1978

Appellants' Brief

Lewis M. Steel '63

78-6001

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

BROOKHAVEN HOUSING COALITION, BROOKHAVEN BRANCH N.A.A.C.P., SMITHHAVEN MINISTRIES,

Plaintiffs,

ROSEMARY TARRY, GLORIA YOUNG, CAROLYN JOHNSON, DORIS ACREE, VICKIE JORDAN, LUCILLE MIDDLETON, and NORA RUSH,

Plaintiffs-Appellants,

against

JOEL SOLOMON, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION; GERALD TURETSKY, REGIONAL ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION; JEROME KURTZ, COMMISSIONER, INTERNAL REVENUE SERVICE; PHILIP E. COATES, REGIONAL COMMISSIONER, NORTH ATLANTIC REGION, INTERNAL REVENUE SERVICE; TOWN OF BROOKHAVEN, NEW YORK; BROOKHAVEN TOWN BOARD; JOHN RANDOLPH, BROOKHAVEN TOWN SUPERVISOR; CHARLES W. BARRAUD; BROOKHAVEN TOWN PLANNING BOARD; JOHN LUCHSINGER, CHAIRMAN, BROOKHAVEN TOWN PLANNING BOARD,

Defendants-Appellees.

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STATEMENT OF THE ISSUES

1. Whether the lower court was correct in holding that the IRS employee appellants were third party beneficiaries to the Brookhaven-GSA housing agreement.

2. Whether the GSA-Brookhaven housing agreement is enforceable.

PRELIMINARY STATEMENT

Appellants are low income federal employees who work at the Internal Revenue Service Center (IRS) in the Town of Brookhaven, New York. They live in inadequate and/or sub-standard housing, and are unable to obtain decent accommodations for themselves and their families. All of the appellants reside in the vicinity of the Center.

As the court below noted, the principal thrust of this case is to compel the Town of Brookhaven either directly, or indirectly, through the federal defendants, to perform a commitment which the Town made to the federal defendants to "provide whatever program would be necessary to meet the housing needs" of IRS Center employees (A. 50).

Appellants claim, (1) that this commitment is binding on Brookhaven, (2) that as third party beneficiaries, they may secure enforcement of the commitment, and (3) that they may compel the federal defendants to enforce it. The Town of Brookhaven asserts it made no such commitment. The federal defendants seek to wash their hands of the matter, whether or not the IRS employees live in adequate housing.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

This case has undergone considerable evolution since the complaint was filed on August 2, 1971. At that time the original plaintiffs, who included various civil rights and civic organizations and agencies, as well as several Black residents of the Town of Brookhaven, sought to enjoin the Administrator of the General Services Administration (GSA), and the Commissioner of the IRS from occupying the Brookhaven facility then under construction. The thrust of the original complaint was that the federal defendants had violated the provisions of Executive Order 11512 which imposes on GSA the duty to insure that adequate housing will be available for lower income workers in the vicinity of a new federal facility, and the requirements of the Fair Housing Law, 42 U.S.C. 3608, which requires federal officials to act affirmatively to promote equal housing opportunities for minority citizens.

In early 1972, the plaintiffs sought a preliminary injunction to restrain IRS from occupying the soon to be completed Center, and to restrain GSA from disposing of certain surplus housing facilities located near the IRS facility at the Suffolk Air Force Base in the Town of Southampton. With

respect to the surplus housing, the plaintiffs claimed that these units represented a potential partial remedy for the defendants' failure to comply with the federal laws involved.

The district court, per Orrin G. Judd, determined that GSA had indeed violated the low cost housing requirements of Executive Order 11512, but declined to enjoin IRS from occupying its new facility. Judge Judd, however, did agree that the Air Force Base units represented a partial remedy and enjoined GSA from disposing of the units. Brookhaven Housing Coalition v. Kunzig, 341 F.Supp. 1026 (E.D.N.Y. 1972).

Following the issuance of the preliminary injunction, numerous months passed during which GSA negotiated with various potential housing developers including the Town of Southampton, in an attempt to have the Air Force Base units acquired and used as a lower income subsidized project. The district court on several occasions amended the preliminary injunction to facilitate possible sale of the units for low cost housing. After all the lower income proposals fell through, the district court finally dissolved the injunction in 1975, permitting GSA to sell the units to a standard housing developer. The ultimate sale was conditioned to insure that the purchaser would not discriminate against tenants who required rent supplement payments or governmental assistance in order to meet their rental

obligation.

During the time the court was resolving the Air Force units issues, the overall focus of the case in chief was significantly altered. IRS moved into its Brookhaven Center in the summer of 1972. There was not, however, an adequate supply of decent housing for lower income IRS employees in the Brookhaven community. As a result, on March 30, 1973, the plaintiffs filed an amended and supplemental complaint which added the Town of Brookhaven, the Town Board and Planning Board, and various Brookhaven public officials as defendants (A. 1).

The first two causes of action of the amended pleading alleged that the federal defendants had failed to comply with site selection standards mandated by Executive Order No. 11512, and the Fair Housing Law of 1968. Additionally, it was alleged that the federal defendants had failed to enforce a commitment which they had obtained from the Town of Brookhaven to provide adequate low-income housing to meet the needs of the employees at the new federal facility.

The third and fourth causes of action were directed against the Brookhaven defendants, the plaintiffs alleging that Brookhaven had committed itself to provide whatever programs were necessary to meet the housing needs of the IRS employees, but had failed to comply with that commitment.

In early 1975 the federal defendants moved to dismiss the case asserting that the plaintiffs, none of whom were actually IRS employees, lacked standing to sue. In response to that motion the district court in a memorandum order dated March 20, 1975, allowed eight (8) additional individual plaintiffs to join the action. These plaintiffs were all IRS employees who were unable to find adequate housing near their jobs.

The trial of this case began in May, 1976 and was concluded on July 1, 1976. Judge Judd died six days later before rendering a decision. The case was reassigned to the Honorable George C. Pratt and the parties stipulated to allow Judge Pratt to rule upon the record made before Judge Judd. On May 6, 1977, Judge Pratt filed a 90 page memorandum and order. As a result of that decision a further hearing was conducted on September 26, 1977. On October 27, 1977, Judge Pratt issued a final ruling dismissing the amended and supplemental complaint in its entirety. The individual IRS plaintiffs have appealed from that ruling.

