

# **Bond Case Briefs**

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## **SOVEREIGN IMMUNITY - CONNECTICUT**

### **Town of Rocky Hill v. SecureCare Realty, LLC**

**Superior Court of Connecticut, Judicial District of Hartford - April 23, 2013 - Not Reported in A.3d - 2013 WL 2132067**

The town of Rocky Hill brought suit to prevent the defendants from proceeding with their plan to operate a nursing home for individuals transitioning from a correctional facility or receiving services from the Department of Mental Health and Addiction Services.

In 2011, the Connecticut state legislature adopted Public Act. 11-44, which was codified as General Statutes § 17b-372a. That statute provides for the development of residential nursing facilities for individuals in the department of correction's custody or receiving services from the department of mental health and addiction services. The supposed rationale behind the legislation is that the costs associated with those individuals would be covered by the federal Medicaid program.

Defendant formed two entities, one to own the facility property and one to serve as the licensed nursing home operator and tenant on the property. These entities subsequently entered into a contract with the state department of mental health and addiction services. The contract referenced an agreement whereby the state would reimburse the entities for certain expenses. The contract also identifies that the entities were created solely for the contract with the state, and that such entities would be "financially dependent on the State due to the fact that the State shall be the sole referral source and primary payment source for the Facility."

The town sought a declaratory judgment and injunction that the defendants were prohibited from opening and operating the proposed § 17b-372a facility at the facility property because it conflicts with the town's zoning regulations.

Defendants filed a motion to dismiss, based upon the assertion that the defendants are "arms of the state" and are entitled to sovereign immunity. The court agreed, granting the motion to dismiss.

In addition, a municipality could not through its zoning regulations prevent the establishment of a facility created pursuant to state statute. In this case, the state's action in § 17b-372a has preempted the plaintiff's zoning authority in relation to the facility property.