

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIVERSIFIED HEALTH	:	
ASSOCIATES, INC., et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
BOROUGH OF NORRISTOWN, et al.,	:	No. 00-5702
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

May , 2001

This declaratory judgment action arises out of the refusal by the Zoning Hearing Board of Norristown to award the Plaintiffs a land use permit to operate a 30-50 person treatment facility for the treatment of alcoholism and controlled substance addiction. Before this court is the Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, I grant the motion.

I. Facts

Diversified Health Associates, Inc. ("DHA") is a corporation providing substance abuse treatment and housing for individuals with mental and/or physical disabilities. (Compl. at 3.) In November of 1998, Sean McDougall, president of DHA, met with the Norristown Borough Planning Commission ("Planning Commission"). DHA was interested in establishing a residential treatment facility for individuals with alcoholism and drug addiction disabilities for the Borough of Norristown and Montgomery County. The Planning Commission provided Mr. McDougall with a map of the borough showing those areas zoned for residential treatment facilities. (Compl. at 5.)

Using the information provided by the Planning Commission, Mr. McDougal searched for a property suitable for DHA's needs within the areas that would permit a residential treatment facility. Mr. McDougal finally settled on a property at 1529 DeKalb Street in Norristown. The zoning classification of the property is "HC-Health Care District." Norristown Properties, L.P. purchased the building at 1529 DeKalb Street and entered into a lease agreement with DHA. (Compl. at 5.)

In October of 1999, DHA filed an Application for Zoning Permit and/or Use Registration Form to operate an adult substance abuse treatment program for 30-50 individuals at 1529 DeKalb Street. DHA filed its application to qualify the treatment center as a "hospital," a use for which the area encompassing the DeKalb Street property was specifically zoned. The Planning Commission denied the permit on the grounds that the proposed use "was not permitted in the HC-Health Care District." (Compl. at 5.) The Planning Commission advised DHA that it should re-apply for an "institutional" use permit. (Compl. at 5.)

DHA appealed the Planning Commission's decision to the Zoning Hearing Board. The basis for DHA's appeal was that the proposed treatment facility comported with the Borough Zoning Ordinance definition of a "hospital" as a "place for the diagnosis, treatment or other care of humans and having facilities for inpatient care including such facilities as a sanitarium or preventorium." (Compl. at 6.) The Zoning Hearing Board denied DHA's application on the basis that the proposed use was in violation of the Zoning Ordinance. (Compl. at 6.)

DHA then modified its application to qualify the treatment center as an "Institution or Group Home," as the Planning Board had recommended. The Zoning Hearing Board once again denied DHA's application stating that the proposed use did not qualify under the definition of an "Institution or Group Home."

On March 17, 2000, DHA filed a Land Use Appeal with the Court of Common Pleas of Montgomery County, Pennsylvania. (Defs.’ Supplemental Mem. Supp. Mot. Dismiss Ex. B.) In its appeal, DHA challenged the Zoning Hearing Board’s opinion that its proposed treatment center did not meet the requirements of a “hospital” as defined by the Zoning Ordinance. DHA also claimed that the Zoning Hearing Board’s decision was “in violation of the Americans with Disabilities Act, the Fair Housing Act and other federal and state laws protecting the rights of the victims of drug addiction and alcoholism.” (Defs.’ Supplemental Mem. Supp. Mot. Dismiss Ex. B at 3.) In a decision issued on February 12, 2001, the Common Pleas Court overruled the Zoning Hearing Board’s denial of a permit to DHA by finding that the proposed treatment center falls under the definition of “hospital” contained in the zoning ordinance. (Defs.’ Supplemental Mem. Supp. Mot. Dismiss Ex. D at 10.) The Common Pleas Court dismissed DHA’s claims under the “Americans with Disabilities Act, the Fair Housing Act and other federal and state claims” as lacking in support. (Defs.’ Supplemental Mem. Supp. Mot. Dismiss Ex. D at 10.)

On November 9, 2000, after filing its Land Use Appeal with the Court of Common Pleas, but before that court issued its decision, DHA and Norristown Properties, L.P. filed the instant action. The Plaintiffs have brought claims under the Fair Housing Act, 42 U.S.C. §§ 3602 and 2613, the Rehabilitation Act, 29 U.S.C. § 794, and 42 U.S.C. §§ 1983 and 1985. The Plaintiffs seek a declaratory judgment that Defendants’ interpretation of the zoning ordinance violated Plaintiffs’ federal rights, an injunction blocking the Defendants from enforcing their interpretation of the ordinance and preventing them from receiving federal assistance, as well as compensatory and punitive damages.