THE DISTRICT COURT'S MAY 6, 1977 MEMORANDUM AND ORDER

A. Summary of Opinion

Judge Pratt, in his first memorandum decision,

provided a detailed summary of the procedural history of this case (A. 52-60a). He also set out the positions of the parties (A. 60a-70) and the legal framework of the case, including an analysis of the impact of Executive Order 11512 (A. 70-73), the scope of Title VIII (A. 74-77), the applicability of the third party beneficiary doctrine (A. 97-98), and the enforceability of Brookhaven's commitment to provide adequate housing (A. 122-136).

The decision below also contains extensive findings of fact dealing with the federal defendants' performance (A. 77-96), the third party beneficiary claim (A. 98-106), the adequacy of housing for IRS employees, and Brookhaven's response to the housing need (A. 106-120).

The lower court's basic conclusions were that:

(1) Before accepting Brookhaven's bid to build and lease the Center, the federal defendants considered the adequacy of housing near the proposed facility, the only action required under Executive Order 11512 and Title VIII;

(2) Prior to GSA's acceptance of Brookhaven's bid, Brookhaven's special town attorney in a letter to GSA stated that the Town would "provide whatever programs would be necessary to meet

the housing needs" for IRS Center employees;

(3) The housing needs of low income IRS Center employees have not been met and Brookhaven has failed to provide necessary housing programs;

(4) If the special town attorney's commitment to provide necessary programs was binding on Brookhaven under applicable municipal law, then the low income IRS employee plaintiffs were third party beneficiaries of that commitment and could enforce it by this action;

(5) Because the record was incomplete to resolve the question as to whether the special town attorney's commitment was binding, a further hearing was necessary.

The court's findings are set forth in greater detail below.

B. The Scope of the Federal Defendants' Obligation With Regard to Housing

Judge Pratt found that GSA was advised in March, 1968 that the IRS sought a facility in Suffolk County, New York. This request was passed on to GSA's Regional Administrator for Region 2 in June, 1969 (A. 78). Executive Order 11512 was signed by the President on February 27, 1970. The lower court found that this Executive Order was applicable

to the Brookhaven site selection process as it went into effect "well prior to the September 4, 1970 award" (A. 71-72).

The court pointed out that the Executive Order contained seven policy guidelines for the selection of federal facilities. One of these guidelines was "the availability of adequate low- and moderate-income housing." The court held that the Executive Order could not be read to require that satisfaction of all seven policies was mandatory. Instead, GSA merely had to consider the guidelines and could engage in "certain trade-offs and balancing" (A. 72). With respect to the requirements of Title VIII of the Civil Rights Act of 1968, 52 U.S.C., §§3601, et seq., the district court determined that the law added "little if anything to the scope of the duty more specifically imposed by E.O. 11512" (A. 76).

C. The Federal Defendants' Performance

The court analyzed the actions taken by GSA in order to determine whether there was an adequate supply of low and moderate income housing in the vicinity of the proposed Brookhaven facility (A. 76-86). It concluded that GSA "did consider the availability of low and moderate income housing in its site selection decision" (A. 94). The court reached this conclusion notwithstanding that it also found that "GSA seems to have accepted too readily and without sufficient verification the

documentation of the Town. . . GSA might have made more certain that the housing which it found to be available [for lower income citizens] at least met the minimum 'habitability standards' of HUD and the Town" (A. 95).

D. Brookhaven's Bid and Its Acceptance

Brookhaven submitted an offer to construct the IRS Center on June 2, 1970. Its bid was one of 13 bona fide offers submitted to GSA (A. 81-82). All of these offers involved sites within Suffolk County.

GSA's Regional Administrator, Gerald Turetsky, formally requested leasing authority from Washington on July 31, 1970 and recommended that GSA negotiate a lease for the Town of Brookhaven's proposed site (A. 86-87).

On August 12, 1970, a meeting was held in Washington, D.C. which was attended by high officials of GSA, IRS and the Department of Housing and Urban Development (HUD). The topic of the meeting was the proposed IRS Center in Suffolk County, the Executive Order, and the problem of inadequate lower cost housing near the proposed facility. HUD's Deputy Assistant Secretary for Equal Opportunity informed the GSA and IRS representatives that the Suffolk County community had been dilatory in developing public housing programs and requested that the selection of an IRS site "be used as a means of getting the County to move forward"

with subsidized housing efforts (A. 87-88).

GSA's representative responded that his agency could not make a public program in Brookhaven a mandatory award factor (A. 88). Nonetheless, the HUD, GSA, and IRS officials reached a decision, which was recorded in a government memorandum, to contact Brookhaven officials before the announcement of the award. The goal would be to obtain a Town commitment to take such steps as were necessary to provide for the housing needs of government employees (A. 89).

The district court found that before Regional Administrator Turetsky accepted Brookhaven's bid, he "asked for a statement in writing from the Town which would summarize and state the availability of housing, their attitude toward low and middle income housing, and the verbal statements and assurances that they had made to GSA with regard to supporting our efforts to house federal employees and cooperate with those efforts" (A. 89). The court also found that Brookhaven's special town attorney, Oscar Bloom, responded by letter which was received prior to the official award on September 4, 1970 (A. 89). The Bloom letter stated:

> The Town of Brookhaven will provide whatever programs would be necessary to meet the housing needs for all federal employees which may develop as a result of the award of the project to the Town of Brookhaven (A. 394).

The district court concluded, "that GSA sought and received

certain assurances concerning housing" prior to the award (A. 90).

E. The Court's Analysis of the Legal Significance of This Commitment

(1) Did Special Town Attorney Bloom understand his letter to be a contractual commitment?

Because the court found that GSA would have accepted Brookhaven's bid whether or not it made assurances with regard to housing, Judge Pratt regarded Mr. Bloom's state of mind as being relevant to the nature of the commitment. The district court viewed this aspect of the case as follows:

> Turetsky of GSA made the approach to Special Town Attorney Bloom by telephone on September 3, 1970. Bloom responded with his letter of September 4, 1970... The record does not show (1) whether Bloom was led to believe that the Town would not get the award if they did not make the commitment, (2) whether he was told informally GSA's position, namely that the Town would get the award whatever its response to the request, or (3) whether Bloom was left in the dark as to the significance of the federal defendants' request for a commitment (A. 100).

