

*THE BUFFALO HOUSING COURT:
A SPECIAL COURT FOR SPECIAL NEEDS*

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The purposes of this brief Article are neither to sound the trumpets of ultimate success in discovering a solution to housing problems nor to compare and analyze the many housing courts now in existence; rather, this study focuses on the Housing Court of the City of Buffalo, how it came about, what it is today, and where it appears to be headed.

Numerous comments are proffered in support of the effort and establishment of a housing court, set up to handle the need for quick and effective adjudication of housing problems in a mature, northern, industrial city.

Additionally, numerous examples are discussed to demonstrate the many effective and useful solutions that the housing court provides for today's complex housing problems.

The City of Buffalo municipal court system was created by the Uniform City Court Act in 1964.¹ This state legislation, affecting all city courts, was designed to simplify and streamline the operation of these courts of first instance. The court began handling housing matters through a variety of local and state laws in an attempt to regulate housing code enforcement.² The idea of a housing court, per se, has been

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1. 1964 N.Y. LAWS ch. 497 (codified in UNIFORM CITY CT. ACT §§ 101-2301 (McKinney Cum. Supp. 1978-79)).

2. N.Y. MULT. DWELL. LAW §§ 1-367 (McKinney 1974 & Cum. Supp. 1978-79); N.Y. REAL PROP. LAW §§ 1-602 (McKinney 1968 & Cum. Supp. 1978-79); N.Y. REAL PROP. TAX

a rather recent phenomenon, with the first actual housing court, or housing term, appearing in 1971.³

Historically, landlord-tenant housing matters in the municipal court system were handled in the special term division. A special term judge was designated to handle housing code violations. The theory was that such an arrangement could provide expeditious adjudications to landlords and tenants who might be injured by delay. However, as urban decay intensified in Buffalo, this procedure proved inadequate and inefficient.

The special term division handled all civil litigation motions, landlord-tenant proceedings and housing code violations. Because the judge sat at special term for only one month, his workload was too enormous and his follow-through ability too hampered for him to effectively handle these ever-increasing problems. Therefore, in 1971, the first actual housing court was set up as a division of the municipal court system. The Buffalo Housing Court is exclusively devoted to housing violations and enforcement of the city's residential, commercial, health, fire and sanitary codes.

Before 1978, the court had little power to compel landlords to repair or demolish their buildings. As urban blight intensified, however, an awakened city council sought to provide the court broader powers to combat the problems. At the same time, the State of New York took over the court system. The Buffalo city fathers pressed the New York State Legislature in Albany for special legislation creating a unique housing court. In early 1978, the state legislature enacted a law⁴ creating a special court with powers to "recommend or employ any . . . program, procedure, or sanction authorized by federal, state or local law for the enforcement of housing standards." The court has jurisdiction over houses and buildings in Buffalo and may enforce the housing, sanitation, health, fire, zoning, electrical and building codes.

The municipal court judges are elected to ten-year terms.⁵ The court's

LAW §§ 1-2016 (McKinney 1972 & Cum. Supp. 1978-79); BUFFALO, N.Y., HOUS. & PROP. CODE ch. 11 (1974); BUFFALO, N.Y., BUILDING CODE ch. 12 (1974); BUFFALO, N.Y., ZONING ORDINANCES ch. 70 (1974); BUFFALO, N.Y., FIRE PREVENTION CODE ch. 93 (1969).

3. A. Garin, *Housing Code Enforcement in the City of Buffalo under the Special Housing Pact* (February 2, 1976) (an independent study done by a law student at the State University of New York, at Buffalo, reviewing factors involved in enacting the special housing pact of Buffalo).

4. 1978 N.Y. LAWS ch. 516, art. X.

5. Buffalo City Court Act, 1909 N.Y. LAWS ch. 570, art. I, § 3, *as amended* by 1941 N.Y. LAWS ch. 391.

current funding is split evenly by the state and city, with the state scheduled to take over all funding at the end of 1980.⁶ The court's far-reaching substantive jurisdiction is almost exclusively limited to resolution of housing code matters.

