



# Department of Justice

**Acting United States Attorney Lev L. Dassin  
Southern District of New York**

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**WESTCHESTER COUNTY AGREES TO DEVELOP HUNDREDS OF  
UNITS OF FAIR AND AFFORDABLE HOUSING IN  
SETTLEMENT OF FEDERAL LAWSUIT**

Lev L. Dassin, the Acting United States Attorney for the Southern District of New York, and Tony West, the Assistant Attorney General for the Civil Division of the Department of Justice, announced today that Westchester County, N.Y., has agreed to ensure the development of 750 units of fair and affordable housing in areas with low racial and ethnic diversity in order to settle a lawsuit brought against it by the United States under the False Claims Act and Housing and Community Development Act. To implement the settlement, the County has agreed to expend \$30 million of County funds; to pay the United States an additional \$30 million, a substantial portion of which thereafter will be made available again to the County for housing development; and to submit to the oversight and enforcement authority of a court-appointed monitor. According to the Complaint filed by the United States in Manhattan federal court:

**The Complaint**

Westchester County receives Community Development Block Grants from the United States Department of Housing and Urban Development ("HUD"), on behalf of a consortium of municipalities within the County. As a condition of receiving such grants, the County, among other commitments, agrees to "affirmatively further fair housing." The commitment to affirmatively further fair housing requires more than simply building affordable housing; it also requires grant recipients to assure that the housing is fully available to all residents of the community, regardless of race, color, national origin, gender, handicap, or familial status.

To meet this obligation, the County was required to conduct an analysis of the

impediments to fair housing choice, including impediments erected by racial and ethnic discrimination or segregation, and to take appropriate actions to overcome the effects of any such impediments. The County was aware that racial and ethnic segregation and discrimination persisted in its municipalities: according to the 2000 federal Census, over half of the County's municipalities had an African-American population of 3% or less, and in 1999 the County Board of Legislators found that there had been repeated instances of intolerance and discrimination in the County.

Despite that, the analyses of impediments that the County conducted between 2000 and 2008 made no mention of the housing needs of racial or ethnic minorities or the effects of racial or ethnic discrimination. Instead, the County focused on "impediments to affordable housing," with no identification of impediments to fair housing based on race or ethnic background or resulting from the effects of racial or ethnic segregation. In particular, the County did not analyze how its placement of affordable housing affected segregation, nor whether the placement of such housing had the effect of increasing or decreasing racial or ethnic diversity in the neighborhoods where the housing was built. Having failed to identify impediments to fair housing based on race or ethnicity, the County took no action designed to overcome those particular impediments. As a result, the County's production and placement of affordable housing may have perpetuated or increased racial and ethnic segregation in the area.

As part of its applications for funding under the HUD grant program, between 2000 and 2008 the County periodically certified that it was meeting its obligations to affirmatively further fair housing. The Complaint alleges that, due to the County's failure to identify and address impediments to fair housing, the County knew those certifications to be false, and therefore violated the False Claims Act. In addition, the Complaint alleges that the County's failure to comply with the express conditions of the HUD grants violated the Housing and Community Development Act, entitling the United States, among other things, to court-ordered relief. In an earlier order in this case, the United States District Court ruled that the County's certifications that it had acted to affirmatively further fair housing were false, and directed that a trial be held to determine if the County knew the certifications were false when it submitted them to HUD; and the damages, if any, incurred by the United States.

### The Settlement

To settle the United States' claims under the Housing and Community Development Act, the County has agreed to repay \$21.6 million to the County's account with HUD. That amount, along with an additional \$30 million of County funds, will be used for the construction of 750 units of fair and affordable housing over the next seven years in areas of the County with low African-American and Hispanic populations. If the County fails to meet the terms of the settlement agreement regarding housing construction, it will become liable for penalties that require it to fund the construction of additional housing. To resolve the False Claims Act claims in the Complaint, the County has agreed to pay the United States a total of \$30 million, with a credit for the \$21.6 million repaid to the County's HUD account.

The settlement also provides that the County will change certain of its policies to

facilitate the removal of impediments to fair housing. In particular, the County will seek to eliminate municipalities' right of first refusal over land purchases made by the County to develop fair and affordable housing, and will condition the use of public funds (including HUD grants) on commitments by municipalities to implement policies that promote fair and affordable housing. The County will also undertake and fund marketing, public education, and other outreach efforts to promote fair and affordable housing.

Finally, the County's compliance with the agreement will be overseen by a court-appointed monitor. The monitor will have the authority, among other things, to review the County's programs and policies, recommend additional actions needed by the County to achieve compliance with the settlement, issue periodic reports on the County's progress, and modify certain terms of the settlement if necessitated by changed conditions. With the court's approval, the United States has selected James E. Johnson, a member of the law firm Debevoise & Plimpton, to fill the post of monitor.

United States District Judge Denise L. Cote approved the settlement today in Manhattan federal court. The settlement agreement is conditioned upon approval by the County's Board of Legislators. Following approval of the settlement, the court issued an order scheduling a trial in the case for Nov. 2, 2009, in the event that the Board of Legislators fails to provide the necessary approvals within the 45 day period provided for in the settlement.

#### The Whistleblower

The allegations of wrongdoing were first brought to the attention of the United States by the Anti-Discrimination Center of Metro New York, a fair-housing advocacy group, which filed a complaint as a whistleblower under the *qui tam* provisions of the False Claims Act. Those provisions permit the United States to intervene in cases originally commenced by private parties who know of fraud committed against the Government. The Anti-Discrimination Center will receive \$7.5 million as part of the False Claims Act settlement.

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"Local governments that accept HUD grants undertake a serious commitment and responsibility to affirmatively further fair housing," said Acting United States Attorney Lev L. Dassin. "This groundbreaking agreement with Westchester County will ensure that hundreds of new units of housing are built to be not only affordable, but fully available throughout the community."

"Fair housing is a significant issue for this Administration," said Tony West, Assistant Attorney General for the Civil Division of the Department of Justice. "In collaboration with the United States Attorneys' offices and our other partners, the Justice Department will work to ensure that public dollars intended to affirmatively further fair housing are not being misspent."

Assistant United States Attorneys James L. Cott, Sean C. Cenawood, and Benjamin H. Torrance handled the case, with the assistance of Renee Brooker, Assistant Director of the

Commercial Litigation Branch in the Department of Justice Civil Division; Senior Trial Attorney William C. Edgar, also of the Commercial Litigation Branch; and attorneys in the Office of General Counsel at HUD.

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