MRS. JOHN MC CAULEY,
Petitioner,
v.
TOWNSHIP OF PENNSVILLE,
Respondent.

Decided

Initial Decision

SYNOPSIS

Mrs. John McCauley, a tenant in a single family house located in Pennsville Township, applied to that Township for relocation assistance. The Township denied the request taking the position that it was not responsible for any assistance. A hearing was requested and the matter heard before an administrative law judge.

The administrative law judge found that in May 1978, Mrs. McCauley made an oral complaint about conditions in her leased premises to the Pennsville Township building inspector. After an inspection of the property, the inspector informed the landlord that various violations of the building code existed. The landlord told the inspector that repairs would be made and asked that a condemnation sign be posted on the property in the interim. After a condemnation sign had been posted and a form condemnation notice sent to the landlord, the landlord advised the building inspector that repairs would not be made and that Mrs. McCauley would be evicted. On a reinspection visit approximately five months later, the inspector found that some violations had been corrected but that others had not. The administrative law judge found that following this reinspection, the inspector never returned to the property and never followed through with the provision of the Township's ordinance dealing with the condemnation of unfit buildings.

In March 1979, the landlord began District Court proceedings to evict Mrs. McCauley based on *N.J.S.A.* 2A:18-61.1(g) which permits a landlord who has been cited for violations by a governmental entity and has determined that repairs are economically unfeasible to seek eviction of his tenant. At the same time, Mrs. McCauley's attorney applied for relocation assistance under *N.J.S.A.* 52:13B-1 on Mrs. McCauley's behalf. The Township denied the assistance on the basis that it was not causing Mrs. McCauley's displacement.

In September 1979, the District Court granted judgment for possession

in favor of the landlord but required that no warrant of possession be issued until the requirements of *N.J.S.A.* 52:13B-1 (governing relocation assistance) be complied with. A renewed request for relocation assistance was made to the Township and the request was again denied.

The administrative law judge concluded that the Township was indeed the displacing agency and thus responsible for providing relocation assistance. The judge based his conclusion on a finding that the building inspector was acting within the scope of his official duties when he first visited the property, observed violations and issued a notice of condemnation; thus, the inspector's actions were the actions of the Township. While the building inspector's actions did not comport with the ordinance requirements, the administrative law judge concluded that it was clear the inspector never acted to revoke the condemnation or to advise any party that there had not been, in fact, a condemnation.

The administrative law judge also concluded that the Township could not raise the issue in this administrative proceeding of the economic feasibility of making the repairs since it could and should have proceeded in District Court to prevent the eviction if it felt that the landlord could have feasibly repaired the property.

Accordingly, the judge ordered that the Township provide the appropriate relocation assistance to Mrs. McCauley.

Joel Solow, *Esq.*, for Petitioner (Camden Regional Legal Services, Inc.)

Andrew Rhea, *Esq.*, for Respondent

MASIN, ALJ:

On September 24, 1979, the Salem County District Court granted a judgment for possession in favor of landlord Paul Haynes, Sr., and against tenant Mrs. John McCauley pursuant to a complaint seeking possession of leased premises. The legal basis for the eviction proceeding, as pleaded in the second count of the Complaint filed in the District Court, and as noted in the Consent Judgment, was *N.J.S.A.* 2A:18-61.1(g), a section of the Anti-Eviction Act. The cited statutory section deals with situations in which a landlord has been cited for violations by a governmental authority and has determined that it is economically unfeasible for him to correct the violations. The procedureal requirements relating to such an eviction will be discussed below but at this point it is sufficient to note that the Consent Judgment signed by Judge George Farrell, III, J.S.C. required that no warrant of possession be issued until the requirements of *N.J.S.A.* 52:31B-1, *et seq.* had been complied with. These statutes, which will be discussed

below, deal with the responsibilities of governmental agencies for relocation assistance.

Both prior to and subsequent to the issuance of the Consent Judgment, Mrs. McCauley, through counsel, made application to the Township of Pennsville for relocation assistance. As a result, a request was made for a hearing by the Department of Community Affairs and the matter was then transferred to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* A Pre-hearing Conference was held on February 6, 1980 and a hearing was held on February 15, 1980 at the Camden County Courthouse, Camden, New Jersey, before Administrative Law Judge Jeff S. Masin.

