A-5257-11T4 M-5589-12

ORDER ON EMERGENT APPLICATION

IN RE FAILURE OF COUNCIL ON AFFORDABLE HOUSING TO ADOPT TRUST FUND COMMITMENT REGULATIONS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5257-11
MOTION NO. M-5589-12
BEFORE PART:
JUDGE(S): FUENTES
GRALL
MESSANO

FILED
APPELLATE DIVISION
JUN - 7 2013
CLERK

EMERGENT APPLICATION
FILED: 05/10/2013 BY: FAIR SHARE HOUSING

ANSWER(S) FILED: 05/13/2013 BY: COUNCIL ON AFFORDABLE HOUSING
APPEARANCE ONLY:

SUPPLEMENTAL ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 6TH DAY OF JUNE, 2013, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR	GRANTED	DENIED	OTHER
STAY OF THE SEIZURE OF TRUST FUNDS ON OR AFTER MAY 22, 2013	( )	(☐)	(☒)

SUPPLEMENTAL:

Based on the briefs submitted and the arguments presented by counsel on June 5, 2013, the order entered by the court on May 13, 2013, as modified by the Supreme Court in its order entered by May 28, 2013, is hereby ordered as follows:

1) The stay entered by this court on May 13, 2013, is hereby vacated subject to the following conditions:

2) The resolution adopted by the Council on Affordable Housing (COAH) on May 1, 2013, ratifying the action taken by the Acting Executive Director (Director) on July 24, 2012, as reflected and memorialized in letters sent by the Director to affected municipalities, is hereby modified as follows:

(a) The letters dated May 1, 2013, sent by the Director to affected municipalities are vacated. The Director shall serve all affected parties on the service list referenced in N.J.A.C. 5:97-8.13(b);

(b) The parties affected by the Director's letter shall have 30 days from receipt to respond to COAH's assertion that the funds identified by the Director, held in the municipality's affordable housing trust, are subject to forfeiture under N.J.S.A. 52:27D-329.2 and N.J.S.A. 52:27D-329.3, because these funds have not been spent or "committed" for expenditure within four years from the date of collection. The definition of "committed" in this context shall be consistent with the definition reflected in this court's July 13, 2012, order, as incorporated in the resolution adopted by COAH on May 1, 2013. COAH shall not take any action to seize any funds identified as subject to forfeiture within the 30-day period given to the affected parties to contest the forfeiture.

(c) The Director shall dully consider any evidence or other information submitted by the affected parties and shall respond, in writing, the decision reached after such consideration. Such a response shall explain, in detail, the basis for rejecting or accepting the information submitted by the parties.

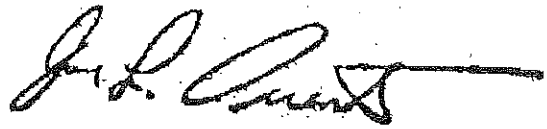
(d) The COAH Board shall consider the Director's determination at its next regularly scheduled meeting or on such other date as it deems appropriate, with at least fifteen (15) days' notice to the affected parties identified in subparagraph (a) above. In its discretion, the Board may permit the party objecting to the Director's determination to address the Board directly, or, if may act on the Director's decision based only on the documentary record before it. COAH shall not take any action to seize any funds identified as subject to forfeiture pending a final decision by the Board. The affected party may thereafter seek further relief by appealing directly to this court.

(e) Because COAH has failed to function in a consistent manner with respect these issues, we have been forced to establish a process that at least comports to rudimentary notions of due process. We expect COAH to continue to function in a manner consistent with its statutory mission, to create and promote the development of affordable housing throughout our State. Ad hoc procedures established through litigation violate the Legislature's expressed public policy. See N.J.S.A. 52:27D-303 ("The Legislature declares that the State's preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this [Fair Housing Act] and not litigation . . . .").

Although extraneous to the issues raised in this appeal, we are compelled to acknowledge and address a documentary submission forwarded to each of the judges comprising this

appellate panel by the Executive Director of the Majority Office of the General Assembly, on behalf of the Speaker of the New Jersey of General Assembly and the President of the New Jersey State Senate. The letter signed by the Executive Director transmitted copies of a Memorandum of Law previously submitted by these elected officials to the Supreme Court on May 23, 2013, in opposition to COAH's motion seeking a modification or reversal of our order dated May 13, 2013. We deem it highly improper for these elected representatives, holding positions of leadership in the Legislature, a co-equal branch of our State's government, to unilaterally intervene in a case pending before this court. These individuals are not parties to this appeal; their submission were therefore disregarded by the members of this panel and did not influence in any manner the decision we have reached.

FOR THE COURT:



JOSE L. FUENTES, P.J.A.D.