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A Housing Blitzkrieg Which Failed

by Frank J. Parker, S.J.

On paper, new laws and new judicial interpretations sympathetic to tenants look pretty. A progressive State such as Massachusetts has been in the forefront in both regards. From the early 1970s onward, a clear trend to assist tenants living in sub-standard housing has emerged. Yet what the law and courts say can occur, and the day-to-day practicalities of enforcing new laws and judicial interpretations are not necessarily the same. This article will explore the reasons for the failure of one such project which attempted to implement three Massachusetts judicial decisions concerning housing so as to assist the indigent Puerto Rican community in the City of Waltham, Massachusetts.

In the case of *Hemingway v. Boston Housing Authority*, the Supreme Judicial Court of Massachusetts decided that henceforth it would imply the existence of a warranty of habitability in all residential housing leases in the State. Simply stated, this meant that henceforth every court in Massachusetts would always presume that the landlord promised as a part of the rental contract that the apartment in question would constantly remain in a condition which conformed to minimum acceptable occupancy standards as defined in the State Health Code and in the State Building Code. If this were not done, the tenant, if not culpable in the matter, would be free to leave without penalty; or, alternatively, to deduct from the rent owed an amount proportionate to the severity of the violation incurred.

The holding of *Hemingway v. Boston Housing Authority* was extended by the Supreme Judicial Court of Massachusetts in two subsequent cases: *McKenna v. Begin* and *Commonwealth v. Haddad*. The *McKenna* case gave a very loose response to the question as to the moment when the landlord received notice of the existence of the defect which caused the apartment to rest in violation of the State Health Code or the State Building Code. The very fact that the landlord offered the apartment for rent while it was in an

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uninhabitable condition was held to give the landlord notice in a judicial sense that violations permitting legitimate lease termination or legitimate rent reduction had occurred. For the notice period to run, it would not be necessary for the tenant to complain formally to the landlord concerning the existence of the defect nor would it be necessary to institute a complaint in the courts or with the local health or building departments. In fact, the tenant would not even need to be aware that conditions in the apartment made it uninhabitable, legally speaking. According to the McKenna case, the very fact that the apartment was in an uninhabitable condition was enough to bring the penalties into effect retroactive to the day when the uninhabitable condition occurred, whether it was the start of the tenancy or some day during the duration of the tenancy.

As has been explained, the monetary penalties assessable against a landlord whose apartments are in violation of the State Building and Health Codes could be severe if applied with full vigor. This is especially true because the tenant does not have to be the instigator of the complaint. The third case in the trilogy, *Commonwealth v. Haddad* made this point most clearly and, at least in theory, opened the way for social activists to compel erring landlords to comply with the strictures of the Massachusetts Building and Health Codes. The Haddad case concerned a lawyer who inspected a neighboring house with which he had no direct connection except as a passing pedestrian offended by the condition of the building and its evident lack of proper sanitation. After inspection, the lawyer, in his own name and on his own volition, sought a complaint in the local court against the landlord for violations of the State Health Code and the State Building Code. No attempt to have a tenant make the complaint occurred. Local health inspectors and building inspectors were similarly by-passed. The Massachusetts Supreme Judicial Court upheld the activist approach of the complaining attorney on the grounds that: "A many pronged attack is needed to bring about effective enforcement of housing codes."

Taking Hemingway, *McKenna* and Haddad together, the roots for an activist housing strategy are clearly present. Any social service agency with a clearly defined clientele could teach its social workers and community organizers the rudiments of the State Health and Building Codes so that they could inspect the apartments of their clients, trace the violations back to their time of inception, and with the cooperation of local legal service agencies, institute rent abatement suits simultaneously as to all apartments of the offending landlord. For confirmed slumlords, this attack could pose massive difficulties, since they risk receiving an order to re-

fund all or substantially all of the profits made since the institution of their business. This article will detail one such attempted attack which failed.

