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CANTON MUNICIPAL COURT
STARK COUNTY, OHIO

STARK METROPOLITAN HOUSING,	:	
	:	CASE NO.: 96-CVG-1298
Plaintiff,	:	
	:	MAGISTRATE GREEN
vs.	:	
	:	<u>REPORT OF MAGISTRATE</u>
DENEACHERA SHORT,	:	<u>FINDINGS OF FACT AND</u>
	:	<u>CONCLUSIONS OF LAW</u>
Defendant,	:	
	:	

This matter came on for hearing before the Magistrate on April 1, 1996. The Plaintiff was present and was represented by Attorney John B. Wirtz. The Defendant was also present and represented by Attorney Jonathan E. Morris of the Stark County Legal Aid Society.

FINDINGS OF FACT:

1. Defendant is a tenant pursuant to a written lease with the Stark Metropolitan Housing Authority at 1523 Robin Court S.E., Canton, Ohio.
2. Paragraph 4a(2) of the lease states as follows, "If there is a change in the Head of Tenant's family, due to Marital Separation in which no legal action has been taken, there shall be no reduction in rent until a period of ninety (90) days has elapsed."
3. Upon her marriage in January, 1996 the Defendant's monthly rental obligation was elevated from \$70 to \$471. This increase took into account the income of Douglas Short to whom the Defendant was married in September 1995. The rent increase took effect January 1996.
4. On January 3, 1996 the Defendant's husband moved out, abandoning the family and has not provided any support

since. The Defendant notified the Stark Metropolitan Housing Authority of that fact in early January.

5. The Defendant also reported this fact to the Welfare Department and was returned eligibility for A.D.C.

6. At the time of the hearing of the matter, legal proceedings between the Defendant and her husband had not been commenced.

CONCLUSIONS OF LAW:

1. Pursuant to federal regulation if a public housing authority receives information concerning a change in the family's income or other circumstances, the housing authority must consult with the family and make any adjustments determined to be appropriate. 24CFR960.209(b) A public housing authority lease may not be terminated for other than serious or repeated violations of material terms of the lease such as failure to make payments due under the lease. 24CFR966.4.

2. Although non-payment of rent, especially repeated delinquency in the payment of rent, establishes a prima facie cause to terminate the lease and evict the tenant, it is appropriate for the Court to consider that non-payment was due to circumstances beyond the tenant's control and that the tenant promptly informed the landlord of the circumstances and that the tenant made diligent efforts to pay. Cincinnati Metropolitan Housing Authority vs. Green, 41Ohio Appeals 3rd 365. This case falls clearly within the exception recognized by that case, inasmuch as the inability to pay was clearly beyond the means of the tenant, given her circumstances, that is to say the loss of family income owing to the abandonment by her spouse.

3. The provision in the Stark Metropolitan Housing Authority Lease setting forth that no adjustment in rent could be had prior to the lapse of 90 days following the marital separation is clearly at variance with 29CFR960.209(b). See also Housing Authority of Saint Louis County vs. Boone 747SW 2nd 311.

4. The Writ should be denied.

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RECOMMENDATION:

The Writ of Restitution should be DENIED.

Dated: ~~June 18, 1996~~
July 9, 1996

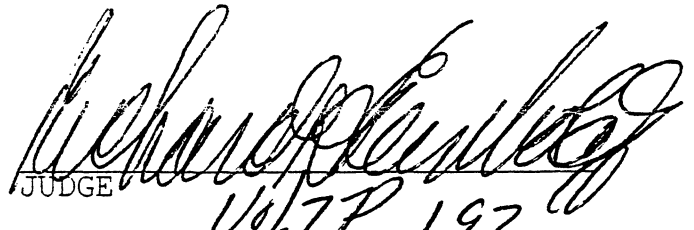

MAGISTRATE LEMUEL R. GREEN

cc: John B. Wirtz, Counsel for Plaintiff
Jonathan E. Morris, Counsel for Defendant

JUDGMENT ENTRY

The Court, having reviewed the Report of the
Magistrate dated ~~June 18,~~ July 9, 1996, hereby approves and
confirms same.

DATED: _____


JUDGE
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cc: John B. Wirtz, Counsel for Plaintiff
Jonathan E. Morris, Counsel for Defendant

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