The Court then proceeded to analyze events after the award to determine if they shed light on the nature of the housing commitment. In this analysis, the court found that the formal lease which was signed on October 20, 1970 contained no provision relating to the availability of low or moderate income housing. However, deletion of the award

factor pertaining to housing was consistent with the deletion of other award factors from the lease (A. 101). The court then pointed to the fact that GSA officials, between the date of the award and the date the lease was signed, themselves assumed that the Town had agreed to the housing commitment, and GSA officials had written letters to that effect (A. 101-102).

Finally, the court looked to an exchange of correspondence which occurred shortly after the signing of the lease. In this exchange, GSA asked the Town what programs it intended to utilize to meet its housing commitment, and Bloom responded that it would fulfill its "lease requirements" when it was informed of the number of people needing housing (A. 103-104). As a result of this correspondence, the court concluded:

> It seems clear that Bloom believed the Town to have been committed to the housing promise contained in his September 4, 1970 letter (A. 104).

(2) Did Special Town Attorney Bloom have the authority to commit the Town?

In order to determine whether the Bloom letter rose to the level of a contractual commitment, the court engaged in an analysis of municipal corporation law. The court determined that the prime requisites of a valid contract by a town, "relate to a matter within the power of the town and that it be executed by the supervisor or other person having authority for such pur-

pose, and in such form or manner as is authorized or prescribed by law" (A. 125-26). The court also concluded that, "In rare instances an initially unauthorized contract may be subsequently ratified by the authorized contracting agent" (A. 126-27). Applying his understanding of the law to the facts, the court concluded:

> On the record presently before the court it is impossible to hold that the Bloom letter constitutes a contractual obligation enforceable against the Town. There was no resolution of the Town board which either authorized or approved the special counsel's promise, nor was the promise signed by the Supervisor (A. 130).
>
> * * *
>
> Close analysis of the applicable law leads me to conclude that the claimed contractual obligation would be enforceable against the Town only if (1) the Town board members (2) at the time they adopted the resolution approving and authorizing execution of the lease (3) knew that Bloom had sent the September 4, 1970 letter, (4) knew that it had been sent for the purpose of inducing GSA to award the project to the Town, and (5) had not been informed by the federal representatives or knew that the Town would get the award whether or not they were under a commitment on housing. Under such circumstances, if they exist, the record may well warrant findings that the lease itself mistakenly omitted reference to the letter, that the Bloom promise was a material term of the lease agreement, and that the promise is enforceable against the Town (A. 132-33).

The court below recognized that its analysis, which placed a heavy burden on plaintiffs to prove that the Bloom letter constituted a contractual commitment, conflicted significantly with

the opinion of Judge Judd who ruled at the end of plaintiffs' case in response to motions to dismiss:

> As to the Town ***
>
> It did make a commitment to take action to encourage the provision of housing within the economic means of families within the town, and specifically to all employees of the IRS Center.
>
> I believe that [the Special Town Attorney] had authority to write the letter that he did. Here, let me state that a playground program supervisor can be held closely liable to a school district just by his negligence, so I think that a spokesman who is designated to help to get a desirable project into a town has the authority to do what is necessary to get it.
>
> * * *
>
> [Brookhaven's counsel] says they must prove a contract, but certainly this is not the type of contract you might have on a contract to build a house by specification; it was an open-ended commitment, as [the Government's attorney] described it, and I think any program that the Town of Brookhaven might have to propose would have to be within the limits which seem to me to be fairly low limits of a number of IRS low income employees to be within adequate housing. It would not have to meet all the needs of the entire town and it would mean that the GSA and the plaintiffs would have to make a little more investigation of what the requirements of IRS employees are now (A. 241-42, 134-35).

To resolve this aspect of the case, Judge Pratt ruled that a further hearing be held to determine whether the special town attorney's letter had been ratified in accordance with the standards set out in the May 6, 1977 ruling (A. 136).

F. The Court's Findings With Regard to "The Housing Picture for IRS Employees."

Rather than await its determination of the contractual question, the district court made extensive findings with regard to the adequacy of housing for low income IRS employees (A. 106-120).

The court concluded:

> There are today and have been over the life of the IRS facility a number of IRS employees who are living in housing that is deteriorated, delapidated, and/or overcrowded. The rent paid by many of these employees for this inadequate housing exceeds the 25% to 35% of income by which HUD defines 'adequate housing.' The exact number of such employees is uncertain although their number is most prevalent among the lower GS grades and the seasonal employees (A. 118-19).

The court stated that the following factors contributed to the inadequacy of housing for low income IRS employees:

1. Based on the evidence adduced at trial, there does appear to be a shortage in Brookhaven and its neighboring towns of low and moderate income housing which meets the minimum governmental standards of habitability.

2. What adequate housing there is, is not equally available to all IRS employees because of instances of racial discrimination.

3. Problems of mobility, particularly the absence of an adequate public transportation system, have contributed to the housing problems of some IRS employees.

4. Inadequate child care services may also contribute, at least indirectly, to the problem.

5. IRS and the Town as well as other agencies, have failed to make known and to deliver services that are, or at one time were, available (A. 119-120).

Finally, the court below held that, "if the Town made the contractual commitment, it has failed in its performance since it has not provided 'whatever programs would be necessary to meet the housing needs of all federal employees' at the IRS facility" (A. 120).

THE DISTRICT COURT'S OCTOBER 27, 1977 MEMORANDUM AND ORDER

After rendering its first opinion, the court allowed the parties time for additional discovery with regard to the unresolved contract issue. A hearing on the matter was held on September 26, 1977 (A. 140). On October 27, 1977, the court entered a second memorandum and order (A. 138) which contained additional findings. Some of these findings conflicted sharply with the findings in the first opinion.

In the first decision the court analyzed the special town attorney's conduct before and after he sent the September 4, 1970 letter and concluded, "It seems clear that Bloom believed the Town to have been committed to the housing promise contained in his September 4, 1970 letter" (A. 104). At the second trial, however, Bloom testified as to his subjective intent. The court accepted Bloom's testimony that by the September 4 letter he merely intended to "supply his

own personal analysis as to what the housing situation was in the Town and what he felt the Town would be doing" (A. 142). The district court also accepted Bloom's characterization that the letter was not a contractual commitment, but merely his personal feelings concerning Brookhaven's general concept relating to housing (A. 142).

In its first opinion, the court concluded that GSA took certain steps with regard to the September 4 letter which indicated that GSA believed it had obtained a binding commitment (A. 101-102). At the second hearing, however, a GSA lower level employee testified he did not see the letter before the offer was accepted. Thereupon, the Government argued the letter was not a part of the contract between GSA and the Town. The district court concluded "that the terms of the contract were fixed by the Government's formal advertisement for bids, the offers submitted by bidders in response thereto, and finally the Government's notice of award which was given on September 4, 1970" (A. 143).

