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Trials: ADA Intentional Discrimination Zoning Challenge Does Not Avoid Requirement for Final Administrative Determination

Sunrise Detox, LLC v. City of White Plains, No. 13-2911 (2d Cir. Oct. 2, 2014).

Despite a novel attempt to use an ADA-based complaint to avoid the requirement that it obtain a final administrative determination before seeking a judicial remedy, a New York detoxification services provider's case has been dismissed for lack of subject matter jurisdiction.

Sunrise Detox, a provider of drug and alcohol detoxification services, sought to open a facility in White Plains, New York's R2-2.5 district. Locating there required the facility to be a "community residence," defined as "a "residential facility for the mentally disabled operated pursuant to the New York State Mental Hygiene Law and regulations promulgated there under, including an alcoholism facility, a hostel, a halfway house and any other such facility as defined in such regulations, and any similar facilities operated under the supervision of federal departments and agencies." Initially the Planning Board unanimously approved the facility and the legal department did as well. A public hearing was set and opposition was fomented and began to boil over. Public comment included that the facility – slated to have 33 beds with an average stay of 5.7 days – was really a short-term inpatient treatment facility, not a "community residence" under state law. Sunrise submitted a supplemental application and, upon further review, the Building Department revised its determination, stating that the facility was for "crisis services" and not appropriate in the R2-2.5 zone. Sunrise was thus informed it had to either seek a variance or appeal the department's ruling. It did neither. It filed suit alleging the city intentionally discriminated against it and its clients. The District Court dismissed the case for lack of subject-matter jurisdiction, holding the case was unripe given Sunrises' failure to obtain a final decision on the zoning application.

HELD: The Second Circuit affirmed the lower court.

DISCUSSION: Sunrise argued the final-decision requirement of the Supreme Court's *Williamson County* case did not apply in cases, like the one at hand, wherein zoning challenges are brought under the ADA based on intentional discrimination. Sunrise pushed for this exception to *Williamson County's* general rule that a final decision is necessary for Article III standing prior to the appeal of a zoning determination because, it argued, intentional discrimination is forbidden by federal law and the injury in such cases is immediate.

The Circuit agreed this "argument is not without appeal" because "when a public official violates constitutional or statutory rights of citizens to equal treatment we allow resort to the federal courts to vindicate those rights, without requiring the offended person to exhaust potentially available state remedies first." However, it decided it need not address this novel argument because Sunrise was not seeking compensatory damages from the official who allegedly acted out of a discriminatory motivation, but rather sought an injunction prohibiting the disapproval and enforcing the authorization of its project.

It was this requested relief that brought the case "squarely within the compass of *Williamson County"*--if Sunrise were to proceed the initial disapproval could be reversed, it could be rejected on the same grounds, or the project could be rejected on entirely independent grounds. It is impossible to know "whether the allegedly discriminatory decision of the official had any effect at all on Sunrise's application" until the application process is complete. As a result, the Circuit held a plaintiff "alleging discrimination in the context of a land-use dispute is subject to [*Williamson County's*] final-decision requirement unless he can show that he suffered some injury independent of the challenged land-use decision."

Since Sunrise only alleged that the city's rejection of the "community residence" classification and the city council's failure to take further action after that did not amount to independent injury, Sunrise's allegation failed this test. The Circuit thereafter disposed of Sunrise's alternative theories that the city "constructively denied" its application and that further pursuit of its project would be futile. It affirmed the lower court.

http://www.ca2.uscourts.gov/decisions/isysquery/c731c00f-118b-4809-bbb5-1502ac633f33/1/doc/13-2911_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/c731c00f-118b-4809-bbb5-1502ac633f33/1/hilite/ (last accessed Oct. 22, 2014)