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STATE COMPTROLLER

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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 5, 2000

Mr. Joseph Lynch
Commissioner
New York State Division of Housing
and Community Renewal
Hampton Plaza
38-40 State Street
Albany, New York 12207

Re: Unity Park Phase I and II
Report 99-G-1

Dear Commissioner Lynch:

On September 8, 1999, we commenced a review of selected areas at the Unity Park Phase I and II housing developments in the City of Niagara Falls. The review was done to address the following questions:

- What is the vacancy rate at Unity Phase I and II?

- Do complaints made to the Office of the State Comptroller about deplorable conditions in Unity II's housing units and grounds appear to be valid?

- Has the Division of Housing and Community Renewal (DHCR) and other entities adequately monitored the developments to provide reasonable assurance that the managing agent maintained the housing units in good condition and made adequate efforts to rent the apartments?

To answer these questions, we interviewed employees of DHCR, the Mortgage Loan Enforcement and Administration Corporation (MLC), City of Niagara Falls, and the managing agent. We also reviewed the DHCR inspection reports from September 1995 to September 1999. In addition, on October 19 and 20, we visited Unity I and II accompanied by DHCR Housing Manager Representatives.

Our review was prompted by complaints made to the Office of the State Comptroller about deplorable living conditions in the Unity II development alleging health and safety hazards. During

our review we did inquire about the same issues at Unity I e.g., vacancy rate, conditions of apartment unit and grounds. However, we focused on Unity II which was the primary subject of the complaint. The purpose of this review is to generate, along with DHCR, MLC and the managing agent, ideas and/or programs to correct some of the problems found.

A. Background

Unity Park Phase I and Phase II (Unity I and Unity II) are residential apartment complexes developed under the provisions of the Mitchell-Lama program. In this program, housing is made available to low- and middle-income populations. Unity I contains a total of 204 apartment units, while Unity II contains a total of 198 apartment units. The two housing developments are located on adjacent property in the City of Niagara Falls, New York (Niagara Falls). The developments are colloquially known by several names: the managing agent refers to Unity I as Applewalk and Unity II as the Niagara Park Apartments, while Niagara Falls refers to Unity I as Northgate and Unity II as Southgate.

While the housing developments in the Mitchell-Lama program are overseen by DHCR, the developments are privately owned. The construction of Unity II was financed through the sale of bonds by the New York State Urban Development Corporation (UDC). Unity II was acquired by its current owner (the Unity Park Phase II Associates Limited Partnership) on April 19, 1989. It acquired the property through a $6.4 million mortgage assumption that was overseen by MLC. Unity II is operated by a private managing agent (Signature Housing Solutions, Inc.) that was hired by the Unity Park Phase II Associates Limited Partnership.

B. Results of Review

We found that, while actions have been taken to address some of the poor conditions described in the complaint, additional actions are still needed. We noted that, because so many of the apartments in Unity II are vacant, the development is unable to generate enough income to properly maintain the complex and to meet financial obligations, including the mortgage payments to MLC. If action is not taken by DHCR and other Unity II stakeholders to reduce the vacancy rate, improve the physical condition, and strengthen the financial status of the development, the continued operation of Unity II could be at risk.

1. Vacancies

As of September 29, 1999, 43 percent of Unity II's housing units were vacant, one of the highest vacancy rates of all of the developments in the Mitchell-Lama program. This vacancy rate has increased in recent years, as 37 percent of the units were vacant in August of 1995. This high vacancy rate, combined with more than $30,000 in tenant receivables, has limited the amount of funds available to maintain the development's operations, fund its reserves, and pay the debt service on the mortgage with MLC. Unity I has a 30 percent vacancy rate.

Neither DHCR nor the managing agent has formal long-range plans for reducing the vacancy rate. The managing agent told us that it has recently taken steps to try to reduce the vacancy rate. For example, the agent hired a marketing manager who is responsible for advertising housing units in various journals, training leasing agents, reviewing the conditions of the buildings and grounds, and overseeing the training of property managers.

Many tenants of Mitchell-Lama projects are eligible for Federal assistance under Section 8 of HUD's regulations. Such tenants are required to pay up to 30 percent of their income for rent, and the balance of the rent is paid by HUD. While Section 8 tenants account for 46 percent of Unity I's tenants, they account for only 10 percent of Unity II's tenants. We found that the managing agent for Unity II would like to rent more units to Section 8 tenants, but cannot, because Niagara Falls, which administers the Section 8 program at the development, will not allow new Section 8 tenants at Unity II until the managing agent pays the City about $700,000 in delinquent water charges and taxes.

