further maintain the issues on
23 her part to be maintained, called as a witness
24 MARY VIRGINIA ST. ROMAIN, who, being first duly sworn,
25 was examined and testified as follows:)

1 - - - - -
2 THE COURT: Thank you.
3 - - - - -

4 CROSS-EXAMINATION OF MARY VIRGINIA ST. ROMAIN

5 BY MS. STOLLER:

6 Q Please state your name.

7 A My name is Mary Virginia St. Romain.

8 Q Could you spell that for the court reporter, your last
9 name?

10 A S-T. R-O-M-A-I-N.

11 Q Are you the custodian of the records for the Housing
12 Choice Voucher Program?

13 A Yes, I am.

14 MS. STOLLER: Your Honor, given that the
15 witness is an employee of the appellee, I'd ask that I
16 be allowed to question her as if on cross-examination.

17 THE COURT: Granted.

18 MS. STOLLER: Thank you.

19 Q I'm handing you a document marked for identification
20 purposes as Appellant's Exhibit 2. Is this a true and
21 accurate copy of the decision to terminate Ms. Blackmond from
22 the voucher program?

23 A (Witness reviewing.) Yes, it is.

24 Q And in the decision it says that the Housing Choice
25 Voucher Program relied on a journal entry of judgment from the

1 Bedford Heights Municipal Court, Case No. 04CVG00169, in
2 terminating Ms. Blackmond; correct?

3 A Yes.

4 Q I'm handing you a you document marked for identification
5 purposes as Appellant's Exhibit 3.

6 MS. STOLLER: I provided copies of the
7 exhibits to appellee's counsel.

8 Q Is this a true and accurate copy of the journal entry
9 and judgment contained in the CMHA files?

10 A Yes, it is.

11 Q The journal entry indicates that the eviction was heard
12 on February 13th, 2004; correct?

13 A Yes.

14 Q The journal entry does not contain the factual basis for
15 the eviction, does it?

16 A It says been in default.

17 Q Under the voucher -- under the voucher program a
18 landlord has two separate contracts, a lease with a tenant and
19 a Housing Assistance Payments Contract with the Housing
20 Authority; correct?

21 A Yes.

22 Q Both the lease and the Housing Assistance Payments
23 Contract must include an addendum drafted by the United States
24 Department of Housing and Urban Development; isn't that true?

25 A Yes.

1 Q I'm handing you a document marked for identification
2 purposes as Appellant's Exhibit 4. If you can look at it and
3 verify for me that that's a true and accurate copy of the
4 addendum to the Housing Assistance Payments Contract and in
5 the back is the tenancy addendum.

6 A Yes, it is.

7 Q Rental units must comply with certain housing quality
8 standards, correct, under the Housing Choice Voucher Program?

9 A Correct. Sorry.

10 Q If the landlord fails to fix the rental unit after being
11 notified that it does not comply with the housing quality
12 standards, CMHA will terminate the Housing Assistance Payments
13 Contract; correct?

14 A We do give time for the landlord to fix, and we will
15 terminate if the landlord does not comply, after a period of
16 time, again.

17 Q In this case, CMHA terminated the Housing Assistance
18 Payments Contract with Ms. Mowafy effective January 13th,
19 2004, didn't it?

20 A 31st, 2004. You're looking at the notice, the --

21 Q The notice of default and contracts cancellation.

22 A Right, right. But we do terminate at ending of the
23 month. We do terminate at the ending of the month. So it
24 says the 31st, but apparently it went into default on the
25 13th.

1 Q Went --

2 A Yes.

3 Q So the house went into default on the 13th of January --

4 A Yes.

5 Q -- 2004?

6 And CMHA terminated the Housing Assistance Payments
7 Contract because Ms. Mowafy failed to correct violations --

8 A Correct.

9 Q -- of the housing quality standards; correct?

10 A Correct.

11 Q I'm handing you a document marked for identification
12 purposes as Appellant's Exhibit 5. Is this a true and
13 accurate copy of the document prepared by CMHA regarding 3970
14 Pinecrest Drive.