Having accepted the testimony of both GSA and Town witnesses regarding their subjective intent, the court concluded:

> Under all these circumstances, the court concludes that the Executive Order's requirement that the availability of low and moderate income housing be considered in awarding the contract of the construction of this IRS Center was simply an award factor. It was neither intended by the contracting parties nor required by the law to be a part of the formal contractual obligations undertaken between the federal government and the Town of Brookhaven (A. 143).

STATEMENT OF FACTS

1. GSA's Solicitations of Bids For An IRS Center

GSA learned that the IRS was seeking space for a Long Island center in June, 1969 (A. 181). A determination was made that GSA would secure space for IRS by soliciting bids from the public whereby the successful bidder would construct the facility and lease it to the government. After studying possible areas for sites in Suffolk County, on April 3, 1970 GSA solicited bids from potential leasors (A. 462, 192, 247). Thirteen bona fide offers were submitted to GSA, including one from the Town of Brookhaven (A. 247).

2. Brookhaven's Bid and Negotiations

On June 2, 1970, the Brookhaven Town Board at a special meeting adopted a resolution authorizing the Town to submit a bid for the construction of the IRS Center (A. 410). The resolution stated that the offer would be signed by the supervisor and would be submitted on behalf of the Town to GSA by Councilman Robert Reid and/or Councilman William Rogers. Section 3 of the resolution noted that the offer bound the Town "to execute any resultant lease and deliver the premises" (A. 412). Brookhaven's initial offer submitted to GSA pursuant to the June 2 resolution was for a lease price of $7.75 per square foot (A. 424).

Once the Brookhaven bid was submitted and GSA began to focus on Brookhaven as a potential site, GSA and Town officials entered a period of concentrated negotiations leading up to the acceptance of Brookhaven's bid on September 4, 1970. Throughout this period, Councilmen Reid and Rogers and Special Attorney Bloom formed a committee of three to deal with GSA (A. 188). Bloom became the spokesman for the Town. Both Reid and Rogers testified that Bloom would serve as the one voice communicating with GSA concerning the terms of Brookhaven's bid (A. 172), and that he "was more or less in charge of everything" (A. 351). According to Reid, "Mr. Bloom was the vehicle by which [the Town Board] expressed its decisions to the Federal Government" (A. 172).

3. Negotiations With Respect to Rental Price

The square foot price GSA would pay on the lease was a primary subject of the negotiations between the parties (A. 319-20, 430-33). GSA sought a lower rental price (see, A. 432). On June 16, 1970 the Brookhaven Town Board at a special meeting authorized, by resolution a reduction of the Town's bid price to $7.50 a square foot (A. 417). The same resolution also provided that Bloom would continue as special attorney "in reference to the negotiations being conducted with the General Services Administration in any and all matters relating to the execution of any contracts between the General Services Admini-

stration and the Town of Brookhaven as it may effect awards here too (sic)..." (A. 416). The resolution further stated that, "Councilmen Reid and Rogers are hereby designated as a committee of 2 with the power to decide whether such bid shall be accomplished and report back such decision to the Town Board..." (A. 417).

On June 25, 1970, the Brookhaven Board at another special meeting noted in a resolution that GSA had requested the Town to submit a revised bid for the IRS Center. The Board resolved that a bid be submitted by Brookhaven:

> ... as prepared by the Town Board Committee consisting of Councilmen (sic) Reid and Councilman Rogers to General Services Administration as the final bid of the Town of Brookhaven in this matter, subject to final negotiations with General Services Administration on July 2nd, 1970 together with any explanatory letters referring to the bids (A. 419) (emphasis added).

The $7.50 bid was conveyed to GSA on July 2, 1970 by Reid and Bloom at a meeting with GSA and IRS representatives (A. 432-33). At this meeting the federal officials pressed, however, for a lower bid. Shortly after the July 2 meeting the Brookhaven bid was lowered to $7.25 per square foot (A. 428). This price was finally accepted by GSA (A. 326). It is conceded by Brookhaven that the Town Board did not pass a resolution, prior to the submission of the $7.25 bid, authorizing a reduction of the Town's $7.50 figure (A. 367).

4. Negotiations With Respect to Lower Cost Housing Opportunities

The availability of low and middle income housing was an award factor which GSA had to consider pursuant to Executive Order 11512. Thus, during the period that price was negotiated the issue of housing also was on the agenda. The GSA negotiation record for a meeting held on June 15, 1970 between GSA and Brookhaven representatives specifically states that the Brookhaven representatives "advised of the plans for low income and moderate housing in the area..." (A. 431).

As the district court found, on August 12, 1970 high level officials of GSA, IRS and HUD decided at a meeting in Washington, D. C. to press Brookhaven for housing commitments in connection with the awarding of the contract on the IRS Center (see, pp. 9-10, supra). Shortly thereafter, on August 18, 1970 the Brookhaven Town Board passed a resolution which stated:

> IT IS HEREBY RESOLVED that the Town Board take action to encourage the providing of housing within the economic means of families within the Town of Brookhaven, investigate private and public means to accomplish such action, and investigate the possibility of establishing a Town Housing Authority to coordinate such matters (A. 392-93).

By a letter dated August 20, 1970 (A. 391), the Brookhaven Town Clerk forwarded certified copies of this resolution to GSA and the resolution was made part of GSA administrative record on the Center negotiations.

On September 3, 1970, Bloom, pursuant to a request from GSA officials, met with Gerald Turetsky, GSA Regional Administrator, and S. William Green, HUD Regional Administrator, "relative to the overall negotiations" on the IRS Center (A. 381). At the time of this conference, Bloom did not know whether GSA was going to accept the Town's bid (A.329-330). Turetsky asked Bloom to deliver a letter to GSA, spelling out the oral agreements which GSA had obtained from Bloom, Reid and Rogers in earlier negotiating sessions (A. 282). Turetsky testified that he wanted the Town's commitment in writing prior to awarding the Town the contract because he had "bargaining power...to nail down those things that they agreed that they would help the federal government on..." (A. 287).

