

In the Matter of	)	New Jersey Council on
the Township of	)	Affordable Housing
Parsippany-Troy Hills	)	
	)	Docket Nos. 01-1208;
v.	)	01-1302; and
	)	01-1302(a)
Lake Lenore Estates, L.L.C.	)	

Motion Decision

This is a dispute between Lake Lenore Estates, L.L.C., ("Lake Lenore") and the Township of Parsippany-Troy Hills ("the Township") over the terms of a June 28, 1996 COAH mediation agreement between the Township and Lake Lenore. Parsippany-Troy Hills received substantive certification from COAH on August 7, 1996. Specifically, the dispute involves the interpretation of a provision of the mediation agreement involving sewer connection fees. The dispute has been the subject of litigation in the courts and before COAH. COAH was asked to consider whether it has jurisdiction of this matter. On January 3, 2001 at its regularly scheduled monthly meeting the COAH Board voted to accept jurisdiction and directed both parties to appear at COAH's February 7, 2001 COAH meeting. At that meeting COAH directed the parties into mediation to attempt to resolve the sewer connection fee issue. Further, the COAH Board directed that if mediation were unsuccessful, the case would be transferred to the Office of Administrative Law ("OAL") for a hearing with regard to all material contested issues of fact concerning the mediation agreement, each parties' understanding of its terms and the effect of the agreement on COAH's grant of substantive certification to the Township.

The mediation was unsuccessful. However, on March 1, 2001 the Township filed a motion with the Council which essentially sought a reconsideration of the Council's January 3, 2001 jurisdiction decision. In its motion the Township argues that COAH is not the appropriate forum for this dispute, because it involves an agreement between private parties. Further, the Township argues that the Honorable Reginald Stanton, J.S.C., who dismissed the Superior Court litigation and determined that Lake Lenore could proceed before COAH, erred in his decision dismissing the action.

The Township argues that COAH does not have any rule or regulation that gives COAH the authority to hear this matter and states that the dispute "in no way" impacts COAH's substantive certification of the Township's housing element and fair share plan.

The Township further asserts that COAH's jurisdiction is affected by the holding in Alexander's Department Stores in New Jersey, Inc. v. the Borough of Paramus, 243 N.J. Super. 157 (App. Div. 1990), *affd.* 125 N.J. 100 (1991).

In response to the Township's motion, Lake Lenore argues that the motion merely restates what the Township previously presented to the Council and to Judge Stanton and provides no persuasive reason for COAH to reverse its jurisdiction decision. Lake Lenore argues that the Township's substantive certification is directly impacted by this dispute because the Council's resolution granting certification contains a provision which states: "any change in the facts upon which this certification is based or any deviation from the terms and conditions of this certification, which affect Parsippany-Troy Hills Township's ability to provide for the realistic opportunity of its fair share of low and moderate income housing and which Parsippany-Troy Hills Township fails to remedy, may render this certification null and void." Lake Lenore argues that by enacting a sanitary sewage connection fee in October 1996 the Township has changed the facts upon which the certification was based and violated the terms of its substantive certification.

Further, Lake Lenore argues that Judge Stanton's decision transferring this matter to COAH answers the Township's argument with regard to Alexander's. Lake Lenore relied upon the following transcript excerpt from Judge Stanton's December 1, 2000 ruling to support its argument:

Let me tell you what I think we should do. You see, it is, of course, true that, as an abstract matter, if somebody thinks the contract has been breached and they want either damages or some kind of injunctive relief to deal with that breach, or both, some

mix of them, its something you would normally come to court about. That's what courts do.

And it's also true, abstractly, that that is not what the Council on Affordable Housing does. That's not what they do. So if we view what the plaintiff is seeking here as a suit for violation of contractual rights, then it belongs in the Superior Court.

I'm inclined to think, though, that - and, of course, there certainly are contractual breach issues in the case, obviously. But this alleged breach of contract is occurring in a particular context.

It's occurring in a context where there has been a mediation agreement worked out with COAH that, facially at least, has something to do with the cost of the provision of sewer services. And, also, the alleged breach of this contract has a clear possibility to impact adversely on the land use policies and the affordable housing policies, which COAH is seeking to advance and which, presumably, had been advanced by the mediation agreement.

In other words, there is a real chance here that the plaintiff may have lost a significant part of the fruits of the mediation agreement, in terms of the social policies that are implicated in COAH's work, by the township's changing of the ordinances dealing with sewer fees and connection fees and the like. So I think there is a distinct chance that the township may have frustrated what was believed to have been achieved by the mediation agreement. And that's not just a breach of contract issue; that's a more fundamental social policy issue.