15 A It looks like our document, yes.

16 Q Could you double check for me that it's in the file?

17 A (Witness reviewing.) I'm sorry.

18 Q The reason I asked you to look for the document is
19 because I want you to be able to say it's a true and accurate
20 copy.

21 A I think -- I think this here -- I have it in letter
22 print. This here is when the inspector, I think, went out to
23 the unit.

24 Q So you can --

25 A When the inspector went out to the unit, I will say

1 that there was a note at home, or when the inspection was
2 conducted. I do have it in letter print.

3 Q Okay. So you --

4 A But I am familiar with this.

5 MR. MCGUIRE: We'll stipulate to that, your
6 Honor --

7 MS. STOLLER: Okay.

8 MR. MCGUIRE: -- as the record.

9 MS. STOLLER: Thank you.

10 And will you also stipulate that it's a record
11 of the regular --

12 MR. MCGUIRE: Yes.

13 MS. STOLLER: Thank you.

14 Q Please read the description of problems found by the
15 CMHA inspector at 3970 Pinecrest Drive. Well, if you can read
16 it off of the exhibit.

17 A Yes, I -- it was flood -- flooded basement, wiring not
18 grounded, fire shooting out of outlets.

19 Q The lease between the landlord and the tenant is
20 terminated when CMHA terminates a Housing Assistance Payments
21 Contract; correct?

22 A Yes.

23 MS. STOLLER: I have no further questions,
24 your Honor.

25 THE COURT: Okay. Now, she's on cross. Do

1 you intend to call her in your case?

2 MR. McGUIRE: Yes.

3 THE COURT: Okay. Do you have any other
4 witnesses?

5 MS. STOLLER: No, your Honor.

6 THE COURT: Can we just then hold your
7 admission of exhibits and let him go ahead and do it,
8 save some time?

9 MR. McGUIRE: Okay.

10 MS. STOLLER: Certainly.

11 THE COURT: You may proceed to direct.

12 - - - - -

13 DIRECT EXAMINATION OF MARY VIRGINIA ST. ROMAIN

14 BY MR. McGUIRE:

15 Q Okay. Now, CMHA will terminate a contract with a
16 landlord if they don't keep up the house to quality standards;
17 correct?

18 A Correct.

19 Q That contract is between the Housing Authority and the
20 landlord. There's a lease between the landlord and tenant.

21 A Correct.

22 Q They're not the same thing?

23 A No, they're not the same thing.

24 Q CMHA on subsidized housing, on this particular unit, we
25 paid part of the rent; correct?

1 A Correct.

2 Q The tenant was responsible for part of the rent;
3 correct?

4 A Correct.

5 Q Okay. Did we -- to the best of your knowledge -- let me
6 show you what Ms. Stoller showed you as a journal entry of
7 judgment for eviction. Do you recall seeing that? I'm not
8 sure what number that was, but Appellant's Exhibit -- "This
9 cause came on for hearing on February 13th, 2004, before the
10 Judge." It was an exhibit that -- no, it's not in our letter
11 file. It was an exhibit that she just gave you.

12 A It's --

13 Q This right --

14 A Yes, yes.

15 Q So we received a notice that Ms. Blackmond had been
16 evicted from the premises; correct?

17 A Correct.

18 Q Pursuant to that notice, did CMHA schedule a hearing for
19 Ms. -- as required by the regulations, did we schedule a
20 hearing for her prior to her termination?

21 THE COURT: Mr. McGuire, I have to
22 interrupt.

23 MR. MCGUIRE: Sure.

24 - - - - -

25 (Thereupon, a discussion was had off the

1 record.)