Paul and Dorothy Haynes are the owners of a single family home located at 85 Quaker Road in the Township of Pennsville, Salem County, New Jersey. Some time ago, they leased the premises to Mrs. John McCauley who resides there with six children. In May of 1978 Mrs. McCauley made an oral complaint to Daniel L. Hemple, Building Inspector of Pennsville Township, concerning alleged health hazards in the leased premises. According to Mr. Hemple's testimony in this hearing, he called the Haynes, whom he knew. Mrs. Haynes answered and Mr. Hemple advised her that he wanted to inspect the property. Mrs. Haynes agreed, saying that the tenant was doing repairs. Mr. Hemple inspected the property on May 21, 1978, examining the first floor and the back yard. He did not go on the second floor as there were no complaints made concerning that area. Mr. Hemple testified that he found a hole in the bedroom floor, broken windows, plumbing that was leaking into the crawl space under the home, a malfunctioning water heater and a flue pipe that was "hanging." Following his inspection Mr. Hemple called Mrs. Haynes at her home and advised her of his findings. According to Mr. Hemple, Mrs. Haynes said that she and her husband would take care of repairs and requested that Mr. Hemple post a condemnation sign on the property until the repairs were made. At the time of this call Mr. Hemple did not speak to Mr. Haynes. He testified that he posted the property on May 25, 1978 and the Notice of Condemnation which was posted was placed in evidence as a joint exhibit. It bears the date May 25, 1978 and is signed by Daniel J. Hemple. Mr. Hemple also prepared a form notice to the Haynes, dated May 24, 1978, which reads as follows:

> As building inspector of the Township of Pennsville, I hereby condemn the home owned by Paul and Dorothy Haynes located on 85 Quaker Road, tax block 458, lot 9480-9487 in the Township of Pennsville.
>
> The dwelling has been declared unfit for human habitation or for rebuilding in its present condition.

The letter was addressed to Paul and Dorothy Haynes at their home at Quaker and Salem Drive in Pennsville and a copy was noted to James T. Shidner, Assessor of the Township of Pennsville.

Mr. Hemple testified that about three or four days after the posting, he spoke to Mr. Haynes on the phone and was advised that the Haynes had no intention of repairing the property. Mr. Haynes advised Mr. Hemple that he was going to evict the tenants. According to Mr. Hemple, at this point he though that he was being "used" and told Mr. Haynes to speak to his own lawyer. Thereafter, Mr. Hemple took no other action except, according to his testimony, to return to the property about five weeks later at which time he observed that the windows and floor had been repaired but that the piping had still not been taken care of. Other than one subsequent inspection, Mr. Hemple states that he took no other action with respect to this property.

Mr. Hemple testified that the Township had adopted an ordinance with respect to condemnation of unfit buildings which called for the issuance of complaints and the holding of hearings and the issuance of orders, where appropriate. The witness testified that he had not followed the mandated provisions of the ordinance in connection with the above described proceeding.

Because of the condition of the home, it appeas that the tenants began to withhold rent from the landlord. An eviction proceeding was begun in the Salem County District Court. The landlord's complaint was based upon non-payment of rent. The Summons issued at the time was dated August 8, 1978 and the matter eventually came on for trial in the District Court on October 2, 1978. At that time rent was abated by the district court judge from $170.00 a month to $75.00 a month. Mr. Hemple testified that he appeared as a witness under subpoena issued by the tenant at the October 1978 hearing. At that time he described his findings based on his original inspections of the property. He told that court that he had condemned the property but that he had not gone through with the formal legal procedures outlined in the ordiance. Further, he testified that he told the district court judge that the house was repairable.

The parties in this proceeding have agreed and stipulated as to the occurrence of certain legal proceedings and other events. Specifically, they have agreed that the landlord again began an eviction proceeding in the Salem County District Court in late March or early April of 1979. A review of the complaint indicates that the first count states that Mrs. John McCauley, the defendant therein, is in occupancy and possession of 85 Quaker Road and has caused destruction and damage either willfully or through gross neglect. The first paragraph goes on to refer to certain types of damage and requests judgment for possession with costs. The second

count states that the plaintiff landlord, Paul Haynes, Sr., has been cited for violation of local codes and wishes to demolish premises known as 85 Quaker Road, Pennsville, New Jersey. Judgment for possession is sought with costs.