HISTORY

Over the past decade, Buffalo, like other American cities, has undergone the traumas of a continuing housing crisis. Ninety percent of Buffalo's dwellings were constructed prior to 1930, and sixty-five percent before 1920. Over eighty percent are of wooden-frame construction.⁷ These older homes require numerous and constant repairs to avoid dilapidation or deterioration. Like many housing problems, this need for constant repair which seemed almost non-existent fifteen or twenty years ago suddenly seems to be spreading like wildfire.

Municipal legislators, community and civic groups, and concerned citizens alike seemed alarmed as Buffalo's housing stock neared a severe state of dilapidation. These vocal efforts and signals led the city fathers to pursue the matter with the state legislature which arrived at the current Buffalo Housing Court Act.⁸

JURISDICTIONAL POWERS AND OPERATION

The Buffalo Housing Court is manned by a single judge, generally serving a six-month term. The first judge's term under the new Housing Court Act has been extended one year in an effort to continue the work of the first six months without a change in methodology.⁹

Some rather startling statistics can be noted for the first several months of operation. Before the new Housing Court Act there were approximately forty new litigant actions per month. Under the new Housing Court Act, the court has averaged over 235 new litigant actions¹⁰ per month. It appears that the code enforcement inspectors have brought many more matters to the court for adjudication since they have been seeing the quick disposition of cases.¹¹

Most important to the housing court's effectiveness has been the

6. Unified Court Budget, 1976 N.Y. LAWS ch. 966.

7. CITY OF BUFFALO DEP'T. OF LICENSES & INSPECTIONS REPORT NO. 1 (1978).

8. 1978 N.Y. LAWS ch. 516, art. X (effective July 21, 1978).

9. Buffalo Evening News, Jan. 12, 1979, at 33, col. 4.

10. Litigant action is a new case just commencing in court.

11. City of Buffalo DEP'T OF LICENSES & INSPECTIONS BI-MONTHLY REP. (1978).

number of properties which it compels to comply with the codes. Early figures indicate that more than eighty percent of matters initiated by the court four months ago are now in compliance with codes.¹²

Only after the enforcement agency has failed to achieve code compliance through exhausting all administrative efforts does the agency pursue these cases in court. Since these violations are brought to the court voluntarily, they represent a true upgrading of the properties involved.

Similarly, Buffalo is confronted with problems arising from abandoned or vacant homes. Often, destructive tenants leave the landlords with little recourse other than abandonment. In the first four months of the new housing court, an average of fifteen cases per month involved abandoned property owners seeking to pay for demolition of their abandoned premises. The owner requested the city to solicit bids from private demolition contractors. The city paid the lowest bidding contractor, using funds of the property owner. Demolition of these abandoned units is necessary to prevent personal injury and property damage in the surrounding area. Often, children, vagrants, and vandals are injured in such homes, or, accidentally or intentionally set fires in them. In densely populated neighborhoods, the potential damage from a spreading fire is substantial. In 1978, the city demolished 795 blight-riddled properties. The demolition compliance program is currently functioning at record levels under the new Housing Court Act.¹³

EFFECTIVE NEW TOOLS

One difficulty in the housing court judge's code enforcement had been the limited range of available criminal penalties. The new Act not only has created additional criminal sanctions, but it has also provided several avenues of relief. Anyone found guilty of a code violation may face fifteen days in the county penitentiary and/or a five hundred dollar fine. In addition, the court has power to compel the landlord to make repairs, to order a building demolished and/or to appoint a receiver for the building.

This right to appoint a receiver was previously a power held exclusively by the New York State Supreme Court. In the hands of the housing court this power is an extremely effective tool, particularly in dealing with negligent slumlords. Many slumlords have found it more lucrative to hire

12. City of Buffalo COMM'R OF INSPECTIONS & LICENSES, FINAL REPORT (1978).

13. See note 7 *supra*.

skillful counsel, procure delays, and pay fines, than to spend money sufficient to bring their properties into compliance with housing codes.

The Act¹⁴ provides that the prosecutor may bring a special proceeding before the housing court judge, asking that a receiver of rents be appointed to bring the building up to code. When used, this procedure has proved an effective remedy which, literally, takes the silver from the pockets of the slumlord and, perhaps more importantly, forces the slumlord to keep accurate accounting records on the property in question. In addition, many slumlords are displeased that an outside receiver will file a record of his stewardship of this property with the Internal Revenue Service. Since many slumlords treat their records as they do their buildings, the I.R.S. may often lack a clear picture of the income such individuals derive from their numerous properties. The appointment of a receiver clarifies this previously clouded picture.