2

3 THE COURT: Sorry. Go ahead.

4 Q There was a hearing held. Ms. Blackmond was proposed
5 for termination?

6 A Yes.

7 Q The hearing was held.

8 A On 7/21/04.

9 Q Okay. At that hearing then the -- this journal entry of
10 judgment would have been taken into consideration?

11 A Correct.

12 Q Now, under the federal regulations, what is CMHA
13 required to do if someone is evicted from a subsidized unit?

14 A With the judgment, we take that into consideration, an
15 evicted tenant.

16 Q Does the --

17 A To terminate the tenant.

18 Q The CFR states -- this is section CFR 982.552. If you
19 will read for the Court, please, what does that say, the
20 section down there?

21 A "The PHA must terminate program assistance for a family
22 evicted from housing assisted under the program for serious
23 violation of the lease."

24 Q So we terminated Ms. Blackmond from the program based on
25 the requirements of the civil code.

1 A Correct.

2 Q You know, the code of -- code of federal regulations.

3 MR. McGUIRE: That's an exhibit.

4 THE COURT: Actually, I have that.

5 MR. McGUIRE: Do you have that?

6 THE COURT: Yes. Thank you.

7 Q There is nothing else we can do in this matter, is
8 there?

9 A No.

10 Q Okay. It's -- the hands are pretty much tied?

11 A We follow the procedure.

12 MR. McGUIRE: Okay. That's all we have,
13 your Honor.

14 THE COURT: Do you have any cross?

15 MS. STOLLER: No, your Honor.

16 THE COURT: You may step down, ma'am.

17 THE WITNESS: Thank you.

18 THE COURT: Sir, do you have any more
19 witnesses?

20 MR. McGUIRE: No. That's it.

21 THE COURT: Okay. So we're going to go
22 back to the plaintiff.

23 You're going to rest. Let's get your exhibits
24 in. If you could just talk to Mr. McGuire, see if
25 there's any objection.

1 MR. MCGUIRE: Okay.

2 - - - - -

3 (Thereupon, a discussion was had off the
4 record.)

5 - - - - -

6 MS. STOLLER: Your Honor, I would move
7 Appellant's Exhibits 1, 2, 3, 4, and 5 into evidence. I
8 believe counsel indicated that he did not object.

9 THE COURT: Okay. And, sir, do you have
10 any exhibits?

11 MR. MCGUIRE: No, other than that section
12 of the code, but you already have it, so we're just
13 going to refer to the code section.

14 THE COURT: Okay.

15 MS. STOLLER: Would you like me to give
16 these to the court reporter or to you?

17 THE COURT: The court reporter.

18 Would either of you like to make a close?

19 MR. STOLLER: Yes, your Honor.

20 THE COURT: Go ahead.

21 MS. STOLLER: Thank you.

22 CMHA's decision to terminate Gloria
23 Blackmond's participation in the Housing Choice Voucher
24 Program was illegal, arbitrary, capricious,
25 unreasonable, and/or unsupported by the preponderance of

1 substantial, reliable, and probative evidence on the
2 whole record.

3 24 CFR section 982.552(B)(2) provides, quote,
4 "The PHA must terminate program assistance for a family
5 evicted from housing assisted under the program for
6 serious violation of the lease," end quote.

7 CMHA's decision to terminate Ms. Blackmond did
8 not comply with this regulation for two reasons.

9 First, Ms. Blackmond was evicted after CMHA's
10 termination of the contract with Ms. Blackmond's
11 landlord, Salena Mowafy. Therefore the unit was not,
12 quote, assisted under the program, end quote, at the
13 time of the conviction, and Ms. Blackmond should not be
14 terminated from the voucher program.

15 CMHA had no evidence to show that
16 Ms. Blackmond committed any serious violations of the
17 lease before the Housing Assistance Payments Contract
18 was terminated.

19 Second, CMHA had no evidence to show that
20 Ms. Blackmond committed a serious violation of the
21 lease either before or after the termination of the HAP
22 contract.

23 Ms. Blackmond has presented the only direct
24 testimony regarding representative payments to
25 Ms. Mowafy. CMHA relied on a journal entry that

1 contained -- that does not contain factual findings.