The managing agent told us that Unity II is unable to pay these delinquent charges and taxes, and estimates that Unity II loses three or four prospective Section 8 tenants each month. We were told that the amount owed for the water charges and taxes is being negotiated. DHCR needs to facilitate the resolution of the problem with Niagara Falls so that prospective Section 8 tenants can be referred to Unity II.

The managing agent also expressed concern about the future of the housing development because of the depressed economy in Niagara Falls and because the population of the City has decreased (from about 71,000 in 1980 to about 62,000 in 1990 to about 50,000 in 1999). In an attempt to retain the current tenants, rents have not been increased in the last five years.

2. <u>Tenant Eligibility</u>

According to the guidelines for the Mitchell-Lama program, an occupant's income and the total number of occupants in a unit are subject to certain restrictions. For example, a family of four needs to earn no more than $27,480 to be eligible for a unit, and can rent no more than 4 ½ rooms (2 bedrooms). In addition, because Unity II participates in the Low Income Housing Tax Credit program (in which Federal income tax credits are awarded for private investment in low income housing), its occupants are subject to additional income restrictions. However, these income and occupancy restrictions can be amended with DHCR approval. We were told by the managing agent's representative that, because of these restrictions, a number of prospective tenants have been denied apartments at Unity II. Considering the need for more tenants at the development, we believe DHCR needs to reassess the income limits and occupancy criteria.

The managing agent's tenant selection policy indicates that an applicant who owes a prior landlord back rent will be rejected regardless of the unpaid amount. While we understand the managing agent's reluctance to accept tenants who have a history of not paying rent, in light of the high vacancy rate at Unity II, it may be helpful to modify the tenant selection policy by developing

a threshold amount for rejection or researching further to determine the cause of the failure to pay. For example, it may not be in the best interest of Unity II to automatically reject an applicant who lived in a housing project for several years and paid all the rent except for a small amount.

3. Needed Repairs

The complaint made to the Office of the State Comptroller included a videotape of certain conditions at Unity II. The videotape showed that the walls in several housing units were damaged. Representatives of the managing agent told us that this damage was not reported to the agent by the tenants, and as a result, the damage was not repaired. The managing agent also told us that some of the damage might not be repaired because tenants are required to pay for certain repairs and some tenants are unable or unwilling to make these payments.

The videotape also showed potholes and puddles of water on roads located on the grounds of the development. We were advised by the managing agent that these roads, which are made of dirt and gravel, are owned by UDC and are intended to be used only by service vehicles. However, the roads are sometimes used by tenants. DHCR has recommended that these roads be covered with dirt and seeded and made inaccessible to tenants. We believe that DHCR and the managing agent should work with tenant representatives and other stakeholders (such as MLC and UDC) to reach a solution that improves the conditions at Unity II and will benefit all parties.

We also found that some of the problems brought to our attention in the complaint have been corrected. For example, vacant apartments have been more firmly secured, roofs were fixed, and the grounds were better maintained. The vacant apartment we visited was in fairly good shape, and was rentable with only minor repairs.

4. Monitoring

The buildings represent an investment and are the homes of its tenants and, as such, every effort must be made to maintain the facility. According to DHCR's guidelines, a DHCR Management Bureau housing representative is supposed to do an annual review of each housing development overseen by DHCR. We found that DHCR has inspected Unity II three times since February 1999, including two inspections since August 1999. (In August 1999, there was widespread publicity in Niagara Falls about the poor living conditions at Unity II.) In addition, a community builder from the U.S. Department of Housing and Urban Development (HUD) recently inspected Unity II. MLC also has inspected the buildings to determine the adequacy of the repairs it has funded. To provide for continued improvement, DHCR should maintain its frequent inspections of Unity II.

We determined that many of the problems identified in these inspections had been identified by DHCR inspections in prior years, but had not been corrected. For example, a prior inspection noted that carbon monoxide detectors had not been installed, and a 1999 inspection again noted that the detectors had yet to be installed. In addition, during our visit to the development, we noted that

several of the needed repairs identified by DHCR inspections had not been made. For example, vinyl siding is cracked and damaged; storm doors are missing window paneling; bulbs are missing from exterior lights; benches in disrepair; drainage is poor; and spikes from parking curbs are exposed. We also noted that, while some problems were corrected, they were not always done in a timely manner. For example, in 1995 DHCR reported that there were no security guards at the development. While security plans were eventually implemented at the development, they were not implemented until more than a year after DHCR's report.

