

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIE BURRELL,)	
)	No. 03 C 8776
Plaintiff,)	
)	Judge Manning
v.)	
)	
CHA et al.,)	
)	
Defendant.)	

**FEDERAL DEFENDANT'S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

Introduction

More than two years after he first instituted this lawsuit, and despite a valiant attempt by appointed counsel, plaintiff Willie Burrell has still failed to provide this court with a viable complaint. This court's memorandum opinion of August 22, 2005 provided Burrell with a very specific road map by which to avoid another dismissal. However, the minor editorial changes provided in Burrell's attempt to amend simply do not overcome the deficiencies in the original pleading.

Background

Plaintiff Willie Burrell's amended complaint is virtually identical to the one he filed in December 2003.¹ Both complaints allege that the Dorothy Gautreaux Northeast Scattered Site Resident Advisory Council (DGNSSRAC) and the Northeast Scattered Site Resident Management

¹ The following paragraphs in the amended complaint are identical to paragraphs in the original complaint: 2 – 5, 7 – 15, 20 – 22, 26 – 27, 29 – 30, 32, 34, 37 – 41, 43 – 44, 47 – 53, 55, 57 – 58, 69 – 72. The following paragraphs have minor changes, but are essentially the same as in the earlier complaint: 1, 6, 16 – 18, 31, 33, 35 – 36, 42, 45 – 46, 54, 56, 67 – 68.

Corporation (NSSRMC) and Burrell have been discriminated against based upon race and ethnic origin. Because these are the same allegations raised in the original complaint, the United States incorporates by reference the memorandum of law and reply memorandum filed in its motion to dismiss the first complaint. Exs. 1 and 2.

The handful of new paragraphs in the amended complaint do nothing to correct the defects outlined by the court in dismissing the first complaint.

Argument

I. The Court Lacks Subject Matter Jurisdiction Under the Fair Housing Act.

With regard to Burrell's claims under the Fair Housing Act and Title VI of the Civil Rights Act, the court held that the complaint did "not specifically contend that HUD engaged in intentional, as opposed to negligent, discrimination." Mem. Op. at p. 7. The court further held that insofar as Burrell was alleging a tenanting claim, that claim would have to be raised in *Gautreaux v. Chicago Housing Authority*, No. 66 C 1459 (N.D. Ill). However Burrell's new complaint does not allege any facts suggesting that HUD engaged in intentional discrimination, and despite the court's instructions, Burrell continues to raise his tenanting issues here instead of before the *Gautreaux* court.

Furthermore, this court concurred with HUD's position in its original motion to dismiss that the Fair Housing Act did not provide a private right of action for Burrell's claims. Burrell has simply ignored this ruling, as well as ignoring the fact that he cannot represent tenants other than himself.

II. The Court Lacks Subject Matter Jurisdiction Pursuant to 28 U.S.C. § 1343.

This court agreed with HUD that Burrell's assertion of jurisdiction under 28 U.S.C. § 1343 was subject to dismissal because he failed to allege that HUD acted under color of any state law. The amended complaint offers nothing new on this point and hence it should be dismissed.

III. The Court Lacks Subject Matter Jurisdiction Pursuant to 28 U.S.C. § 1331.

Burrell's only basis for federal question jurisdiction is the recitation of a federal regulation expressing HUD's policy of encouraging resident management. 24 C.F.R. § 964.15. However, as this court ruled, this regulation does not create any specific rights for tenants or resident management companies, and hence any claims based on the regulation must fail. Mem. Op. at 5. Since Burrell has not added anything new to the amended complaint to sustain federal jurisdiction, the amended complaint should be dismissed as well.

Conclusion

For these reasons, this court should grant HUD's motion to dismiss Burrell's amended complaint.

Respectfully submitted,

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