Waltham, Massachusetts is a comfortable suburb of Boston in close proximity to the central city. The Charles River, which flows majestically through Boston and Cambridge, has its headwaters in Waltham. Largely due to this natural occurrence, the history of Waltham as a living place extends back to 1632, within twelve years of the Pilgrims landing at Plymouth. The City of Waltham grew slowly but constantly toward its present size of 60,000 inhabitants. This increase was aided by the establishment and prospering of two large manufacturing complexes, the Waltham Watch Company and later the Raytheon Company, an enormous diversified electronics concern. To fulfill manpower needs for these factories, large numbers of unskilled labor jobs were created. As years passed, succeeding waves of immigrant Italians, Poles, Irish, and Jews moved to Waltham for this reason. Money came into the local economy, the immigrants were assimilated into the larger community, prosperity blossomed, and inevitably the children of the immigrants pushed on to middle class status themselves during the next generation. The post-World War II foundation of Brandeis University and Bentley College at Waltham strengthened the middle class structure of the city, as did the union movement which brought higher and better benefits to factory employees. In line with this growth factor, the manufacturing community in great numbers purchased space on the edges of the superhighway surrounding Boston, Route 128. Executives and engineers working in these plants settled in Waltham in large numbers.

When the next wave of immigrants, the Puerto Ricans, came to Waltham in large numbers during the middle and late 1960s, the memories of the suffering caused by true poverty were far enough behind the former newcomers to Waltham that, as a whole, they were unimpressed and unsympathetic at their plight. "We made it on our own, why can't they?" was the general attitude. Although there is some truth in this, it forgets among other points the vast disparity between work obtainable by the educated and work obtainable by the uneducated which has grown up in the recent past, plus the fact that Puerto Rico is a Commonwealth of the United States and is thus this country's responsibility, a responsibility which has been pretty totally ignored by all Americans over this century, as the millions of impoverished Puerto Rican immigrants to the mainland will attest.

Puerto Rican settlement in Waltham began in the early 1960s

when a few men began to work as immigrant laborers on farms in nearby Lexington. Shortly thereafter, others found employment as janitors in manufacturing plants on Route 128. Soon the possibility of employment stopped but the immigration to Waltham did not. Within ten years, the population of Puerto Ricans in Waltham had exploded from 0 to 5,000. Because the housing for many consisted of sharing apartment space with friends, an accurate count was impossible. Perhaps 85-90 percent of the total was unemployed, receiving public assistance. Most came with little formal education. Perhaps 50 percent were functionally illiterate in Spanish, to say nothing of English. Not surprisingly, tension with the local community surfaced, especially in the school situation and in the provision of adequate housing. Many Puerto Ricans felt that they were being exploited on all sides. Any impartial observer looking at the poor quality of their housing would definitely agree. As to the schools, there would be a difference of opinion.

By the banks of the Charles River existed row after row of three-deckers which had served as the initial housing for generations of new arrivals in Waltham. As soon as possible, these quarters were abandoned for more luxurious ones on the outskirts of the city, leaving Charles Street to the next group of newcomers. However, it is safe to say that never before had the immigrant influx been so sudden or large and so lacking in family units. Most often, one or two males came alone, looking for work and waiting until they succeeded before summoning the rest of the family. In this state of temporary refuge, the possibilities of crowding a whole group of people into one apartment became enormous. Exploiting landlords could charge high rents for space and allow the tenants to seek other occupants to share the apartment with them in order to afford the high rent cost. With the group of unattached Puerto Ricans forced to pay high rents (up to \$350 a month for unheated 3-room apartments) this had the natural consequence of raising the rent for those Puerto Ricans with families—forcing them to dig deeper into their welfare allowances to pay for their apartments. With the demand for these apartments never ceasing, it was inevitable that the majority of landlords would ignore totally the demands of the Building and Health Codes of the State of Massachusetts. Before 1974, this left full responsibility for the enforcement of these codes to the City of Waltham housing and health inspectors. The number of complaints sought by these town employees could be termed as modest in the extreme.

