

**Hirschfeld v Teller**

2006 NY Slip Op 30608(U)

November 8, 2006

Supreme Court, Nassau County

Docket Number: 009849/03

Judge: Tammy S. Robbins

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**ORDER**  
**SUPREME COURT OF THE STATE OF NEW YORK**  
**Present: HON. TAMMY S. ROBBINS, Acting Justice**

TRIAL/IAS, PART 47

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SIDNEY HIRSCHFELD,  
Director, Mental Hygiene Legal Service,  
Second Judicial Department

Plaintiff,

- against -

Index No. 009849/03  
Motion Seq. 7 & 8

MITCHELL TELLER, as Administrator of Woodmere  
Rehabilitation and Health Care Center, Inc.,  
ROBERT KOLMAN, as Administrator of Brookhaven  
Rehabilitation and Health Care Center, LLC,  
SAUL GREENBERGER, as Administrator of Meadow Park  
Rehabilitation and Healthcare Center, LLC, MOSHE BAIN,  
as Administrator of New Surfside Nursing Home, LLC,  
PHILIP BUCHSBAUM, as Administrator of Golden Gate  
Healthcare Center, LLC, WOODMERE REHABILITATION  
and HEALTH CARE CENTER, INC., BROOKHAVEN  
REHABILITATION and HEALTH CARE CENTER, LLC,  
MEADOW PARK REHABILITATION and HEALTH CARE  
CENTER, LLC, NEW SURFSIDE NURSING HOME, LLC, and  
GOLDEN GATE REHABILITATION and HEALTH CARE, LLC.,

Defendants,

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Plaintiff, Mental Hygiene Legal Service (MHLS), commenced this action requesting a judgment declaring that MHLS has the right of access at any and all time to the residents of neurobiological units (and their clinical records) who are receiving services for the mentally disabled. After commencement of this suit, defendants allegedly disbanded these units but allegedly continue to provide mental health residential services to these patients. Defendants deny any connection between the commencement of this lawsuit and the disbanding of the units.

In this court's order of January 19, 2006, this court opined that "[e]ven though the neurobiological units have been disbanded, a determination still must be made as to whether or not the defendants are providing mental health services to those patients formerly participating in the neurobiological program. If, in fact, the defendants are providing mental health services to those patients, this court must then determine whether the plaintiff's statutory mandate extends to health care facilities, such as nursing homes, which do not hold operating certificates from the Office of Mental Health (OMH)."

Both sides submit motions for summary judgment and this court now considers the issue raised in its prior decision with the understanding that unless it is shown that the agency's determinations lacked a rational basis or were arbitrary and capricious, the issues surrounding the statutory mandates are not to be determined by this court (*see Flacke v Onondaga Landfill*, 69 NY2d 355).

MHLS moves this court for an order granting summary judgment in favor of plaintiff and for an order declaring that (a) the defendant nursing homes are "facilities" as defined in Mental Hygiene Law §1.03; (b) the defendant nursing homes are "any other place or facility which is required to have an operating certificate pursuant to Article 31 of the Mental Hygiene Law" as provided under Mental Hygiene Law §47.01(a); (c) MHLS has the right of access, pursuant to Mental Hygiene Law §47.03, at any and all times to the residents of the defendant nursing homes who are receiving services for the mentally disabled; (d) MHLS has the right of access, pursuant to Mental Hygiene Law §47.03, at any and all times to the clinical records and any additional information pertaining to the residents of the defendant nursing homes who are receiving services for the mentally disabled; (e) MHLS has the right of access, pursuant to Mental Hygiene Law §47.03, at any and all times to any reports of abuse or mistreatment pertaining to the residents of the defendant nursing homes who are receiving services for the mentally disabled; and (2) issuing an injunction permanently enjoining the defendants from (a) denying MHLS access at any and all times to the residents of the defendant nursing homes who are receiving services for the mentally disabled; (b) denying MHLS access at any and all times to the clinical records and any additional information pertaining to the residents of the defendant nursing homes who are receiving services for the mentally disabled; and (c) denying MHLS access any and all times to any reports of

abuse or mistreatment pertaining to the residents of the defendant nursing homes who are receiving services for the mentally disabled.

Plaintiff argues that services provided by the defendant nursing homes to individuals with Axis I diagnoses who are discharged from state psychiatric facilities are services for the mentally disabled; each of the defendant nursing homes is a “facility” as defined in Mental Hygiene Law §1.03(6), and thus MHLS’ mandate extends to such nursing homes for purposes of access to the residents with mental illness and their records; each of the defendant nursing homes is a “place or facility required to have an operating certificate” and therefore MHLS’ mandate extends to such nursing homes for purposes of access to the residents with mental illness and their records.

