

Bond Case Briefs

Municipal Finance Law Since 1971

STUDENT HOUSING - COLORADO

Auraria Student Housing at the Regency, LLC v. Campus Village Apartments, LLC

United States District Court, D. Colorado - January 22, 2014 - Not Reported in F.Supp.2d - 2014 WL 235519

Auraria Student Housing at the Regency, LLC leases and operates an apartment complex in Denver under the trade name The Regency—Auraria’s Student Housing Community, LLC (the “Regency.”) The Regency is dedicated to providing off-campus housing for students attending classes on the campus of the Auraria Higher Education Center campus (“Auraria Campus”) in Denver. The Regency is located a few miles away from the Auraria Campus.

In response to a 2004 study that found that the Auraria Campus had a housing demand, the University of Colorado Denver (“UCD”) approached University of Colorado Real Estate Foundation (“CUREF”) to construct student housing on land adjacent to campus. CUREF formed Campus Village Apartments, LLC (“CVA”) in order to construct the Campus Village Apartments.

In 2004, UCD and CUREF entered into an agreement (the “2004 Agreement”) whereby UCD agreed to: (1) assist in marketing the Campus Village Apartments; (2) institute a residency requirement for most full-time domestic freshmen and international students (the “New Students”) to live at off-campus housing; (3) “exclusively refer” the New Students to the Campus Village Apartments; and (4) not participate in the development of another student housing project.

In 2005, CUREF assigned the 2004 Agreement to CVA, and CVA issued \$50.365 million in revenue bonds (the “2005 Bonds”) through the Colorado Educational and Cultural Facilities Authority (“CECFA”) to fund the construction of the Campus Village Apartments.

In May 2008, UCD, CUREF, and Defendant entered into an operating agreement regarding the Campus Village Apartments (the “2008 Agreement”). Pursuant to the 2008 Agreement, UCD agreed to continue enforcing the Residency Requirement. In return, CVA gave UCD students placement priority at the Campus Village Apartments with a specific number of beds dedicated each year for UCD students.

In July 2008, CVA borrowed proceeds from the sale of \$54.055 million in bonds issued through CECFA to refinance the 2005 Bonds.

During the 2012–2013 academic year, the rental cost for New Students living at the Campus Village Apartments was \$7,390 per academic year, without parking or a meal plan. During the 2011–2012 academic year, the lowest rental cost for the Regency was \$4,750 per academic year, which included parking but not a meal plan. Plaintiff alleges that it has lost business from New Students who would have chosen to live at the Regency if not for the Residency Requirement.

On these facts, Regency filed action against CVA alleging four claims for relief: (1) conspiracy to monopolize, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2; (2) civil conspiracy; (3) interference with prospective business relations; and (4) interference with existing contractual

relations.

The parties provided mutually exclusive versions of CVA's motivations and purposes for entering into the 2004 and 2008 Agreements, neither of which were implausible on its face. The District Court concluded that questions of fact existed as to whether CVA had the specific intent to monopolize, as required under the Sherman Act, and thus denied Regency's motion for partial summary judgment.