It was into this situation that the local Hispanic social service agency entered. Unfortunately, as a working organism, this agency

was not yet up to the task. As with so many specialized agencies formed to assist a specific minority clientele, solidity in all aspects of operation was, at first, lacking. Almost universally, these new agencies lack sustained funding. Normally, a burst of altruism on the part of better-established agencies and a one-time-only start-up grant by a variety of foundations provides the impetus for a pleasant even luxurious first year of life. However, shrewd plotting of the agency's future course and future goals by both the executive director and an experienced board of directors is needed to keep such a specialized project afloat by obtaining the required added funds for future operation. This particular minority agency possessed all the faults of most specialized minority service agencies.

At the time the housing strategy outlined above was conceived, the Hispanic agency in question was in a bad way, existing on the slimmest of shoestrings, being kept alive by the benevolence of a couple of middle-level State employees who allowed their programs contracted to the agency to remain, even though the agency operations were in a shambles. The problems were attributable to lack of follow-up funding; bitter division between the board and the executive director, which led to his forced departure from all contact with the agency; strife among agency employees; and a justifiable loss of confidence in the agency by the local Puerto Rican community.

As far as the timing went, there could be no worse imaginable set of circumstances under which an aggressive program for housing reform could have been begun. Yet the agency needed a new direction, a breath of fresh air, and a success which could clear the atmosphere of past problems and better orient the agency toward the future. Another factor that also justified the effort was the lamentable condition of much of the Puerto Rican housing in Waltham. No attempt to alleviate this could ever be condemned. Finally, no other method of attacking the housing problem on a day-to-day scale had worked. No other area social service agency had interested itself in the problem; the city itself had, if anything, been hostile to remedying the situation; legal services offices in Boston could not service Waltham because of its distance and, due to agency lack of resources, employ adequate staff. A local law school ran a clinic which occasionally succeeded in getting the heat turned back on or a wrongfully withheld security deposit returned, but the clinic was staffed by law students whose commitment frequently came second to studying for exams, enjoying summer vacations, or job-hunting for permanent employment. In addition, the clinic had no overall strategy for dealing with Puerto Rican housing problems or

direct contact with the community, since few at the clinic spoke Spanish or lived in Waltham.

Only one group in the Waltham area could be said to be deeply interested in the plight of Puerto Rican housing conditions: the local Hispanic social service agency. An energetic, enormously competent assistant director had started a small self-help committee of local Puerto Rican residents, which could at least discuss and identify the scope of the problem. She was also able to establish a working relationship of sorts with local city inspectors of various enforcement agencies. Finally, with the help of an attorney, some of the most flagrant cases of exploitation were brought to court. Since the agency lacked specialized resources to back up the attorney, many cases were handled in an expedited, band-aid approach manner. Success varied but was less than it should have been had more resources been present. Slowly, relations between the local judge who invariably heard these cases and the attorney and assistant director of the agency deteriorated into a state approaching open warfare. The final exchange occurred when, gratuitously, upon receiving the statement in court that the Puerto Rican tenant was not home when the oilman came, the judge, completely out of the blue, observed to the attorney: "That figures, your client probably was in a bar drinking beer." From there matters completely blew up. Only the diplomatic intervention of the clerk of the court saved the attorney and assistant director from spending the night in jail for contempt of court.

Formal removal of the judge was attempted, but, when interviewed, he apologized profusely, and the Chief Justice of the local court decided that this was a fall from grace from an otherwise excellent career, and, other than a written reprimand to the judge involved, allowed the matter to drop. Unfortunately, the level of judicial assistance in alleviating the conditions did not rise significantly thereafter. As any activist attorney can attest, once the word is out that the local judiciary has no use for a certain agency or attorney, assistance from all levels of its court personnel becomes very hard to obtain.