At trial Turetsky also confirmed the accuracy of the following statement contained in an affidavit he had submitted to the court in earlier proceedings:

> Prior to the award letter being directed to the town of Brookhaven, the town submitted its letter (Exhibit C) with the same date, September 4, 1970, in which the town agreed to provide whatever programs would be necessary to meet the housing needs for all federal employees which may develop as a result of the award of the project to the Town of Brookhaven. Upon receipt of said letter and in reliance on the town's commitment stated therein with respect to housing, the New York regional office by letter dated September 4, 1970 accepted the town's offer (A. 283) (emphasis added).

Before sending the September 4 letter, Bloom discussed Regional Administrator Turetsky's request with Councilman Reid and cleared the transmittal of it to the government (A. 383, 142). Reid testified that he knew at the time the letter was sent that it was in the name of the Town, that no steps were ever taken to disavow the letter, and that during the entire period of the negotiations with GSA, Bloom sent numerous letters on behalf of Brookhaven and none were thereafter disavowed (A. 173).

5. The Contract Between GSA and the Town of Brookhaven to Construct the IRS Center Was Binding on September 4, 1970

All the parties agree that when GSA accepted the Town bid on September 4, 1970, a binding contract existed at that moment. No further action was necessary by Brookhaven or GSA. This is confirmed by the solicitation itself (A. 464), and was conceded before Judge Pratt (A. 366).

6. The Parties Understood That Brookhaven's Housing Commitment Was Binding

Following the September 4 award, the housing commitment became the subject of correspondence relating to its implementation. This correspondence revealed that representatives of both the government and Brookhaven viewed the commitment as binding.

On September 16, 1970, R.I. Nixon, GSA's Assistant Commissioner for Space Management and a participant in the August 12, 1970 Washington meeting, in a letter to a representative of the NAACP, stated that Brookhaven "also agreed to provide whatever programs would be necessary to meet the housing needs for all Federal employees which will develop as a result of leasing the facility in Brookhaven" (A. 396). On September 17, 1970 another Washington GSA official wrote a local Brookhaven NAACP official that "Brookhaven has agreed" to meet the housing needs of IRS workers. He stated the contract was awarded to Brookhaven after "obtaining this assurance" (A. 408).

On September 25, 1970, S. William Green of HUD, in a letter to the NAACP, referred to the Bloom letter as an "agreement entered into by the Town of Brookhaven" with GSA. Mr. Green, who attended the September 3 meeting with Bloom, further advised in this letter that GSA requested the Brookhaven "commitment" as a result of HUD's discussions with GSA both in New York and Washington (A. 434).

In response to a GSA inquiry as to the steps Brookhaven would take "to honor its assurances" with respect to housing (A. 398), Bloom wrote a lengthy letter dated December 15, 1970, setting out the Town's position (A. 399-404). Accepting GSA's right to seek compliance under "the lease requirements," Bloom

assured the Government that the Town was ready, willing and able to provide housing for low and middle-income workers at the IRS Center as the need develops and is shown. Bloom sent copies of this letter to Councilmen Reid and Rogers and to Town Supervisor Barraud.

ARGUMENT

I.

THE COURT BELOW CORRECTLY HELD THAT THE IRS EMPLOYEES WERE THIRD PARTY BENEFICIARIES TO THE BROOKHAVEN-GSA HOUSING AGREEMENT.

The court below found that the IRS Center employees, "including the individual plaintiffs [were] the intended beneficiaries" of special town attorney Bloom's "promise" which was contained in the September 4 letter (A.97). In that letter Bloom stated, "The Town of Brookhaven will provide whatever programs would be necessary to meet the housing needs for all federal employees which may develop as a result of the award of the project to the Town of Brookhaven . . .".

The court further ruled that, assuming the Bloom letter formed a part of the contract, it would be enforceable by the plaintiffs as third party beneficiaries (A.97-98). This ruling is consistent with well established principles of law.

There can be no dispute that third party beneficiary rights may be enforced in the federal courts with respect to contracts entered into by the federal government. See, Miree v. DeKalb County, ____ U.S. ____, 53 L.Ed.2d 557 (1977); Bossier Parish School Board v. Lemon, 370 F.2d 847 (5th Cir. 1967), cert. den., 388 U.S. 911 (1967); Bethune v. United States Department of Housing & Urban Development, 376 F.Supp. 1074 (W.D. Mo. 1972);

Davis v. City of Toledo, 54 FRD 386 (N.D. Ohio 1970).

The general principle with respect to third party beneficiary actions filed in federal courts is that state contract law applies. Federal common law would be applicable only in situations where the contract claims involve matters of substantial federal interest. See, Miree v. De Kalb County, supra; Clearfield Trust Co. v. United States, 318 U.S. 363 (1943); Northwestern Nat'l Bank of Minneapolis v. Williamson, 545 F.2d 76 (8th Cir. 1976). In the instant case it is unnecessary to resolve whether the appellant IRS workers seek to enforce rights relating to a substantial federal interest, as New York law clearly recognizes third party beneficiary actions. See, e.g., American Elec. Power Co. v. Westinghouse Elec. Corp., 418 F.Supp. 435 (S.D.N.Y. 1976); 10 NY Jur., Contracts §237.

The well accepted principle with respect to third party beneficiary claims, is that those seeking to enforce such rights must be the intended beneficiaries of the contract and not simply incidental beneficiaries of the contract. This principle is accepted in New York. See, Ogden Dev. Corp. v. Federal Ins. Co., 508 F.2d 583 (2d Cir. 1974). "Thus, in order for a third party who may be benefited by performance of a contract to be entitled to sue, there must have been an intention on the part of the contracting parties to secure some direct benefit to him." 10 NY Jur., Contracts §239. See, also, Weinberger v. N.Y. Stock Exchange, 335 F.Supp. 139 (S.D.N.Y. 1971).

New York does, however, support a more relaxed and liberal standard in third party beneficiary litigation in that a claimant need not show an intent to incur a benefit solely from the contract itself. Cutler v. Hartford Life Ins., 22 N.Y.2d 245, 253, 292 N.Y.S.2d 430, 438 (1968). The court in American Elec. Power Co. v. Westinghouse Elec. Corp., supra, summarized the status of New York third party beneficiary law as follows:

> In sum, under New York law, the intent to confer a benefit on a party not named in the contract must be determined not only from the agreement, but from a careful examination of the surrounding circumstances as well.
>
> Thus, if New York law applies, the non-signatory plaintiffs will be entitled to recover under the contract if they can affirmatively demonstrate that the contract and the circumstances surrounding its formation evidence an intent to confer a benefit on them. Clearly, the intent to confer a benefit on third parties is an issue of fact. 418 F.Supp. at 449.