On March 30, 1979 Joel Solow, Esq., counsel for the McCauleys, wrote to Andrew Rhea, Solictor for the Township of Pennsville, and advised him that he represented Virginia McCauley in the landlord/tenant dispute with the Haynes. Mr. Solow's letter, refers to the prior abatement of the rent and also notes that the landlord is bringing an action for possession based on *N.J.S.A.* 2A:18-61.1(g). Enclosed is a copy of Plaintiff's notice. The letter goes on to point out that under the provisions of *N.J.S.A.* 2A:18-61.1(g) compliance with the relocation assistance law, *N.J.S.A.* 52:31B-1, is mandated. Mr. Solow states that he "hereby applies on behalf of Virginia McCauley for relocation assistance."

Mr. Rhea responded on April 24, 1979. In that letter, Mr. Rhea states that he had spoken to Mr. Hemple, the building official and was advised "that the Township has no present action against this property in which Mrs. McCauley resides. He (Mr. Hemple) also advises me that he completed a recent inspection at your request and has advised you of the conditions disclosed." Mr. Rhea continues that "under the circumstances, I am not aware that the Township is causing the displacement of any person for housing conditions." The advice which Mr. Rhea notes Mr. Hemple as having given Mr. Solow was in the form of a letter, dated March 28, 1979, addressed from Mr. Hemple to J. N. McCauley which stated that at the request of Mrs. McCauley's attorney for an inspection of 85 Quaker Road, the "following items were found." Listed below were such matters as fuses blown, holes in living room and heater room floors, plumbing under the crawl space not hooked up and draining into the crawl space, a flue pipe not secure to the chimney and electric wires not covered in the breezeway and the garage.

At the present hearing Mr. Hemple testified that despite the implications of the phrasing of the language in Mr. Rhea's letter and in his own letter to Mrs. McCauley of March 1979, Mr. Hemple did not believe that he had actually gone out to the property and inspected it at that time. He stated that all he was doing in the March 28, 1979 letter was referring to the items which he had found at the time of his inspections in May of 1978.

Subsequent to the exchange of letters noted above, Judge George Farrell, III, sitting in the Salem County District Court, issued an order "for inspection by Department of Community Affairs" which mandated that the Department perform an inspection and report in connection with the landlord's complaint seeking eviction, pursuant to *N.J.S.A.* 2A:1861.1(g).

The order notes that the regulations promulgated under that statute require the Department of Community Affairs to perform such an inspection. The order is dated April 23, 1979.

Pursuant to the above order the Department of Community Affairs performed a special field inspection. This investigation, which consisted of field inspections and the receipt and examination of affidavits from the landlord as well as a review of inspections conducted by the Salem County Department of Health in August of 1978 and May of 1979, led the Department of Community Affairs to the conclusion that it was economically unfeasible for the landlord to repair the premises. The report was forwarded to the District Court for its review. It is significant to note that the Department of Community Affairs report indicates that the inspectors, visiting the premises in June of 1979, found such conditions as drainage in the crawl space, fuses blowing continually, rotted out floors, and exposed electrical wiring in the breezeway. These examples of the conditions found are apparently the same as those found over one year earlier by Mr. Hemple.

Upon receipt of the report of Department of Community Affairs, the parties entered into negotiations and subsequently agreed upon the entrance of a consent judgment for possession under *N.J.S.A.* 2A:18-61.1(g). Judge Farrell signed an order to this effect on September 24, 1979. This Consent Judgment contained an order that no warrant of possession be issued until the requirements of *N.J.S.A.* 52:31B-1, *et seq.* and *N.J.S.A.* 20:4-1, *et seq.* be complied with. It also ordered that count one of the Complaint, which had referred to damages allegedly caused by the tenants, be dismissed.

Following the entry of the Consent Judgment, a renewed request was made to the Township of Pennsville for relocation assistance. The Department of Community Affairs, through its representative, George Consovoy, had contact with the Township Solicitor some time prior to October 25, 1979 and informed the solicitor that under section g(1) of the Eviction Law, the responsibility for relocation payments was with Pennsville, as the displacing agency, and that it was the policy of the Department to share the costs on a 50/50 basis. Subsequent to this meeting, Mr. Rhea consulted with the Township Council and on November 26, 1979, advised Mr. Solow that the Township did not feel that it was responsible for relocation assistance.