We further note that the managing agent did not notify DHCR of fires in the apartments. DHCR noted the condition during its inspections. DHCR should be notified of serious problems such as fires in the apartments.

Since 1992 MLC has distributed about $1.2 million to Unity II for capital improvements and other expenses. We were advised by an MLC employee that funding for repairs is controlled by MLC and not the managing agent. However, MLC also indicated that the scope of the improvements are agreed to by the Project owner, managing agent and State agencies. DHCR should determine if any additional repair funds can be made available to Unity II.

5. Recreational Areas

While Unity I has at least two playgrounds, Unity II does not have any playgrounds. The only recreational area for children at Unity II is a basketball court, but during our visit we observed that one of the baskets was broken and the other basket was missing. There are large areas of vacant land adjacent to both Unity I and Unity II. The vacant land, including the basketball court, is owned by UDC. In our discussions with UDC, DHCR and MLC officials, we found that, although there are intentions of using this area for parks, there are no immediate plans to create any parks. We believe a park or other recreational facilities might make Unity II more attractive to potential tenants. We recommend that representatives from UDC, DHCR and MLC work together to identify funds that can be used to construct a recreational area for the children of Unity II's tenants. MLC's response to the draft report indicated that UDC is working with the City of Niagara Falls to implement the park land plan.

6. Mortgage Payments in Arrears

When the Unity Park Phase II Associates Limited Partnership (Partnership) acquired Unity II in 1989 from UDC, it assumed a 40-year mortgage of $6.4 million payable to MLC. When the housing company was unable to make the required mortgage payments, MLC restructured the payments through a 1989 workout agreement with the Partnership. Despite the restructured payments, the Partnership has been unable to comply with the terms of the workout agreement and as of December 31, 1998 owes MLC more than $2 million in debt service arrearages. According to MLC, Unity I is in compliance with its workout agreement. The Partnership also has not paid the fee owed to the managing agent for several years, and in 1997 the agent stopped billing for its fee. The agent could not estimate when the Partnership would be able to make the required debt service payments, but was "hopeful" it would be soon.

Because the Partnership has not met the requirements of its workout agreement with MLC, it is subject to foreclosure. Under foreclosure, Unity II would become the property of the State and would be operated by a managing agent hired by the State.

DHCR and MLC should determine the advantages and disadvantages of foreclosing on the mortgage with the Partnership and hiring a managing company to operate Unity II under State ownership or other alternative. MLC's response to the draft report indicated that UDC and DHCR are working with Project ownership to effect changes that will bring fresh ideas on how to turn the Project around and possibly infuse additional private capital funds for repairs.

C. Conclusion

Unity II has many problems. In 1998, Unity II's Certified Public Accountant (CPA) recorded that the development's value had decreased from $8.3 million to $300,000. The CPA also noted that Unity II required significant capital improvements, had a working capital deficiency, and had failed to meet a number of financial obligations. Until Unity II's problems are addressed effectively, the State cannot expect repayment of the Partnership's $6.4 million mortgage. On November 15, 1999, we updated our information and discussed the viability of Unity I and II with DHCR and managing agent representatives. For the most part they indicated that the problems can be corrected and the housing developments improved to allow them to continue as going concerns. Among the reasons sited for the positive outlook is that a nearby development only has a five percent vacancy rate, and in the prior month at Unity I and II seven tenants moved in and two tenants left. In addition, the recently hired marketing specialist indicated that he has contacted many local government agencies and religious groups in Niagara Falls, Buffalo and Lockport to recruit tenants for both Unity projects. Current tenants are also being offered a $100 for each new tenant who moves in and pays three months rent. While there is no single answer to Unity II's many problems, the primary issue is the high vacancy rate. Fewer tenants mean less rental income, and without sufficient income, debt service and operating costs cannot be paid. If Unity II's problems are to be addressed effectively, action must be facilitated and coordinated by the State. A list of the recommendations contained in this report is attached.

We provided a draft copy of the matters contained in this report to DHCR and MLC officials for their review and comment. Their comments have been considered in preparing this report and are included as Appendix A. DHCR officials agree with the results of our review as presented and stated that they will work with tenant representatives and other stakeholders (such as MLC and the project owner) to resolve this issues. MLC also agreed with our results and indicated steps it has taken or are planned to improve conditions at the Project.