There is no doubt, as the court below held, that the appellant IRS workers were the intended third party beneficiaries of the Brookhaven-GSA contractual commitment. The Brookhaven commitment was as a direct result of GSA attempting to implement the newly promulgated Executive Order 11512 which directed GSA to consider as a material factor in the acquisition of office space or other buildings the availability of adequate low and moderate income housing. Brookhaven's promised assurance to meet the housing needs of IRS workers, inures directly to the appellants'

advantage and runs directly to their benefit. Indeed, the Brookhaven commitment can only logically be construed as a promise intended to benefit future IRS workers who would be the ones to occupy any housing units provided or resulting from the Brookhaven assurance. The instant matter therefore presents a contractual relationship entered into by two parties with the clear and manifest intent to confer benefit upon non-contracting parties— i.e., the appellants and those represented.

The fact that the Brookhaven-GSA agreement was intended to benefit a class of lower income IRS workers, of course, does not prevent members of that class from suing to enforce the contract terms. The federal courts have long recognized the right of a member of a class of intended beneficiaries to maintain an action to enforce third party beneficiary claims.

Thus, in Bossier Parish School Board v. Lemon, supra, Black children residing at a United States Air Force base in Louisiana successfully sued as third party beneficiaries to enforce a non-discrimination assurance given by the Bossier Parish School Board to the United States Department of Health, Education & Welfare (HEW). HEW had provided federal financial assistance to the Board for the education of the children of the military personnel. Pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, the Board assured HEW

that the military children would receive equal educational opportunities. The Board thereafter refused Black children from the military base admission to local white schools.

The Fifth Circuit held that the military children were entitled to injunctive relief, requiring the Board to admit them to the white schools. The court incorporated the ruling of the district court which stated:

> Defendants by their contractual assurances have afforded rights to these federal children as third-party beneficiaries concerning the availability of public schools . . .
>
> Having thus obligated themselves defendants are now estopped by their contractual agreement, and their acceptance of federal funds paid pursuant thereto, to deny that plaintiffs are entitled to the same rights to school attendance as are resident children.

Similarly, in Davis v. City of Toledo, supra, a class of individuals eligible for low rent housing were granted the right to sue as third party beneficiaries to a contract entered into between HUD and the Toledo Metropolitan Housing Authority. The contract in question called for construction of low income housing units. In Hebah v. United States, 428 F.2d 1334 (Ct. Clms. 1970), individual Indians were permitted to sue the United States to enforce certain treaty rights. The United States argued that the treaty provision in question provided no rights to individual Indians, but only the tribe itself.

The court noted that the majority of Indian treaties create tribal, not individual, rights. Nonetheless, the court held that "the accepted theory of third-party contractual beneficiaries suffices to give plaintiffs, and others similarly situated, legal rights to vindicate and enforce the Federal Government's promise." 428 F.2d at 1338. See, also, Olzman v. Lake Hills Swim Club, Inc., 405 F.2d 1333,1339 (2d Cir. 1974).

The district court therefore correctly held that if a contract existed between Brookhaven and GSA with respect to low cost housing the appellants here could enforce rights secured by that contract as third party beneficiaries.

The district court also ruled that the federal defendants should remain as parties because they are not entitled to transfer their obligations under the Executive Order and Fair Housing Act to the Town, "and disclaim any responsibility for performance of those obligations." Judge Pratt pointed out that "meeting the housing needs of IRS employees may well require not only the active cooperation, but perhaps even some of the resources of the federal government" (A. 68-69).

II.

THE GSA-BROOKHAVEN HOUSING AGREEMENT IS AN ENFORCEABLE CONTRACTUAL COMMITMENT.

In finally concluding in the October 27, 1977 decision that the Bloom letter did not constitute a binding commitment on the Town of Brookhaven, the district court relied primarily on three factors. (1) The court emphasized Bloom's testimony that he did not, in sending the letter, intend to induce GSA to grant the Town the IRS award and did not intend to bind the Town to provide housing programs. (2) The court accepted the Government's argument that GSA did not consider the letter to be a part of the agreement between GSA and the Town. (3) Finally, the court contended that the Town Board did not authorize or subsequently ratify the housing commitment.

The lower court erred in its approach to the contract issues in that the subjective intent of Mr. Bloom, as testified to in 1977, is legally irrelevant. The Government's argument at trial that GSA did not consider the letter part of the contract is factually erroneous and, in any event, is legally incorrect. With respect to Bloom's authority, the court ignored the critical facts and circumstances of the negotiations and totally misread the terms of the Board's resolutions.

The record conclusively shows that special counsel

Bloom, working with the designated committee of Reid and Rogers, was granted authority to negotiate an agreement with GSA including the housing commitment. The record also shows the parties intended the Bloom letter to constitute a binding agreement. Given the sequence of events both before and after the submission of the September 4 letter, Brookhaven cannot now escape its obligations under the housing agreement.

Reid, Rogers and Bloom Had Broad Authority to Negotiate an Agreement With GSA

Councilmen Reid and Rogers, along with special attorney Bloom, had broad authority from the Town Board to negotiate a contract with GSA for the IRS Center.

Brookhaven submitted its initial offer to GSA pursuant to the June 2, 1970 Town resolution, which authorized Reid and Rogers to submit the offer (A. 410-12). Two weeks later, on June 16 the Town Board by resolution authorized Bloom to continue to act as special attorney in reference to negotiations with GSA "in any and all matters relating to the execution of any contracts..." (A. 416). The same resolution designated Reid and Rogers as a committee of two "with power to decide which bid shall be accomplished and report back such decision to the Town Board..." (A. 417).

Certainly, the broadest grant of authority to the Reid-Rogers-Bloom team is found in the Town Board resolution

of June 25, 1970. It was this resolution that sanctioned Reid and Rogers to submit a reduced bid of $7.50 a square foot on behalf of the Town. The Board resolution further stated that this bid would be:

> ... subject to further negotiations with General Services Administration on July 2, 1970 together with any explanatory letters referring to the bids (A. 419).

Further negotiations did occur on July 2, 1970 (A. 432-33) and for several weeks thereafter. Because the federal government continued its demands with respect to price and a housing commitment, the negotiations did not end until after GSA received the September 4 Bloom correspondence. During this period federal officials pressed for, and obtained, a further price reduction to $7.25 per square foot, as well as the housing commitment. No further Town resolutions were passed relative to the post June 25, 1970 negotiations.