EDUCATIONAL EFFORT

Despite the housing court's expanded authority, punitive measures alone could not accomplish housing code enforcement. Because many code violators were without funds, imposing jail sentences or fines could not eliminate code violations. Thus, a program of education and counseling was created to assist those code violators.

A minimal staff, one person with a background in housing law, attempts to solve problems for defendants who are elderly, sick, physically handicapped, mentally impaired, or senile. The educational effort focuses on any available federal, state, or local program, such as low-interest loans or grants, which might assist a defendant in making required repairs. Further, the court assistant may suggest any number of private institutions which might be of assistance.

The housing court assistant also is a liaison between various agencies and defendants, attempting to solve their respective problems. Furthermore, through contacts with such agencies as the County Welfare Agency or local senior citizens' groups, the court assistant provides physical assistance to defendants in need.

Although still in its early stages, it appears likely that the housing court's two-pronged approach, supplementing enforcement with education, will facilitate prompt and equitable housing dispute resolution.

14. 1978 N.Y. LAWSch. 516, art. X, § 202(f).

DEMONSTRATIVE DISPLAYS

Clearly, many people coming into court were mystified by the language of the city codes and were unable to comprehend their role. For example, an inspector's designation of a faulty rain-leader or downspout, which are synonymously used terms is quite incomprehensible to the average citizen unfamiliar with the building trade. Additionally, such code violations as defective gutters, sink traps, roofing and the like are often not understood by the code violator. As a result, these repairs sound expensive. It became evident that some display item was needed for the housing court judge to physically point to, thereby facilitating the defendant violator's understanding of the specific problems that the violator or a handyman could correct without burdensome expenditures for labor or professional help. "Before" and "after" photographs of locations that have been "turned around" are displayed at the entrance to the courtroom. Other photographs depict various other properties that had been inundated with garbage and refuse or destroyed by fire and decay.¹⁵

The court also has posted numerous newspaper articles stressing the need for maintenance if property values are to be preserved or enhanced. Also posted are articles concerning the need for demolishing fire-damaged buildings, the problem of slumlords, and the improvement of tenement conditions.

This use of demonstrative construction materials, as well as the use of innumerable photographs of actual properties, has added an element of concern and permanence to the housing court's work. To aid further in this educational effort, the housing court judge keeps recent newspaper advertisements of the approximate costs of special repairs.¹⁶

Another area of court concern is the vulnerability that certain defendants, particularly the elderly or uneducated, face when pressured to make code corrections. Such defendants are easy prey for unscrupulous home-improvement contractors and fast-talking salesmen. Invariably, these unscrupulous characters and their companies charge outrageous prices and often perform inadequately. The city council developed a mechanism to alleviate this problem by requiring licensing of all city contractors,¹⁷ and by furnishing each defendant with an advisory

15. These photographs are subtitled with such phrases as: "don't let garbage build up, or it will bury you!"

16. Typical estimates for repairs are for two- or ten-foot lengths of guttering, or four-foot lengths of downspout, or two sink traps, or two hundred feet of rolled roofing.

17. BUFFALO, N.Y. ORDINANCES ch. V, art. XXIII, §§ 390-398 (1974).

sheet indicating that he should call the Department of Licenses to check the reputation of the contractor if one will be engaged. The advisory sheet also contains general information.¹⁸

The advisory sheet minimizes the possibility that a panicky defendant will be "taken in" by a fast-talking home improvement salesman.

INFORMATIVE LECTURES FOR DEFENDANTS

During the new housing court's first several months a lecture program was established in which representatives from the Community Development Agency, the Department of Multiple Dwelling, Plumbing and Electrical Inspection units, and various taxpayer-groups spoke to large numbers of defendants concerning ways to correct and avoid code violations and solve maintenance problems. These lectures seem to have been well received; defendants asked many questions and obtained helpful answers for their problems. This procedure provides defendants with direct access to the City Department Inspection Unit, and because they are in large numbers, defendants recognize that they are not alone in their plight, and that others, like themselves, are working to solve their problems.