Defendants move this court for an order granting summary judgment and dismissing the complaint. Defendant argues that MHLS jurisdiction only reaches residents in facilities that are required to have OMH operating certificates; OMH has determined that defendants’ facilities are not required to have OMH operating certificates for any programs or services they provide to their residents; the Department of Health (DOH) also has concluded that defendants’ facilities are not providing services to residents outside the scope of their DOH licenses; OMH decision making power is not discretionary, if a facility is providing services for the treatment of the mentally disabled, OMH must require an operating certificate; the court may not substitute its judgment for OMH’s determination regarding a facility’s need for an operating certificate; the procedures and processes for discharge of patients from state psychiatric hospitals to nursing homes confirms that residents of defendants’ facilities are not receiving treatment for their mental disabilities, as that term is applied and understood in the MHLS’ enabling legislation and mental health regulatory scheme; and the rights of residents in nursing homes such as those operated by defendants are otherwise fully protected and enforced under federal and state/DOH regulation and oversight.

New York’s Mental Hygiene Law §47.01 states in pertinent part that

There shall be a mental hygiene legal service of the state in each judicial department. The service shall provide legal assistance to patients or residents of a facility as defined in section 1.03 of this chapter, or any other place or facility *which is required to have an operating certificate* pursuant to article ... thirty-one

of this chapter, and to persons alleged to be in need of care and treatment in such facilities or places (emphasis added).

Both parties provide extensive arguments regarding whether the defendants are “facilities” as that term is defined by statute, whether the defendants are providing services for the “mentally disabled” as that term is defined by statute, and whether defendants are the same type of facilities as those who are required to have operating certificates (*see* Mental Hygiene Law §1.03; §47.01). The resolution of these issues are crucial to the plaintiff’s case. If the defendants are found to be “facilities” providing “subject activities” for persons who are “mentally disabled” then, plaintiff contends, defendants should be required to have operating certificates issued by OMH thereby allowing plaintiff unfettered access to the defendants’ properties to provide legal services to the residents living therein (*Id.*).

However, “[t]he court’s function on a motion for summary judgment is not to resolve issues of fact or to determine matters of credibility but merely to determine whether such issues exist” (*Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573 quoting *Roth v Barreto*, 289 AD2d 557). This court will not resolve the many issues of fact submitted by plaintiff for determination.

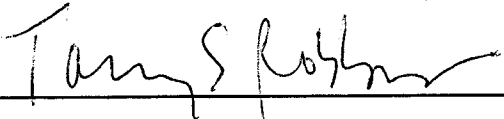
Moreover, the determination of the requirement of operating certificates is a decision which the legislature has entrusted to the Commissioner of Mental Health. Mental Hygiene Law §31.04 provides that the Commissioner of Mental Health shall have the power to adopt regulation to effectuate the provisions and purposes of article 31 of the Mental Hygiene Law. Additionally, § 31.04 states that the commissioner establishes procedures for the issuance, amendment, renewal, and revocation of operating certificates, establishes classes of operating certificates, and sets “standards of quality and adequacy of facilities ... for the rendition of services for the mentally disabled pursuant to an operating certificate” (*see* Mental Hygiene Law §31.04).

“[I]n a proceeding seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary or capricious” (*Flacke v Onondaga Landfill*, 69 NY2d 355). Plaintiff argues that “the absence of evidence that, as part of an administrative process, OMH made a reasoned determination based


upon facts presented to the agency, it cannot be credibly argued that the Court will be usurping OMH's decision-making function" (Plaintiff's Affirmation in Opposition to Cross Motion and Reply). Plaintiff is mistaken in its assessment of the standard to be employed. This court may not usurp the determination made by OMH with its own views and interpretation of the testimony and facts. "[E]ven if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency where the agency's determination is supported by the record" (*Matter of Jeremy Cohen v State of New York*, 2 AD3d 522). The evidence before this court establishes that OMH sent a team to one of the defendant establishments to determine specifically if OMH should license the group of facilities which are the defendants herein. A site report was prepared for the specific purpose of assisting the agency in making its determination as to whether it should require the defendants' establishments to be licensed. Mr. McQuide, the director of the Bureau of Inspection and Certification for OMH, confirms that OMH was aware of the neurobiological programs formerly being provided at defendants' facilities. Mr. McQuide testified that he was of the opinion that OMH did not have licensing jurisdiction over New Surfside nursing home where the site visit was made and, Mr. McQuide along with his supervisor determined that OMH did not have licensing jurisdiction over the facilities who had neurobiological units. The record before this court does not establish that "the [agency's] determination lacks a rational basis or is arbitrary and capricious" (*Flacke v Onondaga Landfill*, 69 NY2d at 355).

Accordingly, plaintiff's motion for summary judgment and for a permanent injunction is denied; defendants' motion for summary judgment dismissing the complaint is granted.

It is So Ordered

  
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Honorable Tammy S. Robbins

Dated: November 8, 2006

  
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NASSAU COUNTY  
COUNTY CLERK'S OFFICE