

The Burger Court Opinion Writing Database

United Housing Foundation, Inc. v. Forman

421 U.S. 837 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1975

Re: 74-157 - United Housing Foundation v. Forman
74-647 - State of New York v. Forman

Dear Lewis:

I join you.

Regards,

WRB

Mr. Justice Powell

Copies to the Conference

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U.S. SUPREME COURT RECORDS

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 11, 1975

Re: United Housing Foundation v. Forman, No. 74-157
State of New York v. Forman, No. 74-647

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

WILLIAM O. DOUGLAS

Mr. Justice Brennan

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 2, 1975

RE: Nos. 74-157 & 74-647 - United Housing Foundation
& State of N.Y. and N.Y. State Housing, etc. v.
Milton Forman, et al.

Dear Lewis:

In due course I shall circulate a dissent in the
above.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE

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For The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: 69-75

Recirculated: _____

United Housing Foundation, Inc.,)
et al., Petitioners,)
74-157)

v.)

Milton Forman et al.)

State of New York and the New)
York State Housing Finance)
Agency, Petitioners,)
74-647)

v.)

Milton Forman, et al)

On Writs of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[June __, 1975]

MR. JUSTICE BRENNAN, dissenting.

I dissent. The property interests here are "securities",
in my view, both because they are shares of "stock" and because
they are "investment contracts."

I.

Both the Securities Act of 1933, 15 U.S.C. §77b(1), and
the Securities Exchange Act of 1934, 15 U.S.C. §78c(a)(10), de-
fine the term "security" as including, among other things, an
"investment contract." The essential ingredients of an invest-

RECEIVED BY ADVISORY BOARD

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Stewart
 Mr. Justice White
 — Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

For: Brennan, J.

Circulated: _____

Re-circulated: 6/10/75

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-157 AND 74-647

United Housing Founda-
 tion, Inc., et al.,
 Petitioners,
 74-157 v.
 Milton Forman et al.
 State of New York and the
 New York State Hous-
 ing Finance Agency,
 Petitioners,
 74-647 v.
 Milton Forman et al.

On Writs of Certiorari to the
 United States Court of
 Appeals for the Second
 Circuit.

[June —, 1975]

MR. JUSTICE BRENNAN, dissenting.

I dissent. The property interests here are "securities," in my view, both because they are shares of "stock" and because they are "investment contracts."

I

Both the Securities Act of 1933, 15 U. S. C. § 77b (1), and the Securities Exchange Act of 1934, 15 U. S. C. § 78c (a)(10), define the term "security" as including, among other things, an "investment contract." The essential ingredients of an investment contract have been clear since *SEC v. W. J. Howey Co.*, 328 U. S. 293, 301 (1946), held that "[t]he test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." See *Tcherepnin v. Knight*, 389 U. S. 332, 338 (1967). There is no doubt that Co-Op City residents invested

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

1, 4, 5, 7

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Brennan
Mr. Justice Powell
Mr. Justice Rehnquist

From: Brennan, J.

Circulated: _____

Recirculated: 6/13/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-157 AND 74-647

United Housing Founda-
tion, Inc., et al.,
Petitioners,

74-157 v.

Milton Forman et al.

State of New York and the
New York State Hous-
ing Finance Agency,
Petitioners,

74-647 v.

Milton Forman et al.

On Writs of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[June —, 1975]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE WHITE join, dissenting.

I dissent. The property interests here are "securities," in my view, both because they are shares of "stock" and because they are "investment contracts."

I

Both the Securities Act of 1933, 15 U. S. C. § 77b (1), and the Securities Exchange Act of 1934, 15 U. S. C. § 78c (a)(10), define the term "security" as including, among other things, an "investment contract." The essential ingredients of an investment contract have been clear since *SEC v. W. J. Howey Co.*, 328 U. S. 293, 301 (1946), held that "[t]he test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." See *Tcherepnin v. Knight*, 389 U. S. 332, 338 (1967). There is no doubt that Co-Op City residents invested

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U. S. DEPARTMENT OF JUSTICE

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 2, 1975

Re: Nos. 74-157, United Housing Fd., Inc.
and 74-647, New York v. Forman

Dear Lewis,

I am glad to join your opinion for
the Court in these cases.

Sincerely yours,

P.S.
/

Mr. Justice Powell

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U.S. DEPARTMENT OF JUSTICE
LIBRARY OF CONGRESS

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1975

Re: Nos. 74-157 & 74-647 - United Housing
Foundation, Inc. v. Forman

Dear Lewis:

I shall await Bill Brennan's dissent.