2 The eviction could have been granted for any
3 number of reasons that do not constitute serious lease
4 violations.

5 CMHA cannot shift the burden of proof to
6 Ms. Blackmond by requiring her to show that she did pay
7 her portion of the rent.

8 Therefore, CMHA incorrectly decided that
9 Ms. Blackmond committed a serious lease violation.

10 Therefore, Ms. Blackmond asks the Court to
11 reverse the decision of CMHA to terminate her
12 participation in the voucher program and reinstate
13 her.

14 Thank you.

15 THE COURT: Sir.

16 MR. McGUIRE: We will ask the Court to
17 find that the CMHA was within its authority, the duty of
18 the authority to terminate her.

19 The fact that the contract was terminated with
20 the landlord isn't relevant here, in that the eviction
21 itself was filed or the causes for the eviction was
22 filed prior to the termination of the contract, because
23 the -- if I'm not mistaken, the eviction itself was
24 filed on the 20th --

25 MS. STOLLER: Objection, your Honor.

1 There's been no evidence regarding when the -- when the
2 eviction was filed.

3 MR. MCGUIRE: Any -- any -- any violations
4 of the lease preceded the date that the contract was
5 terminated, is our argument. And she -- we were served
6 with a copy of the judgment that she was terminated.
7 She was evicted. The federal regulations require us to
8 terminate program assistance for someone who has been
9 evicted. That was basically what the decision was based
10 on.

11 The standard is that our decision not be
12 arbitrary, capricious, or unreasonable. In this
13 instance, I don't think we -- any of that have been met
14 because we do have a journal entry from a court, and it
15 is not our position, it is not our job, to sit down and
16 try to determine whether or not the Court had -- why
17 they did what they did or why they found what they did.
18 There was a court judgment evicting her, and that's what
19 we base this on.

20 We'll leave it at that, your Honor.

21 THE COURT: Okay. Anything else?

22 MS. STOLLER: No, your Honor.

23 THE COURT: Okay. May I see the exhibits?

24 If you want to take a break, I'll see you in
25 about ten minutes.

1

- - - - -

2

(Thereupon, a recess was taken.)

3

- - - - -

4

THE COURT: Okay. Mr. McGuire,

5

Ms. Stoller.

6

Okay. We're back on the record in Gloria

7

Blackmond vs. CMHA.

8

Counsel, I listened to the evidence today.

9

And it's an interesting issue and I can certainly

10

appreciate the position of both the parties, but I think

11

that it would be legally speechless of me to affirm the

12

hearing officer's decision. I don't see how it's

13

possible for anybody who is a factfinder to issue an

14

order that says that by preponderance of the evidence

15

they relied upon one piece of paper, no sworn testimony,

16

and no other evidence.

17

The fact that the eviction occurred didn't

18

necessarily mean it was lawful, certainly didn't negate

19

the hearing officer's obligation to make a record and to

20

take testimony and make a decision.

21

The hearing officer said that she made the

22

ruling here on a preponderance of the evidence with only

23

one document. This Court could never substantiate a

24

decision based on one document and say that it's

25

preponderance of the evidence. It's just a legal

1 fiction, in my mind.

2 Since the Court finds that the hearing
3 officer could not have made such a finding and that the
4 appellee had, therefore, no statutory duty to issue a
5 termination, and the ruling of the hearing officer was
6 indeed capricious, arbitrary, and unreasonable, in
7 violation of the law, the Court voids that finding and
8 reinstates the participant's placement in the Housing
9 Choice Voucher Program. Okay.

10 MS. STOLLER: Thank you, your Honor.

11 THE COURT: Thank you.

12 - - - - -

13 (Proceedings adjourned.)

14 - - - - -

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C E R T I F I C A T E

- - -

I, Mary Jean Cooley, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporter I took down in stenotype all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript is a complete record of the proceedings had in the trial of said cause and constitutes a true and correct Transcript of Proceedings had therein.

Mary Jean Cooley

Mary Jean Cooley, RMR
Official Court Reporter
Cuyahoga County, Ohio