We wish to thank the management and staff of DHCR for the courtesies and cooperation extended to our staff during this review.

Very truly yours,

Carmen Maldonado
Audit Director

Attachment 1

Summary List of Recommendations

DHCR officials should:

1. Facilitate the resolution of the problem of the $700,000 in delinquent water charges and taxes with the City of Niagara Falls so that prospective Section 8 tenants can be referred to Unity II.

2. Reassess its income limits and occupancy criteria to increase in the number of prospective tenants that can be referred to the housing developments.

3. Work with the managing agent, tenant representatives and other stakeholders (such as MLC and UDC) to reach a solution that improves the physical conditions at Unity II and will benefit all parties.

4. Continue frequent inspections of Unity II.

5. Require the managing agent report serious problems such as fires in apartments.

6. Determine if any additional repair funds can be made available to Unity II.

7. Work with UDC and MLC officials to identify funds that can be used to construct a recreational area for the children of Unity II's tenants.

8. Consult with MLC officials to examine the advantages and disadvantages of foreclosing on the mortgage with the Partnership. These discussions should consider either hiring a managing company to operate Unity II under State ownership or other alternatives.

Empire State Development

Larry H. Sutton, Esq.
General Counsel
Mortgage Loan Enforcement & Administration Corporation

December 23, 1999

Carmen Maldonado, Audit Director
Office of the State Comptroller
Arthur Levitt State Office Building
270 Broadway
New York, New York 10007

Re: Unity Park Phase I and II
99-G-1

Dear Mr. Maldonado:

Receipt of your Review of the Unity Park Phase I and Phase II Residential Projects, located in Niagara Falls, New York, is hereby acknowledged.

While the N.Y.S. Urban Development Corporation ("UDC"), as holder of the mortgages on the above Projects, is not able to remedy the depressed economy and the loss of population in the Niagara Falls area, it has provided significant capital funds, either through the "workout" or "acquisition" agreements in place for the Projects or through the loans from UDC and/or the N.Y.S. Housing Finance Agency ("HFA") under its Project Improvement Program, to complete improvements to the Projects which had the effect of reducing operating expenses to allow the Projects to operate on a reduced occupancy level and still provide a safe and comfortable environment for the Projects' occupants. In addition, the N.Y.S. Division of Housing and Community Renewal ("DHCR") has provided significant HEAP Funds to the Projects for the same purpose. Contrary to the statement in the Review, while the disbursement of funds is controlled by this Corporation and DHCR, on behalf of HFA, the scope of the improvements are agreed to among the Project owner, managing agent and the State Agencies.

With respect to the service road and the vacant UDC owned property adjacent to the Projects, the original Project Plan called for such property to become park land. Because of the financial condition of both UDC and the City of Niagara Falls at that time the plan was never implemented. UDC is currently working with the City of Niagara Falls to implement the park land plan and are jointly conducting an environmental review of the property as a first step.

UDC and DHCR are also working with the Project ownership to effect a change in the managing agent and a transfer of ownership to bring in fresh ideas on how to turn the Projects around and possibly infuse the Project with additional private capital funds for repairs and improvements. Such changes are expected within the next six months.

N.Y.S. Mortgage Loan Enforcement & Administration Corporation
633 Third Avenue New York, New York 10017-6754 Tel 212 803 3590 Fax 212 803 3595

While UDC would be willing to foreclose on the Unity Park Phase II Residential Project, such action would be a last resort because ownership of the Project by a subsidiary of UDC would not solve the problems of the Project and its surrounding area .

UDC would fully support any actions that DHCR determines is necessary to correct the problems at the Projects.

Very truly yours,

Larry H. Sutton

cc: G. Ryan
O. Jones

George E. Pataki
Governor

Joseph B. Lynch
Commissioner

New York State Division of Housing and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12207

January 4, 2000

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
270 Broadway
New York, NY 10007

Dear Ms. Maldonado:

We have reviewed your draft report (99-G-1) on Unity Park Phase I and II and appreciate the opportunity to provide comments. The Division of Housing and Community Renewal is in agreement with the comments presented in your report. We will continue to work with the project owner, the managing agent, the Mortgage Loan Corporation, the Urban Development Corporation and tenant representatives to resolve the issues you have identified.

Sincerely,

John J. Solodow /SEK
John J. Solodow
Internal Control Officer

cc: Commissioner Lynch
Mr. Stephen Hicks
Mr. Otis Jones
Mr. Ronald Rock, DOB