

Summer 8-18-1988

**Court Extends Stay for Yonkers Panel Closely Presses Both Sides
(New York Law Journal)**

Daniel Wise

Court Extends Stay for Yonkers, Panel Closely Presses Both Sides

BY DANIEL WISE

THE CITY of Yonkers and four of its councilmen seeking to be relieved of "bankrupting fines" imposed for contempt in a housing desegregation case ran into skepticism — some of it expressed in arch terms — from all three members of the U.S. Court of Appeals in Manhattan hearing the appeal.

Two members of the panel, however, pressed attorneys for the government and the NAACP who were defending the contempt order on points that could yield a ruling in favor of the city of 194,000 just north of the Bronx border. And at one point in the argument, two members of the panel took issue with each other on an important point using the government's attorney as a backboard for their rhetorical shots at each other.

At issue in the appeal were fines directed at the city and four of its councilmen for their refusal to implement a detailed plan to integrate housing in the city to comply with a 1985 ruling issued by U.S. District Court Judge Leonard B. Sand.

Judge Sand found the city in contempt on Aug. 2 and ordered the city to begin paying a fine starting at \$100, which was to double daily. He also imposed a daily fine of \$500 on each of the four council members who formed a 4-3 majority in the city op-

posing adoption of the plan he had ordered a week earlier.

Without a stay, the fine against the city would have amounted to \$3.2 million yesterday. The panel, however, stayed the fines eight days ago, and yesterday agreed to extend the stay, but on terms somewhat narrower than usual by limiting it "until further order of this court." In most cases, a court fashions stays to extend until a decision is issued. The judge presiding over the panel said at the close of the two-hour hearing in the U.S. Court of Appeals for the Second Circuit that a decision would be issued "expeditiously."

Attorneys for the Yonkers defendants were pressed most closely by Judge Newman who repeatedly got concessions from them. At one point Judge Newman came out directly and said he had "difficulty" with the case at this point because the City of Yonkers had agreed to a remedy imposing a legislative solution in a consent decree. A second judge of the panel, Roger J. Miner, picked up on the same point, saying in reference to the consent decree "I don't understand why nobody keeps his word."

The third judge on the panel J. Daniel Mahoney, whose questioning of defendants was confined to whether a 1963 U.S. Supreme Court opinion was controlling, nevertheless, characterized contradictory arguments in

Continued on page 4, column 5

Court Extends Stay for Yonkers

Continued from page 1, column 2

which the city and the councilmen pointed to each other as being the responsible bodies as "a shoot out at OK Corral."

Questions from two of the judges, however, could well have raised the hopes of Yonkers defendants that they will succeed in escaping the crippling fines levied by Judge Sand. The questions went to the issue of whether the District Court has the power to order legislators to vote for the integration plan rather than simply superseding local authority and implementing the plan through a court-established mechanism.

Judge Miner asked the attorney for the U.S. government, which has pressed the eight-year case, whether by compelling the councilmen to approve the plan, Judge Sand was forcing them to go through a "charade."

When the attorney, Linda Thorne, a civil rights attorney at the U.S. Justice Department responded that the legislators had no latitude to alter the terms of the legislation contained in the court's order, Judge Newman interjected to ask "why she was so

quick to agree that the hearing was a 'charade.'" What followed was a volley of exchanges — Judge Miner asserting that the order allowed for no deviation and Judge Newman disagreeing — with Ms. Thorne as a conduit.

Judge Mahoney followed on that line of reasoning telling the NAACP's attorney, Michael Sussman that "all over the country" what judges have done when confronted with a recalcitrant legislature is to "just order the plan" rather than forcing recalcitrant local legislatures to implement orders of the court.

Yesterday's proceedings stemmed from a 4-3 vote by the Yonkers' City Council on Aug. 1 refusing to implement a plan approved by Judge Sand. The phase of the plan rejected by the City Council called for the construction of 800-units of middle income housing on Yonkers' predominantly white eastside.

In January, the Council had voted, under threat of heavy court-imposed fines, to approve the construction of 200 units of low-income housing at seven sites scattered throughout the eastside.