Since the procedural aspects of the proceedings in the District Court were agreed upon, the only witness presented at the hearing was Mr. Hemple. His testimony was presented by the Township in an effort to demonstrate that Mr. Hemple's handling of the situation was such that his actions would not have a binding effect upon Pennsville. The Township Solicitor advised

the court that the Township did not feel that it was a displacing agency because it had not caused the eviction of the tenants through any code enforcement. In the Township's view the actions of its Building Inspector were done in an improper manner and could not place responsibility on the Township for relocation assistance.

In addition to that which has already been described, Mr. Hemple testified that on four or five occasions he had had occasion to use the formal procedures outlined in the ordinance for the conduct of a condemnation proceeding. He also stated in cross-examination that he could have gone through these procedures with the Haynes and eventually brought them to court if they did not make the repairs. He acknowledged that the goal of housing inspections was to keep properties up to the code. He advised that his findings on May 21, 1978 had not been "that serious." He posted the property because he was asked to do so. He did not post the property to get the McCauleys to leave. When he went back to the property some five weeks later, he noted that the Haynes had made some repairs and he was later advised by phone by the Haynes that they were making further repairs. He never went back to the property to reinspect to see whether they had made such repairs but he claimed that he never again received any calls from the tenant complaining about the property and, therefore, he never did anything more.

The first significant issue raised in this hearing came to light at the Pre-hearing Conference. At that time the Township indicated its desire to litigate the issue of "feasibility." The Township argued that it had not been a party to the District Court action and, therefore, had not been involved in the determination of whether the repairs required were economically feasible. *N.J.S.A.* 2A:18-61.1g(1) permits the issuance of a judgment of possession in favor of a landlord where the landlord had been cited for code violations and establishes that it is economically unfeasible for him to make the necessary repairs to comply with the applicable codes. The Township contended that the repairs needed to bring the subject property up to code level were economically feasible for this landlord and therefore any eviction of the tenant was not the result of the enforcement of the building code by the Township. At the Pre-hearing Conference, the administrative law judge advised counsel that he would consider the arguments presented by the Township and would rule in advance of the hearing as to whether the issue of feasibility was an appropriate one for consideration in the context of this administrative proceeding.

On the date of the hearing, the administrative law judge informed counsel that he had determined that it would be inappropriate for him to permit testimony on the feasibility issue. A ruling was made from the bench on the

record and is now set forth more fully.

FEASIBILITY AS AN ISSUE IN THIS PROCEEDINGS

The issue presented at this juncture of the proceedings is whether the Township may properly raise the issue of "feasibility of repair" in this forum. The issue is signficant because eviction of the tenants under the eviction statute may only occur if the repairs needed to meet the cited violations are economically unfeasible for the landlord.

Of course, the economic feasibility of the repairs has already been the subject of consideration by the District Court. Following the filing of the complaint brought by the landlord against Mrs. McCauley, an order was signed requiring an inspection by the Department of Community Affairs. Following this inspection and review by the agency, the parties and the court received a report and the landlord and tenant then entered into a Consent Judgment for possession under the terms of the statute. The signing and entry of this Judgment following receipt of the Department of Community Affairs report, which indicated the existence of an economically unfeasible situation for the landlord, necessarily implies that the district court judge agreed that the eviction was a proper one under the statute upon which the plaintiff-landlord had proceeded. Had the judge thought otherwise, he could not have signed the Judgment.

The Township complains that it was not a party to the District Court proceedings and says that it should not be bound by the District Court's conclusion that the repairs were economically unfeasible. It is true that the Township was not before the District Court at the time the Judgment was entered therein. It is also true that no "formal" notice was given to the Township of the institution of the District Court proceedings. However, it cannot be denied that the Township was advised by the attorney for the tenants that a "g(1)" eviction had begun and a request for relocation assistance was being made. The Township Solicitor looked into the situation and wrote back saying that the Township was not engaged in any code enforcement against the subject property. Thereafter, the Township did nothing to prevent the entry of a "g(1)" Judgment. The parties proceeded to obtain the Department of Community Affairs inspection report and the Consent Judgment was then entered. The Township learned of the existence of the Judgment within a short time after the date of entry. At this point the Township again did nothing to attempt to demonstrate to the District Court tht it was inappropriate to allow the eviction of the tenants on the basis of a "g (1)" eviction. The Township could and should have taken action to try to vacate the Judgment. The Township could have moved before the court to permit it to intervene, citing the potential responsibility of the Township