Sincerely,



Mr. Justice Powell

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 10, 1975

Re: Nos. 74-157 & 74-647 - United Housing
Foundation, Inc. v. Forman

Dear Bill:

Please add my name to your dissenting
opinion in these cases.

Sincerely,



Mr. Justice Brennan

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IN THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1975

No. 74-157 -- United Housing Foundation, Inc. v.
Milton Forman
74-647 -- State of New York and the New York State
Housing Finance Agency v. Milton Forman

Dear Lewis:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Powell

cc: The Conference

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OF THE SUPREME COURT OF THE UNITED STATES

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 2, 1975

Re: No. 74-157 - United Housing Foundation v. Forman
No. 74-647 - New York v. Forman

Dear Lewis:

Please join me.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

✓
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Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

JAN 16 1974

UNITED HOUSING FOUNDATION, INC., *et al.* Circulated: _____

MILTON FORMAN *ET AL.*; and

STATE OF NEW YORK AND THE NEW YORK *et al.* Recirculated: _____

STATE HOUSING FINANCE AGENCY

v. MILTON FORMAN *ET AL.*

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nos. 74-157 and 74-647. Decided January —, 1974

MR. JUSTICE POWELL, dissenting.

These cases involve a question of national importance as to the application of the Federal Securities Laws of 1933 and 1934, 15 U. S. C. § 77a *et seq.*; 78a *et seq.*

Respondents are tenants of Co-op City, a housing cooperative in New York City which was built as part of a state sponsored program to develop decent living quarters for low and low-middle-income people. N. Y. Private Housing Finance Law §§ 10-37. The State subsidizes the building of such cooperatives, places income limitations on those eligible for tenancy, and provides preferences for veterans, the aged, and the handicapped. Petitioner, the United Housing Foundation, is a non-profit corporation, comprised of labor unions and civic organizations dedicated to the development of decent low-cost housing, which was chosen as the promoter for Co-op City. To purchase an apartment a buyer must pay \$450 per room (each room being considered as one "share"). All tenants receive one vote in cooperative matters. If a tenant wants to sell his apartment he must offer his shares back to the cooperative which, to date, has accepted all such offers. In any event, the tenant may sell his shares only at the initial purchasing price.

Wm. Douglas
 Oct 74

see
 with
 1/16/75

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U.S. DEPARTMENT OF COMMERCE

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

✓
151-9 (end)

From: Powell, J.

Circulated: MAY 20 1975

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-157 AND 74-647

United Housing Founda-
tion, Inc., et al.,
Petitioners,
74-157 v.
Milton Forman et al.
State of New York and the
New York State Hous-
ing Finance Agency,
Petitioners,
74-647 v.
Milton Forman et al.

On Writs of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

Join

[June —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case is whether shares of stock entitling a purchaser to lease an apartment in Co-Op City, a state subsidized and supervised nonprofit housing cooperative, are "securities" within the purview of the Securities Act of 1933 and the Securities Exchange Act of 1934.

I

Co-Op City is a massive housing cooperative in New York City. Built between 1965 and 1971, it presently houses approximately 50,000 people on a 200-acre site containing 35 high rise buildings and 236 town houses. The project was organized, financed, and constructed under the New York State Private Housing Finance Law,

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U.S. DEPARTMENT OF JUSTICE

✓ 4, 9-10, 12, 13, 16, 17, 21

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Rehnquist
- Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Burger

From: Powell, J.

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-157 AND 74-647

United Housing Founda-
tion, Inc., et al.,
Petitioners,
74-157 v.
Milton Forman et al.
State of New York and the
New York State Hous-
ing Finance Agency,
Petitioners,
74-647 v.
Milton Forman et al.

On Writs of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[June —, 1975]

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The project was organized, financed, and constructed
under the New York State Private Housing Finance Law,

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

From: Powell, J.

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-157 AND 74-647

United Housing Founda-
tion, Inc., et al.,
Petitioners,
74-157 v.
Milton Forman et al.
State of New York and the
New York State Hous-
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Petitioners,
74-647 v.
Milton Forman et al.

On Writs of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[June —, 1975]

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The project was organized, financed, and constructed
under the New York State Private Housing Finance Law,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 16, 1975

Re: Nos. 74-157 and 74-747 - United Housing Foundation,
et al. v. Forman, et al.

Dear Lewis:

Your opinion dissenting from denial of certiorari in these cases has persuaded me to change my vote and I will vote to grant certiorari. I will not, however, break my sacred tradition of not dissenting from denial.

Sincerely,

wm

Mr. Justice Powell

Copies to the Conference

Wm. Douglas
00474

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 2, 1975

Re: Nos. 74-157 and 74-647 - United Housing v. Forman

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

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U.S. DEPARTMENT OF JUSTICE