II. Defendants’ Motion to Dismiss

Defendants have filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), seeking dismissal based on both collateral estoppel and res judicata. Defendants argue that Plaintiffs had a full and fair opportunity to raise the identical issues of whether their federal rights were violated in the Land Use Appeal to the Court of Common Pleas, Plaintiffs did in fact raise those claims, and those claims were dismissed.

Under the doctrine of collateral estoppel, once an issue of law or fact has been resolved by the final judgment of a court, it is conclusively resolved in subsequent actions between the same parties. See Burlington N. R.R. Co. v. Hyundai Merchant Marine Co., Ltd., 63 F.3d 1227, 1231 (3d Cir. 1995); Zinman v. Prudential Ins. Co. of Am., 919 F.Supp. 279, 281 (E.D.Pa. 1995). Issue preclusion requires that federal courts afford “full faith and credit” to state judicial proceedings. Allen v. McMurry, 449 U.S. 90, 96 (1980). Therefore, a federal court must “give a prior state judgment the same effect as would the adjudicating state.” Gregory v. Chehi, 843 F.2d 111, 116 (3d Cir. 1988). Thus Pennsylvania law on issue preclusion must be applied in deciding whether the plaintiffs are collaterally estopped from asserting their claim. See Ashford v. Skiles, 837 F.Supp. 108, 112 (E.D.Pa. 1993).

Under Pennsylvania law a party is collaterally estopped from asserting a claim if: 1) the issue sought to be precluded is the same as that raised in the prior case; 2) the prior court issued a final judgment on the merits; 3) the party against whom collateral estoppel is asserted was a party or in privity with the party in the earlier case; 4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior action; and 5) the decision in the prior proceeding was essential to the judgment. See Pittsburgh v. Zoning Bd. of Adjustment, 522 Pa. 44, 55, 559 A.2d 896, 901 (1989). All five of the requirements for collateral estoppel have been met in the case at bar.

Plaintiffs' claims are also barred under the doctrine of res judicata, or claim preclusion.

Under claim preclusion "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." Montana v. United States, 40 U.S. 147, 153 (1979). Claim preclusion bars the relitigation of issues which were or could have been raised in the prior proceeding. *See* Allen v. McCurry, 449 U.S. 90, 94 (1980). Under Pennsylvania law, four conditions are required for the application of claim preclusion: 1) identity of subject matter; 2) identity of cause of action; 3) identity of persons and parties to the action; 4) identity of quality or capacity of the parties suing or sued. *See* Nagle v. Alspach, 1992 WL 308457 (E.D.Pa). All four requirements have been met.

In its Land Use Appeal, DHA claimed that the Zoning Board's decision was a violation of "the Americans with Disabilities Act, the Fair Housing Act and other federal and state laws protecting the rights of the victims of drug addiction and alcoholism." (Defs.' Supplemental Mem. Supp. Mot. Dismiss Ex. B at 3). Senior Judge Miller dismissed those claims because "[DHA] does not provide support for this argument." (Defs.' Supplemental Mem. Supp. Mot. Dismiss Ex. D at 10). DHA appears to have abandoned its federal law claims by not supporting them before the Court of Common Pleas of Montgomery County. However, a plaintiff who abandons a claim in one proceeding may not reinitiate a second proceeding on the basis of that claim. *See* Casto v. Arkansas-Louisiana Gas Co., 597 F.2d 1323, 1326 (10th Cir. 1979); Vippolis v. Village Of Haverstraw, 1989 WL 111063 (S.D.N.Y.). Plaintiffs are thus barred from bringing the same claims before this court.

Accordingly, I dismiss the complaint because Plaintiffs are precluded from raising the identical claims and issues previously decided by the Court of Common Pleas of Montgomery County. An Order follows.

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v.	:	
	:	
BOROUGH OF NORRISTOWN, et al.,	:	No. 00-5702
Defendants.	:	

ORDER

AND NOW, this day of May, 2001, it is ORDERED that:

1. Upon consideration of the motion of Defendants to dismiss Plaintiffs' Complaint (docket number 4-1), and Plaintiffs' response thereto, Defendants' Motion is hereby GRANTED. Plaintiffs' complaint is hereby DISMISSED.
2. All other motions are hereby DENIED as MOOT.

BY THE COURT:

Schiller, J.