for relocation assistance and the strong public policies connected to that responsibility and the concomitant responsibility to provide adequate housing for tenants, and could have argued for vacation of the Judgment and a full plenary hearing on the merits. *See New Jersey Rules of Court* 4:33-1, through *R.* 6:3-1 which apply in the District Court. It chose not to do so. Instead it now seeks to raise the feasibility issue in this administrative proceeding. I **CONCLUDE** that it may not do so.

The present action arises out of the administriatve process provided for determining the responsibility of government bodies for relocation assistance, as mandated by the Relocation Assistance Acts. The parties to this proceeding are the tenant, who seeks either financial assistance or substantially equivalent housing to replace that from which she has been dispossessed, and the alleged displacing agency. The landlord, already awarded his eviction order subject to the governmental agency fulfilling its relocation role, is not a party. The issues properly here are the question of who, in fact, is the displacing agency and how much assistance is mandated. While it is recognized that the feasibility issue is in some sense a part of the broader issue of who is the displacing authority, it is one which, under the statutory scheme, appears properly to be, and in this case to have already been, adjudicated by the District Court. Any attempt to vacate or reverse the District Court's ruling should have been made through the normal court procedures of motion and appeal.

As noted above, there is a strong public policy which appears to require that communities which may be subject to economic responsibility for relocation assistance take care to prevent evictions which are not properly grounded in section g(1). Further, there is a strong policy, clearly implied in the statutes, requiring that government take steps to assure adequate housing for the citizenry. The Department of Community Affairs has endeavored to ensure that communities shoulder their responsibility in this area. *See Travis v. Township of Andover Department of Community Affairs*, 78-3(R), a decision of a hearing officer of the Department of Community Affairs, adopted by the Commissioner in March of 1979.

It appears that the summary proceedings available under the eviction statute, even with the time limitations built in, provide the most expeditious means of determining the propriety of a purported "g" section eviction. For the District Court to properly determine such a case, it must decide the feasibility issue. It makes little sense to provide for the disposition of that question in the District Court and then allow the determination of the issue to be subject to relitigation in the administrative process. While it is recognized that District Court decisions are not binding in actions by tenants in connection with alleged illegal evictions, it does not appear that another

area should be opened upon for extended and repetitious litigation unless the legislature or the appellate courts deem it appropriate.

I **CONCLUDE** that it would be inappropriate to allow the Townhip to relitigate the feasibility issue in this forum when it could and should have proceeded in the District Court to prevent the eviction if it felt that the landlord could feasibly repair the property.

THE ACTIONS OF THE BUILDING INSPECTOR

Since the issue of feasibility has been decided and the only remaining issue of significance is whether the Township in fact did cause the displacement of the tenants through it program of code enforcement, it is necessary to determine whether the activities of Mr. Hemple bind the Township. In this connection it appears clear that at the time Mr. Hemple went to the property, following receipt of an oral complaint from the tenant, he was acting within the scope of his capacity as the Township Building Inspector. As he himself testified, the goal of code enforcement is to provide housing which meets the standards set forth in the code. It is exactly this function which Mr. Hemple was performing when he inspected the Haynes property. He noted the existence of violations and advised the Haynes accordingly. Mr. Hemple testified that he posted the property at the request of the Haynes. In view of their request there was no reason for Mr. Hemple to hold a hearing, at least initially. While it is true that he had not filed a formal notice of complaint specifying the exact violations, it seems clear that, by his notice of May 24 and his telephone conversation with Mrs. Haynes, he had given notice to the landlord and had received agreement to the posting of the property as condemned.