The September 4 housing commitment was signed on behalf of the Town by Bloom. The record shows that Reid specifically approved Bloom's transmittal of the letter to GSA. At trial both Reid and Rogers admitted that Bloom had been designated as the one voice for communicating Brookhaven's terms to GSA and as the "vehicle by which [the Town Board] expressed its decisions to the Federal Government" (A 172,351).

Most importantly, the June 25, 1970 resolution gave

Reid and Rogers broad, if not open-ended, authority to resolve the remaining GSA concerns and to secure the IRS award. A final bid was authorized on June 25 "subject to final negotiations." The Town negotiators were also given specific authority to submit on behalf of the Town "explanatory letters" in conjunction with the final bid.

It can hardly be argued now that the Reid-Rogers-Bloom team was unauthorized to negotiate on behalf of Brookhaven. As a minimum, GSA was entitled to assume that these individuals had the authority to negotiate on behalf of the Town and to speak for the Town when submitting offers and explanatory letters relating to the bid. See, Davies v. Mayor of the City of New York, 93 NY 250 (1883).

The Parties Intended That the September 4 Letter Be a Binding Contractual Commitment.

The court below in its first opinion concluded that Bloom intended to bind the Town by his September 4, 1970 letter (A.104). Additionally, at trial Turetsky testified he sought the Town's commitment in writing prior to awarding the Town the contract because he then had "bargaining power" (A. 287). Turetsky also testified that, "Upon receipt of said letter and in reliance on the town's commitment," he accepted the Town's offer (A.283). Obviously, therefore, Turetsky was negotiating for a binding commitment.

At the second hearing, however, the court accepted testimony from Bloom that he merely intended by his letter to supply his own personal belief as to what he felt the Town would do and further accepted Bloom's characterization that the letter was not a contractual commitment (A. 142). Additionally, the court apparently relied on the testimony of Louis Levy, a GSA employee, who did not even participate in the September 3, 1970 negotiations between Bloom and Turetsky, that he did not see the September 4, 1970 letter before the Town's offer was accepted. As a result, the district court held that the contracting parties did not intend the September 4 letter "to be a part of the formal contractual obligations undertaken between the federal government and the Town of Brookhaven" (A. 143).

The lower court's method of analysis is completely at odds with traditional standards for determining the existence of a contract. For more than 100 years, the courts have relied upon an objective theory of contract interpretation to establish the intent of the parties. This theory is predicated on the common sense "plain meaning" of the language used by the parties, rather than testimony of their subjective intent. Judge Learned Hand, in Hotchkiss v. Nat'l City Bank, 200 Fed. 287,293 (S.D.N.Y. 1911), definitively stated this theory:

> A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. A contract is an obligation attached by mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent. If, however, it were proved by twenty bishops that either party, when he used the words, intended something else than the usual meaning which the law imposes upon them, he would still be held, unless there were some mutual mistake, or something else of the sort. Of course, if it appear by other words or acts, of the parties, that they attribute a peculiar meaning to such words as they use them in the contract, that meaning will prevail, but only by virtue of the other words and not because of their unexpressed intent.

See, also, Woburn Nat'l Bank v. Woods, 77 N.H. 172, 89 Atl. 491 (1914), where the rule was stated succinctly, "the question is: what did the parties say and do? The making of a contract does not depend on the state of the parties' mind; it depends on their overt acts."

The overt acts in this case were simple and straightforward. Bloom was called to attend a meeting with Turetsky on September 3, "relative to the overall negotiations" on the IRS Center (A.381). At that time, Bloom did not know whether GSA was going to accept the Town's bid (A.329-330). Turetsky asked for a letter in which the Town would spell out the oral agreements which GSA had previously obtained from Bloom, Reid and Rogers in earlier negotiating sessions (A.282).

The Turetsky request was made in an effort to implement and comply with a new national policy set out in the Executive Order on site selection revised earlier in the year and as a result of a high level Washington decision specifically relating to the Brookhaven project. Brookhaven, through Bloom, complied with the Turetsky request. In reliance on the Town's commitment, Turetsky accepted the bid (A.283).

The district court should not have gone beyond this sequence of events in order to determine whether the parties intended to enter into a contract. In the event, however, that this Court finds that the court below did have adequate reason to look beyond the September 3-4 events, there was an abundance of documents in the record setting forth the views of all concerned that the parties regarded the September 4 letter as a contractual commitment. These documents are summarized above (supra, at 23-25).

Furthermore, the court below should not have given weight to the government's contention, which is unsubstantiated by anything in the record,*/ that the Bloom letter is not a part of the contract. The question as to what documents are part of

*/ The only conceivable factual basis for this contention is the testimony of GSA employee Levy, who stated he did not see the Bloom letter before sending out GSA's acceptance (A. 322-23). In light of Turetsky's testimony that he obtained the letter before accepting the offer, the testimony of his subordinate is irrelevant.

a contract entered into between the government and another party must be determined as a matter of law. Again, the objective facts control. In this case, the Regional Administrator used his bargaining power to demand the letter. The Town negotiators acceded to GSA's demand by submitting a letter explaining the Town's offer. The negotiations completed, GSA then accepted the offer.

It is well settled that a letter agreement such as the one entered into in this case is appropriate and binding. Contracts with the government need be in no particular form. See, United States v. New York & Porto Rico Steamship Co., 239 U.S. 88 (1915); United States v. Purcell Envelope Co., 249 U.S. 313 (1919). See, also, Decisions of the Comptroller General, Vol. 23, #B38290 (1943), p.477; Decisions of the Comptroller General, Vol. 33, #B115069 (1953), p.180.

In addition, neither party may seek to abrogate the terms of an agreement entered into with the government once an offer has been accepted. United States v. New York & Porto Rico Steamship Co., supra; United States v. Purcell Envelope Co., supra. All the parties agreed that when GSA accepted the Town bid on September 4, 1970 a binding contract existed as of that moment. As the solicitation itself confirms (A. 464), no further action was necessary by Brookhaven or GSA. Brookhaven at that time was committed by law to enter into a lease, and take all necessary steps to perform its contract.

The Town of Brookhaven May Not Disavow the September 4, 1970 Agreement.

Brookhaven can escape compliance with the September 4 agreement only if the Reid-Rogers-Bloom team lacked authority to bind the Town and if the Town is not held to the housing commitment by virtue of the doctrines of ratification or estoppel.

