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## LANDLORD VIOLATED THE FAIR HOUSING ACT BY USING A RACIAL QUOTA PLAN TO MAINTAIN INTEGRATED HOUSING

Landlords may no longer use racial quotas to maintain integration in housing complexes. On March 1, 1988, the United States Court of Appeals for the Second Circuit held in *United States v. Starrett City Assocs.*, 840 F.2d 1096 (2nd Cir. 1988), that landlords who restrict minority access through permanent racial quotas violate Title VIII of The Civil Rights Act of 1968 ("Fair Housing Act"), 42 U.S.C. § 3601-3631 (1982). The court concluded that such quotas were a violation of the Fair Housing Act regardless of the landlord's motivation to maintain racial integration.

### Background

Appellants, Starrett City Associates, built, owned and operated in Brooklyn, New York, the largest housing development in the nation. Since 1973, Starrett sought to maintain a tenant distribution of 64% White, 22% Black, and 8% Hispanic in order to create a racially integrated community. Starrett claimed that these quotas were necessary to prevent "white flight" which occurs when white tenants move out of a neighborhood once minority tenants move in. Starrett developed a rental procedure which required applicants for apartments to indicate their race or national origin on an application card. Starrett placed these applications in an "active" file and notified applicants of a vacancy when a tenant of the same race moved out. Only then were prospective applicants offered apartments.

In December, 1979, a group of black applicants brought an action against Starrett in federal court. *Arthur v. Starrett City Assocs.*, 98 F.R.D. 500 (E.D.N.Y. 1983). The complaint alleged that Starrett's quota system violated federal and state law by discriminating against the applicants on the basis of race. The parties ultimately agreed to a settlement, and a consent decree was subsequently entered by the district court. The consent decree provided for increased apartment availability for minorities.

The government filed suit against Starrett in June, 1984, to address the legality of Starrett's policy and practice of limiting the number of apartments available to minorities in order to maintain a racial balance. *United States v. Starrett City Assocs.*, 605 F. Supp. 262, 263 (E.D.N.Y. 1985). The complaint alleged that Starrett violated the Fair Housing Act by discriminating against minorities. The alleged discrimination included forcing black applicants to wait longer than white applicants for apartments, enforcing

a policy which preferred white applicants over minority applicants, and falsely representing to minorities that no apartments were available when in fact units were available. Starrett then moved to dismiss the suit based on estoppel, arguing that because the government had not intervened in the *Arthur* suit it could not sue Starrett now. The district court denied the motion.

Both parties moved for summary judgment. The district court granted the government's motion, concluding that Starrett's practices were clear violations of the Fair Housing Act. The Fair Housing Act prohibits discrimination on the basis of race, color, or national origin in the sale or rental of housing by: 1) refusing to rent or make available housing; 2) offering discriminatory terms of rental; 3) publishing any notice that indicates discrimination against a protected class; and 4) falsely representing the unavailability of housing to protected classes. The court accordingly enjoined Starrett from discriminating against applicants on the basis of race. The court required Starrett to adopt nondiscriminatory selection standards subject to court approval and retained jurisdiction over the parties for three years. Starrett appealed.

### Starrett's Use of a Quota System to Promote Integration Held Discriminatory

The United States Court of Appeals for the Second Circuit affirmed the lower court by holding that the Fair Housing Act does not allow permanent racial quotas which restrict minority access. The court noted that discriminatory housing practices are unlawful under the Fair Housing Act whether they are motivated by a racially discriminatory purpose or have a disproportionate effect on minorities. The court summarized the purpose of the Fair Housing Act: to provide, within constitutional limitations, for fair housing throughout the United States. Because the legislative history provided no guidance on the use of quotas, the court looked to analogous federal anti-discrimination law to determine what constituted permissible race-conscious affirmative action under the Fair Housing Act. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2000e(17) (1982), an act with parallel objectives to the Fair Housing Act, provided a framework for the court's discussion of racial quotas.

Applying Title VII precedent, the court emphasized that a race-conscious affirmative action plan may be valid under the Fair Housing Act if the plan is temporary, has a defined goal, is based on a history of racial discrimination, and is designed to increase minority access. Starrett's plan was unlawful because the quotas were imposed indefinitely, and were not based upon

any history of prior, racial discrimination. Further, the system acted as a ceiling for minority access to housing opportunities.