Mr. Hemple's subsequent actions did not comport with the ordinance requirements. At the same time it is clear that he never acted to revoke the condemnation order or to advise the parties that there was not, in fact, a condemnation. While he claims that he testified in October of 1978, at the first District Court's proceeding, that the property could be economically repaired, there is no indication that at that time he advised anyone that he had not, in fact, begun a conemnation action. Mr. Hemple's activities, while not comporting with the procedures madated by the Township, nevertheless included proper initial steps in the condemnation process and were sufficient to give the parties reason to believe that the property was condemned. Thus, the question that must be answered is whether these actions are sufficiently linked to the subsequent "g(1)" proceeding so as to place responsibility on Pennsville as the displacing agency. I believe that they were.

The linkage between the building inspector's activities performed within

the scope of his duty, and the Judgment of the District Court granting eviction on the basis of a "g(1)" complaint must arise from a review of the nature of the violations noted by Mr. Hemple, the issuance of the condemnation notice and the wording of the eventual Judgment. There is a clear link. Mr. Hemple initially observed violations at the Haynes property and cited them. He posted a notice which condemned the property as dangerous and unsafe. He notified the owners that the property was condemned, declared unfit for human habitation or for rebuilding in its present condition. He then took no action to notify anyone that there was in fact no condemnation. The landlord and tenant proceeded as if a confemnation had occurred and the landlord, having determined not to make the repairs, brought the complaint seeking eviction so that he could demolish the building. That complaint recited the citation by the Township. The Township, upon learning that a "g(1)" eviction was taking place, did not, for whatever reason, do anything to advise the court that there was in fact no condemnation proceeding and that the foundation of the complaint was factually and legally incorrect. If the Township believed the complaint sought relief that was not proper and could cause financial prejudice to the municipal coffers, the Township had the clear responsibility to act to prevent the eviction and it failed to do so. I do not deem the letter from Mr. Rhea to Mr. Solow to be in any way sufficient to fulfill this obligation of the Township.

It appears significant to note that some confusion may have been engendered by the wording of the letters exchanged in March and April of 1979 between the Township officials and the attorney for the tenant. Mr. Solow's letter of March 39th advises Mr. Rhea of the "g(1)" proceeding and requests assistance. It notes the posting of a condemnation sign. The March 28, 1979 letter from Mr. Hemple to Mrs. McCauley appears to indicate that Hemple had inspected the property and found numerous violations. The letter does not make clear that this relates to a 1978 inspection; in fact it could well be read as indicating a recent inspection. Mr. Rhea's response to Mr. Solow of April 24, 1979, specifically indicates that Mr. Hemple had completed a recent inspection at the request of Mr. Solow and advised of the conditions disclosed. Despite the fact that Mr. Rhea indicates that there is no action taking place against the property, the posting of the condemnation sign and the indications of a recent inspection, albeit perhaps a mistaken interpretation of the Hemple letter, did little to clarify the situation. The appropriate way for the Township to have taken itself out of the picture would have been to have intervened in the District Court action and sought dismissal of the "g(1)" complaint on the basis that the repairs were feasible and no eviction was appropriate. For whatever reasons it may

have considered at the time the Township chose not to do so. Thus, Judge Farrell was presented with a case in which he was told there had been citations by the Township. He was advised by the Department of Community Affairs, which acts solely as a servicing agent pursuant to the regulations, that a host of these conditions still existed and that the repairs could not be made economically. (It is significant to note that the Township did not call the landlord as a witness.) He signed the Order and was fully justified in doing so. It is now too late for the Township to attempt to avoid the responsibilities imposed upon it by the statutes. It could only have done so in the District Court and it did not do so.

I **CONCLUDE** that the actions of the building inspector were the actions of the Township. Although Mr. Hemple did not follow the proper procedures in carrying through the eviction process, he clearly instituted a condemnation, gave notice to the proper parties that the property was condemned and did nothing to cancel out the proceedings. The parties properly could rely on the Township's notification of condemnation in their subsequent actions with respect to the property. While the landlord may perhaps have been aware that there were formal procedures for condemnation which had not been followed, there had been no indication from the Township that it was withdrawing its condemnation and the landlord could reasonably have assumed that he still had to make the repairs. Faced with what he considered to be an economically unfeasible situation, he chose to proceed by way of the "g(1)" provision. His economic projections were supported by the Department of Community Affairs review. The tenant could reasonably assume that a condemnation had occurred. The property had indeed been posted and the violations had existed. The repairs, at least some of them, had apparently not been made. I **CONCLUDE** that the Township was indeed the displacing agency.

