Excerpt from 2005 WL 4919482 (Conn.) (Appellate Brief) Supreme Court of Connecticut outlining the legislative history of PA 91-362

ASYLUM HILL PROBLEM SOLVING REVITALIZATION
ASSOCIATION and Adrienne Brown, Plaintiffs-Appellants,
v.
Gary E. KING, Defendant-Appellee.
No. 17313.
April 5, 2005.

… C.G.S. § 8-37cc(b) was part of Public Act 91-362, a comprehensive state fair housing law passed in 1991. In March 1988, not long before the passage of C.G.S. § 8-37cc(b) , the State of Connecticut Blue Ribbon Commission on Housing issued its Report to the Governor and the General Assembly, finding that, inter alia, "The state's 169 municipalities should be encouraged to continue or to begin to forge locally appropriate solutions to regional housing problems." Report of the Blue Ribbon Commission on Housing, (March 1, 1988). In the same year, the Connecticut Supreme Court issued its first major ruling on exclusionary zoning in Builders Service Corp., Inc. v. Planning & Zoning Com'n of Town of East Hampton, 208 Conn. 267 (1988), and the Sheff v. O'Neill school desegregation case was filed in early 1989. The Affordable Housing Land Use Appeals Act, C.G.S. § 8-30g et seq., which encourages the development of affordable housing outside of urban areas, was also passed in 1989 and became effective in 1990. Each of these developments reflects Connecticut's search for regional solutions to the segregation of low-income minority families in blighted, disinvested urban areas.

The legislative history of C.G.S. § 8-37cc(b) shows that legislators and advocates viewed Public Act 91-362 as part of this comprehensive movement to combat segregation in Connecticut. In the hearing on P.A. 91-362, the Sheff litigation or the link between housing and school segregation is mentioned at least eight times. See Hearings on H.B. 5523 (P.A. 91-362) before the Select Comm. on Housing, 1991 Leg. at 267, 270, 271-272, 274, 300, 312, 372, and 457 (1991)(App. 10) (hereinafter, "Hearings"). The need for low-income persons to have choice in the location of their housing is discussed at least nine times. See, Hearings at 278, 287, 288, 293, 299, 305, 309, and 315. Likewise, concerns about the concentration of impoverished persons of color in urban areas and attendant problems with education, employment, etc., are discussed at least eleven times. See Hearings at 267, 276, 293, 296, 301, 317, and 391-392 (1991). Furthermore, implicit throughout the legislative history is the perceived need for a regional solution to the problem of housing segregation. See, e.g., Hearings at 268, 294, 297, 312, 315, 333, 354, 357, 363, 366, and 372. The testimony before the legislators who passed C.G.S. § 8-37cc(b) was sophisticated and comprehensive, revealing a deep understanding of the problems of urban segregation and the concentration of poor persons of color in urban areas, as well as the necessity of a strong public policy response.

The other components of Public Act 91-362 also provide important context for understanding C.G.S. §8-37cc(b). The bills which eventually became P.A. 91-362 addressed a range of housing segregation issues including the administration of housing subsidies, regional housing obligations, and housing choice and mobility. The overall package was designed to address the racial and economic segregation of affordable housing in Connecticut.

The sponsors of P.A. 91-362 were very familiar with 42 U.S.C. § 3608 (the section of the Fair Housing Act upon which § 8-37cc(b) is based, see Commission on Human Rights and Opportunities v. Sullivan Associates, 250 Conn. 763, 799-800 (2003) (recognizing Connecticut legislature's desire to conform Connecticut fair housing legislation to federal fair housing laws), and it is thus also important to understand the manner in which § 3608 had been construed by the courts at the time C.G.S. § 8-37cc was passed. At that time, the most well known Second Circuit case, Otero v. New York City Hous. Auth., 484 F.2d 1122 (2nd Cir. 1973), stood for the proposition that a private right of action to enforce the government obligation to affirmatively further fair housing was implicit in § 3608 and available to a range of potential plaintiffs. At the same time, the Fair Housing Act was being vigorously enforced in high profile cases on Long Island (Huntington Branch, N.A.A.C.P. v. Town of Huntington, 844 F.2d 926 (2nd Cir. 1988) ) and in Yonkers, N.Y. (U.S. v. Yonkers Bd. of Educ., 837 F.2d 1181 (2nd Cir. 1987) ). In view of this broad contextual backdrop for the statute's passage, it is fair

to assume that the Legislature expected its anti-segregation mandates to be enforceable.

The Superior Court acknowledged that this legislative scheme is fully consistent with plaintiffs' attempt to enforce the defendant's duty to promote fair housing. Ruling at 15. Allowing a low-income minority resident and an organization representing a poor, segregated neighborhood to claim that a government agency is perpetuating segregation in housing is plainly consistent with the overall goals of Public Act 91-362 and the specific admonition of C.G.S. § 8-37cc(b) that state housing agencies "affirmatively promote fair housing choice and racial and economic integration in all programs administered or supervised by such housing agency."

The Superior Court erred, however, in its conclusion that certain other aspects of the legislative scheme weigh against construing § 8-37cc(b) to include a private cause of action. First, the court viewed the absence of an express cause of action in other portions of the chapter in which § 8-37cc is located, along with the presence of provisions for administrative and legislative review of CHFA reports analyzing each housing agency's "efforts, and the results of such efforts, ... in promoting fair housing choice and racial and economic integration," Ruling at 16, quoting Public Acts 1991, No. 1-362 §1, codified at C.G.S. § 8-37bb , as weighing against the recognition of a private right of action in the statute. This reasoning flies directly in the face of the Supreme Court's express statement in Napoletano that "where the legislature wishes to limit enforcement of a statute to an administrative body, it has expressly done so," Napoletano, 238 Conn. At 251, and with the Court's conclusion in Napoletano that the absence of an express limitation in P.A. 94-235 to enforcement by the state "supports our conclusion that the act permits a private cause of action." Id. at 252 (emphasis added).

Significantly, in analyzing this issue courts have consistently focused on the adequacy of existing administrative remedies to redress individual grievances concerning statutory violations, not the mere existence of such remedies. Napoletano, 238 Conn. at 252 (because Unfair Insurance Practices Act "does not provide a mechanism enabling private individuals to file grievances, private persons would be denied all access to the administrative enforcement process in the absence of a private cause of action"); Doe v. Voluntown Board of Education, 1999 WL 1001112 at (Conn. Super 1999) (finding private cause of action against Board of Education where no administrative remedy was provided in the statutory scheme); Stabile v. Southern Connecticut Hospital Systems, Inc., 1996 WL 651633, 18 Conn. L. Rptr. 157 at (Conn. Super. 1996) (App. 49)(denying private action where administrative option to challenge decisions already exists as part of the workers' compensation statutory scheme).

In this case, as in Napoletano and Doe, individuals such as plaintiff Brown and those represented by Asylum Hill NRZ would be entirely without access to the administrative enforcement process in the absence of a private cause of action. The Superior Court's decision that the existence of CHFA's reporting requirement weighs against implying a private right of action is particularly inapt in light of the allegation in the Amended Complaint that CHFA "has failed to collect or analyze data on the race of occupants of or applicants to LIHTC developments in Connecticut." Comp. ¶ 16. Thus, for the affirmatively furthering obligation contained in C.G.S § 8-37cc(b) to have any meaning, it must be read to contain a private right of action.