Despite the Town Board resolutions specifically authorizing negotiators to act in its behalf, the lower court in its first memorandum held that Bloom was not authorized to bind Brookhaven (A.128-130). In its second opinion, the court further held that the Town had not ratified the Bloom letter (A. 143-144). The court below did not decide whether estoppel applied. The appellants have urged above that Bloom did have authority to bind the Town. In the event this Court disagrees, appellants maintain that Brookhaven ratified Bloom's action and is estopped from denying the contract.

During the critical June 25 to September 4 period of negotiations, the Town Board understood that GSA was seeking a commitment to insure that the prospective IRS employees were adequately housed. Indeed, the Town Board in August, after federal officials decided to seek a housing commitment, passed a specific resolution requiring "action" to encourage the creation of housing opportunities for lower income families (A. 392-93). Passage of this resolution is clear evidence that

the Town Board members understood that Brookhaven might be required to make a housing commitment in order to obtain the IRS Center.

Thereafter, Bloom put in writing the oral commitments which Reid, Rogers and he had made during the negotiating period to Turetsky (A.282). Bloom checked his letter out with Reid before mailing it to GSA.

Despite the Town's concession that it well understood its offer would become irrevocable when accepted by GSA (A.366), the Town is now apparently arguing that by operation of New York law it was still necessary for the Board as a whole to ratify the work of its sub-committee. The Town is apparently contending, with the concurrence of the court below, that the Board did ratify a reduction in rental price negotiated by its sub-committee, but did not ratify the housing agreement.

The basis for the argument that the Board only partially ratified the handiwork of Messrs. Reid, Rogers and Bloom is the fact that the Board passed a resolution on September 15, 1970 which recited the new per square foot rental price but did not make any mention of the housing commitment (A.420-21). The argument is further buttressed by the testimony of certain Town Board members who said at the second hearing that they were unaware of the housing commitment (A.348, 362).

The argument, however, does not withstand scrutiny. The September 14 resolution which includes in a "whereas" clause

reference to the new per square foot price as well as the total rental, is on its face a pro forma document. No attempt is made in this resolution to include all of the bid modifications negotiated by the Board sub-committee. Indeed, the purpose of the resolution was to authorize various officials including the Town Supervisor and Bloom to make further arrangements for the construction of the project, including the issuance of municipal bonds. It simply cannot be argued that when the Town Board acted upon this resolution, it was picking and choosing which terms and conditions negotiated by its sub-committee it would accept. If ratification was required, then it is obvious that the Board fully ratified the contract on September 15 and began to perform.

Ratification can not be dependent upon whether or not Reid, Rogers or Bloom told each and every member of the Town Board all of the provisions they negotiated. Town Board member Bellport at the second hearing candidly admitted that too much time had passed for him to remember what had actually transpired (A.346-47). Another Board member, Mr. Proios, testified that because he was not a member of the IRS Center sub-committee, he was unable to recall what came before him at the time. Mr. Proios, in explaining how the Board worked, stated that, "myriads of paperwork came before us every week. We were all involved in our own committee work, finances, highway committees, and we all had our jobs to do " (A.361a).

Clearly, the Brookhaven Town Board functioned as a ratifying council for what its committees did, as is traditional for a town board throughout the United States. One commentator summarizes the process as follows:

> Where the committee system prevails in local government the local council as a whole becomes chiefly a ratifying body for approving the actions of its committees. Before matters are considered by the whole body, they are referred to the appropriate committee for consideration and recommendations; it is rare that the council votes to override a recommendation of one of its committees.
> Blair, George S., American Local Government, Harper & Row, New York, 1964, at 280.

See also, to the same effect, Grant, Daniel R. and Nixon, H.L., State and Local Government in America, Allyn & Bacon, Boston, 1963, at 299-300.

Consistent with this committee oriented process, Reid offered the September 15 resolution, and it was unanimously approved (A.420-22). If there was any question as to the binding effect of the September 4 letter, none could exist thereafter. It is established law that:

> A wide variety of acts have been deemed to constitute ratification of a contract. It may consist of a vote of a board having authority, mere silence, acquiescence . . . the failure to repudiate the contract at its annual town meeting . . . the performance of the contract [by the town] . . . or the acceptance of benefits.
> 10 McQuillan, Municipal Corporations, 29.106

The court below properly found that pursuant to a

special law passed by the New York State Legislature, 1970 Laws of New York, Chapter 972, the Town was specifically given the power to enter into the housing commitment contained in the September 4 letter (A.128-30). Therefore, the Board ratified the entire agreement which its sub-committee negotiated with GSA. The doctrine of ratification is fully applicable to municipal corporations in such situations. Peterson v. Mayor of New York, 17 N.Y. 449 (1858); Sief v. Long Beach, 173 Misc. 84, 16 N.Y.S.2d 209 (Sup. Ct. Nassau Cty. 1939). See,also, Loomis v. Fifth School District, 109 Conn. 700, 145 Atl. 571 (1929); Norwalk Gaslight Co. v. Borough of Norwalk, 3 Conn. 495, 28 Atl. 32 (1893).

In its first opinion the court suggested that the issue of ratification could well turn on whether the Town Board members knew of the Bloom letter "at the time they adopted the resolution approving and authorizing execution of the lease" (A. 132-33). At the second hearing, however, it was established that no resolution was passed authorizing execution of the lease (A. 309-11). This was so because the GSA-Brookhaven contract came into being on September 4, and every action taken thereafter was either of a pro forma, or of a ministerial nature. The district court's interest in what individual Board members might have known after September 4 was simply misdirected.

CONCLUSION

The IRS Center is now complete. Brookhaven is receiving its rental income. The Center's low income employees, however, are being forced to live in substandard, overpriced housing. Brookhaven now claims it has no responsibility to provide programs to rectify this situation. For the reasons set forth in this brief, Brookhaven should be held bound by its housing agreement, and the decision below should be reversed.

Respectfully submitted,

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Memo . . . . . from the desk of

Lewis Steel

To:

Date: Brookhaven

Prep For ORAL ARGUMENT

Jurisdiction Civil Rights Case

1343 Civil Rights jurisdiction.

Title 8 Civil Rights - Housing law. Ex Law.

Bossier Parrish - A 1343 case - connection

title VI of 64 Act.

Check our other 3rd Party Beneficiary

Cases.

Also 1331 Jurisdiction against

US - don't need $10,000.00

LA AIRPORT CASE —

1) NOT a civil Rights case

2) not against US

3) Individual Π, seeking $ damages,

must establish $ amount.