TASK FORCE ON HOUSING

In May 1974, as a result of local media coverage of numerous fires, many with arson-related motives, the city government adopted a new approach to attack the problem. The executive branch established a special unit, designated as the Housing Task Force.¹⁹ The media had emphasized the inability of those agencies designated to investigate fires to determine whether there was arson-for-profit. With broad goals of ameliorating the situation, the Housing Task Force called on various experts to assist; police investigators, fire investigators, lawyers, accountants, real estate experts and insurance specialists were assigned to the task. After nearly five years, it appears that this effort has been extremely successful.

Presently, when a fire occurs in the city, a complete review is made

18. People were advised (1) not to pay for the entire cost of the job prior to job completion; (2) to obtain a contract, specifically setting forth work to be done, materials to be used, and total cost of the project, and (3) that if the project was unsatisfactory, they could notify the Home Improvement Board who would immediately hold a hearing with the contractor and the dissatisfied customer, jeopardizing the contractor's license if it were proven that a "rip-off" had occurred.

19. Buffalo, N.Y. Exec. Directive of May 4, 1974.

immediately after it has been reported to determine if arson is involved. An immediate check is made on any outstanding taxes. If there are any back taxes, they are immediately converted to a lien against the property; if emergency demolition is required, the cost of this is added to the lien against the property. The insurance carrier is immediately notified of potential arson and no payment of the claim is made for at least thirty days. Outstanding tax bills, converted to liens, and any additional demolition costs must be paid out of any insurance claim settlement. In effect, this often leaves little, if anything, beyond the settlement amount, thereby extinguishing the profit motive for arson. By "following the money", the Task Force has made headway in combating the fire problem in Buffalo despite its inability to apprehend the arsonist.

New York State Insurance Law²⁰ generally provides that every building can be insured. This is commonly called the "fair plan." The legislature has amended this plan so that no vandalized or open building can be insured. Additionally, the Legislature has made a special computer available to the Housing Task Force which had previously been used by all fire insurance carriers in the state. This enables the Task Force to obtain the claimant's name, amount of insurance, and price paid by the owner for the property. The information aids the Task Force's determination of whether arson might have brought the owner profit.

The Housing Task Force also assists the Department of Buildings and Inspections in locating out-of-state landlords, determining the identity of corporate principals, and performing detailed title searches.

The Housing Task Force has enhanced the court's ability to diminish urban blight. Concurrently, this unique procedure has reduced Buffalo's arson rate.

CONCLUSION

During its short existence, the Buffalo Housing Court has had a greater impact than this brief article might indicate. The court represents an important force in securing compliance with the Buffalo Housing Code. The housing court's efforts have forced many slum landlords and marginal operators to cease and desist before they come to court. Owners of vacant and dilapidated buildings realize they must decide either to demolish or refurbish their empty buildings.

Whatever its actual accomplishments thus far, the Buffalo Housing

20. N. Y. INS. LAW Art. XVII-B, §§ 651-58 (McKinney Supp. 1978).

Court provides a sound basis for hope that housing disputes will be resolved more equitably and expeditiously. Along with aggressive code enforcements, the housing court acts as a catalyst to end many of the old negligent practices of landlords or homeowners. While the problems of deteriorating, aging housing still exist, a sense of accomplishment and a new spirit of hope prevail for the first time in a decade.

The city's legislative body believes that given a concerted effort by the enforcement agency and court, as well as private financing for needy defendants, blight can be stopped and, perhaps, turned back for the first time.

Although it is still too early to determine whether this code enforcement has generated substantial reinvestment by property owners, the court has served a vital role in the city's code enforcement activity. The court also has been instrumental in developing educational programs in the housing area.

Housing courts are certainly no panacea, but the Buffalo experience, tailoring legislation through broad grants of authority to the court, has proved that they can help solve many housing problems.

As the Buffalo Housing Court develops in this specialized area, its potential for effective and efficient code enforcement will become apparent. This unique court, therefore, may serve as an interesting model for communities seeking to provide a decent home for all their citizens.