And that kind of issue I think, is something which the Supreme Court has wanted to have dealt with by an agency by COAH. It always wanted that, always asked the Legislature to do something about affordable housing. It is something that ostensibly the legislature has attempted to deal with by creating the Council on Affordable Housing.

And the Supreme Court, since then, and other courts have, I think, adopted the rule that we

try to - we really try to get as many things as possible before COAH, rather than in the courts. And it's not just because we don't want to do the work; we're perfectly happy to do the work, I'm perfectly happy to do the work, it's an interesting case, I'm delighted to do. But I think the problem is that the decision has been made by the Supreme Court and by the Legislature that this kind of problem should be dealt with primarily by COAH and not by the courts. [December 1, 2000 transcript; T12 to T14.]

Lake Lenore argues that COAH should give substantial deference to Judge Stanton's decision and deny the Township's request for reconsideration of COAH's prior order concerning jurisdiction. Further, Lake Lenore points out that the Township has appealed Judge Stanton's dismissal of the Superior Court litigation to the Appellate Division and that no stay has been granted in this matter.

Oral argument was held in this motion on April 4, 2001 at COAH's monthly meeting. The Council, after hearing oral argument, sent the matter to a COAH task force for consideration of the jurisdiction arguments raised by the Township, particularly the Alexander's issue. While that matter was being considered by the task force, Lake Lenore filed a motion on June 11, 2001 seeking a determination that this is a contested case and seeking an order referring the matter to the OAL. On June 13 a response was filed by the Township joining in Lake Lenore's application to send this matter to the OAL. The Township notes that in agreeing that the matter should be sent to the OAL it was not waiving its argument that COAH does not have jurisdiction. However, the Township states that "if it is ultimately determined that this matter is properly before the Council, it is the Township's position that resolution of the facts and their applicability to the law require that the matter be filed in the Office of Administrative Law, where a full and fair hearing can be conducted after appropriate discovery." Further, the Township states that there was "little question" that

this matter presented material contested issues of fact requiring an evidentiary hearing.

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The Council previously decided on January 3, 2001 that this matter should be transferred to the OAL if the Township and Lake Lenore were not able to achieve a mutually satisfactory resolution of this matter. However, once the Township filed its motion on March 1, 2001 seeking dismissal of Lake Lenore's case and a determination that COAH did not have jurisdiction in this matter, the Council sent this matter to a task force, primarily because the Alexander's issue had not been previously presented to the Council. However, it is clear from Judge Stanton's December 1, 2000 decision that he considered the issues raised by the Alexander's holding prior to dismissing the action before him and allowing this matter to proceed before COAH.

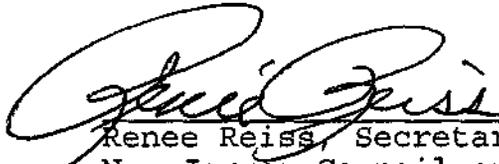
Judge Stanton is correct that there are public policy issues concerning the provision of affordable housing in the Township that are at issue in this dispute over sewer connection fees. Further, the mediation agreement that is at issue was one of "the facts" upon which COAH's grant of substantive certification to the Township was based. Therefore, the interpretation of this mediation agreement is within the incidental power which is reasonably necessary for COAH to effectuate the powers expressly granted to it by the Legislature to certify and administer municipal compliance with their Mount Laurel obligations.

It should be noted that Judge Stanton contemplated cooperation between COAH and the courts. In his decision he stated:

I will let the [attorney for Lake Lenore] come back into court if the Council on Affordable Housing ends up saying, no, this isn't what we do, we really don't want to adjudicate this issue. If they say that, then you can come back into court; or if they say certain things, but then say, go back into court to enforce this, that, or the other right, we've given you our views on what some of your rights are, but you should go back into court

for the implementation and enforcement of it, if they say that -- if they either dismiss the action because they are not going to handle it or they send you back to court for part of the relief you're seeking, I will then allow you to reopen the case in front of me. [December 1, 2000 transcript; T16.]

Clearly, Judge Stanton envisioned the cooperation of COAH and the courts in achieving a resolution of the dispute between Lake Lenore and the Township. Therefore, it is appropriate that this matter be transferred to the OAL for a hearing on the material contested issues of fact that are at issue. Judge Stanton has determined that COAH may exert its jurisdiction and COAH has decided that it will exercise its jurisdiction. To fulfill that jurisdictional mandate, all parties agree that it is necessary that this case be tried at the OAL. Therefore, COAH hereby reaffirms its jurisdiction over this dispute and transfers it in its entirety to the OAL for a full evidentiary hearing on all issues raised by the parties.

  
Renee Reiss, Secretary  
New Jersey Council on  
Affordable Housing

Date: *July 10, 2001*