I make the following FINDINGS OF FACT:

1. Paul and Dorothy Haynes are the owners of 85 Quaker Road in Pennsville Township, a property leased to Mrs. McCauley who resides therein with her six children.

2. Following the receipt in May of 1978 of oral complaints by Mrs. McCauley Daniel L. Hemple, Building Inspector of Pennsville Township, inspected the property, found various violations of the building codes and advised the landlord of existence of the violations. He was told that repairs would be made and was asked to post the property as condemned in the interim.

3. The landlords then advised Mr. Hemple that they would not make repairs and intended to evict the tenants.

4. Mr. Hemple reinspected the premises approximately five weeks later

and found that some of the violations had been corrected but that others still existed.

5. Following his reinspection, Mr. Hemple did not go back to the property at any time and did nothing further with respect to the property except to speak to the Haynes on one occasion. No formal condemnation notice was prepared and served on the Haynes although they did receive the initial form notice in May of 1978.

6. In October of 1978 Mr. Hemple testified in District Court and at that time he described his findings upon his initial inspection of the property.

7. In March of 1979 the landlord instituted a "g(1)" eviction proceeding. The Township received notification from the tenant that eviction was being sought on the basis of the "g(1)" section of the eviction law and that relocation assistance was being sought. The Township responded by denying responsibility.

8. The report of the Department of Community Affairs noted the existence of violations which the absence of any proof to the contrary, would appear to be the same as those found by Mr. Hemple in May of 1978.

9. The Township never attempted to intervene in the District Court proceeding nor did it in any way advise the court that it did not seek the correction of violations for which the landlord had been cited by the Building Inspector. The Township subsequently received notice of the entrance of the "g(1)" Judgment and did not move to intervene and to vacate the Judgment.

10. Mr. Hemple was acting within the scope of his duties as a township offical when he visited the property in May of 1978, observed violations, posted a condemnation sign and issued a notice of condemnation.

I **CONCLUDE** that the Township is the displacing agency and that it is responsbile for providing the appropriate relocation assistance to the McCauleys. Since the McCauleys still live in the subject property and have been thus far unable to make arrangements for removing themselves, the amount of relocation assistance cannot be determined at this time. The parties shall determine the amount of assistance required in conformity with the statutory and regulatory provisions when the McCauleys have made the necessary arrangements for moving. It does not appear that it would be necessary for the Department to retain jurisdiction in this matter.

THE ROLE OF THE DEPARTMENT OF COMMUNITY AFFAIRS

In the course of this proceedings, counsel for the tenant raised a number of questions concerning the position of the Department of Community Affairs in the relocation scheme. During his argument, counsel contended that imposition of a relocation assistance responsibility upon "rural"

communities such as Pennsville may persuade such towns not to enforce their building codes in order to avoid financial liability for assistance. In counsel's view the State, through the Department of Community Affairs, should assume the full cost of such assistance.

While it cannot be said that the situation envisioned by counsel may not occur, at least in some areas, the determination of where the responsibility for relocation assistance is to lie is for the Legislature. Counsel cites no statutory support for his position and I **CONCLUDE** that any change which must occur in order to prevent the situation which he suggests cannot be provided through this proceeding.

MUNICIPAL NOTICE

As stated above, I have determined in this proceeding that the municipality was in fact aware of the eviction proceeding and could and should have moved to intervene in the District Court ot assert its position. However, an examination of this case does indicate that there is perhaps a need for a method of providing better notification to municipalities of the existence of "g(1)" eviction proceedings. While the decision in *Travis, supra,* refers to communications from the Department to the City of Atlantic City addressing the need for the legal staff of that community to monitor the District Court docket in order to prevent improper evictions, it would seem appropriate for the Rules of Court and/or the statute to be amended to provide that whenever a landlord seeks to evict a tenant under the terms of *N.J.S.A.* 2A:18-61.1 g(1) that a formal notice be required to be served upon the municipality advising it that a complaint has been filed and that the municipality may, therefore, be required to provide relocation assistance funds. Such a notification would more surely advise townships that these matters are in existence and would seem to be a more effective method of advising all potentially interested parties.

After reviewing this Initial Decision, the Department of Community Affairs on April 18, 1980 issued the following Final Decision:

The initial decision is adopted as the Commissioner's final decision.