The court concluded that Starrett's allocation of public housing on the basis of racial quotas clearly had a discriminatory effect on minorities. Starrett conceded the discriminatory effect of its plan but had two major defenses. First, Starrett argued that it was clothed with governmental authority by its receipt of federal funding and thus was obligated to affirmatively promote integration. The court declined to decide whether Starrett was a state actor but concluded that even if Starrett were a state actor, the racial quotas Starrett used were invalid affirmative action plans under the Fair Housing Act.

Starrett next argued that a "white flight" phenomenon justified its use of racial quotas to maintain integration. In support of this argument, Starrett relied upon *Otero v. New York City Housing Authority*, 484 F.2d 1122 (2d Cir. 1973), where the court held that public housing authorities had a duty to integrate housing complexes and to prevent racial segregation even if their actions in so doing prevented some minorities from residing in particular housing. In *Otero*, the landlords rented half of a group of newly renovated apartments to non-former occupants, instead of renting to former occupants who were predominately minorities. The court distinguished *Otero* because there the renting procedures did not involve a plan for long-term maintenance of specified levels of integration. The court held the *Otero* plan to be a single event which did not operate as a strict racial quota. Starrett's plan, in contrast, operated to determine exact racial distribution on an indefinite basis.

#### **Dissent: Use of Quotas Discriminatory Only if They Result in Segregation**

The dissent concluded that Starrett was within the spirit of the Fair Housing Act by maintaining

an integrated housing complex through the use of quotas. First, the dissent disagreed with the majority's interpretation of the purpose of the Fair Housing Act. The Fair Housing Act was intended to prohibit segregation, not integration. As authority for this interpretation, the dissent noted that neither the Fair Housing Act nor its legislative history explicitly indicates whether Congress intended to prohibit racially maintained integration. Therefore, the dissent claimed that the Fair Housing Act was never intended to apply to actions such as Starrett's which maintained an integrated rather than segregated complex. Second, the dissent relied upon the holding in *Otero*, which the dissent characterized as generally not prohibiting racial rental quotas adopted to promote integration under the Fair Housing Act. The dissent in fact found the instant case easier to decide than *Otero* because Starrett promoted integration through quotas from the inception of the complex. In *Otero*, on the other hand, the New York Housing Authority attempted to achieve integration by extricating itself from commitments it had made with minority tenants. Finally, the dissent stated that public policy decisions of this nature should be determined by the legislature and not by the courts.

**Stephanie Ferst**

**Editor's Note:** On November 7, 1988, the United States Supreme Court denied the petition for writ of certiorari. Justice White would have granted the writ. 57 U.S.L.W. 3333 (U.S. Nov. 7, 1988) (No. 88-82). The United States Department of Justice, the NAACP, and the City of Chicago have challenged a "managed integration" quota system used by the directors of Atrium Village, a 309-apartment complex in Chicago. Their view is that the directors violated the Fair Housing Act by manipulating the list of rental applicants to maintain a 50-50 balance of black and white tenants.

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## **UNITED STATES COURT OF APPEALS DETERMINES THAT GENERAL MOTORS' BRAKING SYSTEM WAS NOT PROVEN DEFECTIVE**

In *U.S. v. General Motors Corp.*, 841 F.2d 400 (D.C. Cir. 1988), the United States Court of Appeals for the District of Columbia Circuit considered a claim that General Motors Corporation ("GM") manufactured automobiles with a defective braking system. The claim, brought under the National Traffic and Motor Vehicle Safety Act ("the Act"), alleged that GM knew, or should have known, that the braking system in

its 1980 model X-cars caused premature rear-wheel lock-up. The complaint further alleged that excessive corrosion over time aggravated that condition, and that GM violated the Act by failing to notify the Secretary of Treasury and failing to remedy the defect. The Court of Appeals held that there was not a class-wide defect and affirmed the trial court's judgment in favor of GM.

#### **Background**

Development of the X-car by GM began in 1975. In 1978, GM engineers first obtained information indicating a potential brake problem. In a test of GM's model X-cars, drivers registered complaints of "premature" rear-wheel lock-

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