All in all, matters were at a low ebb for the Hispanic agency. By this time, the agency had lost all effectiveness in the local court. It was also internally engaged in bitter feuds on both the employee and director level largely due to money running out and the lack of quick avenues of escape. Now came the attempted blitzkrieg of using new laws to obtain better housing. The plan was formally laid out on the drawing board. The agency attorney and the director of the community organization program at a local graduate social

work school called an all day meeting at which the details of the plans were drawn up. Those attending included the two convokers of the meeting, four Spanish-speaking community organization students who would do the actual inspecting and record searching, plus the new acting director and housing coordinator of the agency, the former assistant director who had provided the original impetus now having left the agency. The participation of the well-trained Spanish-speaking graduate students brought the possibility of significant success to the project. This experience and the detailed planning document to be drawn from their researches and findings would involve the major part of their first semester, second-year community organization curriculum. It was hoped to evade the problems with the local court by obtaining sufficient funds to appeal, if necessary, to a higher court, or, in the alternative, try to have all cases heard by a different judge.

As a result of the day-long meeting and a back-breaking follow-up week of work, a professionally respectable funding proposal was drawn up, and like a young bird pushed away from the nest, it was given a chance to fly. Unfortunately, it flew not far. The reasons for failure were many and the one chosen for rejection differed from funding source to funding source. One source with Catholic auspices was decidedly skittish at some liberation-type theology language in the proposal which talked about the disgrace of having the exploited tenants attending the 11:15 a.m. Mass in Spanish in the lower Church while the landlords sat upstairs attending their own Mass at the same time, oblivious of those below.

Another funding source found the advocacy aspects excessive for their educational interests, a third source ran out of money and gave no grants, and a fourth had already funded this agency within the past year. A fifth objected to paying stipends to students, even though they all had professional training, would still be earning less than comparable social workers with a B.S.W., and local municipalities using other teams of students from this community organization program had reimbursed the students for all school costs as well as awarding them substantial stipends. It appeared that no matter what funding source was tried, somehow this proposal fell through the cracks. Hardly ever did the strongest fear of the writers seem to play a part: that the agency was in an unstable condition.

As the months passed without funding success, other difficulties began to surface as they always do once it becomes clear that a proposal is not a clear winner. The local Hispanic agency slowly started to right itself. Responsible people from the larger Waltham community began to join the board of directors of the agency in an

attempt to mend the deep cleavage between the Puerto Rican community and the city at large. Although this brought stability and respectability to the agency, the sacrifice of extremely aggressive combative programs was one price which had to be paid. The new board members with their established community roots were not keen on having their neighbors exposed as slumlords or running an out-and-out guerrilla war against the city. After a prominent local banker joined the board and kept the agency afloat by approving unsecured loans made totally out of a spirit of public service, the propriety of a program which raised deep questions of who owned what and who held mortgages on what was questioned on a practical level.

Finally, and most discouragingly to the professional writers of the proposal, the students lost interest. Spanish-speaking graduate students are sought-after jewels these days. Other offers for second-year projects with more certain funding and less practical hurdles came their way. Suddenly, at group meetings, questions were raised about how it would look on resumes to be associated with an agency which might fail. This caused the sequence chairman to hit the roof and give a lecture about professional responsibility, carrying out one's personal engagements, and the valuable learning experience from being with an agency in trouble so as to appreciate the difficulties involved, etc. Yet the writing was on the wall. Once the researchers who would carry the program had lost interest, the proposal's possibility of success fell toward zero, even if funded.

Soon thereafter, the agency hired a new executive director and struck oil. He was a fund-raising genius and the agency started to hum. At his insistence, it became a job placement agency only secondarily interested in housing. The housing project was interred almost without notice or official burial. Yet it should be mourned and will be here. The housing conditions for Puerto Ricans in Waltham are as bad as ever. Overcrowding, disease, rats, lice, fear of fire, all exist as before. The planes from Puerto Rico still carry the destitute poor to Waltham by the hundreds. The winters remain as cold, the legal aid coverage as inadequate, and the local courts and city agencies as unconcerned as ever. The activist laws and judicial interpretations remain on the books gathering dust from disuse. It is easy to talk about more employment, advanced education, and Carter Administration HUD programs all improving the Waltham Puerto Rican housing situation. Yet all are far into the future. Currently, nothing is being done, even though a lot could be done. As this article has shown, there is a long way between drawing up an idea to enforce a law which currently exists and finding

the proper vehicle to accomplish the act. At least in Waltham the act still rests very much in potentia.