

Fw: Oxford House obtains preliminary injunction against the City of Baton Rouge  
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I am happy to announce that Judge Brady of the United States District Court for the Middle  
District of Louisiana granted oxford house's motion for a preliminary injunction against the City  
of Baton Rouge for its failure to grant its reasonable accommodation request.

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

OXFORD HOUSE, INC., ET AL

VERSUS

CITY OF BATON ROUGE, LOUISIANA

CIVIL ACTION

NO. 11-391-JJB

**RULING AND ORDER**

This matter is before the court on a motion (doc. 3) for preliminary injunction filed by plaintiffs. Defendant City of Baton Rouge has opposed the request for preliminary injunction. This court issued a temporary restraining order (doc. 5) in this matter on June 10, 2011. We held a hearing on plaintiffs' request for preliminary injunction on June 29, 2011. At the conclusion of the hearing, the court requested supplemental memoranda addressing whether plaintiffs had established that the residents of the two Oxford Houses at issue were handicapped under the Fair Housing Act. Plaintiffs have also filed a motion (doc. 32) for leave to supplement the record, which defendant has opposed. In its opposition (doc. 33), defendant also moved to strike plaintiffs' post-hearing exhibits. For the following reasons, the court grants Oxford House's motion for preliminary injunction, denies plaintiffs' request to supplement the record, and grants defendant's motion to strike exhibits A and B (docs. 29-1 and 29-2)<sup>1</sup>.

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<sup>1</sup> The court will not consider plaintiffs' supplemental exhibits (docs 29 & 32) for purposes of this ruling on the preliminary injunction. The court makes no determination on the future admissibility of these documents.

Oxford House, Inc. is a Delaware not for profit corporation, which supports the opening of individual Oxford Houses throughout the United States. The individual Oxford Houses purport to create a supportive environment to allow residents to recover from alcoholism and drug addiction. Like other Oxford Houses, the Drusilla and Shawn Drive Oxford Houses located in the city of Baton Rouge are financially self supporting, democratically-run, and agree to evict any resident found to have engaged in substance abuse. The members of the Drusilla and Shawn Drive Oxford Houses conduct extensive interviews with prospective applicants, who are usually patients in treatment centers at the time, to ensure the applicants are committed to recovery from alcoholism and addiction. The applicants are asked questions about their history with substance abuse and are told about the requirements of living in an Oxford House. These requirements include, among other things, attendance at 12-step recovery meetings and complete abstinence from drugs and alcohol. The Drusilla and Shawn Drive Oxford Houses conduct weekly meetings and utilize random drug testing to ensure residents are in compliance.

In February of 2011, the City of Baton Rouge informed the landlords of the Drusilla Oxford House that they were in violation of the A-1 single family zoning ordinance of the Unified Development Code. Oxford House responded by requesting a reasonable accommodation to waive the limitation on the number of residents that can reside in a single family house. The city informed Oxford House that it needed to file a request for reasonable accommodation on the A-9

form for a group home, as defined in “Special Homes” in chapter two of the U.D.C. The request for reasonable accommodation for the Drusilla home was denied. In May of 2011, Oxford House was informed that the Shawn Drive home would also not meet the requirements for a variance from the enforcement of the A-1 zoning ordinance. Oxford House now seeks injunctive relief and damages, claiming the city’s actions are in violation of the Fair Housing Act and the Americans with Disabilities Act. This ruling only addresses the request for preliminary injunction. The factual determinations made in this ruling are for that limited purpose only.

The four prerequisites for a preliminary injunction are: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, (4) that granting the preliminary injunction will not disserve the public interest. *Canal Auth. of State of Fla. v. Calloway*, 489 F.2d 567 (5th Cir. 1974). In order to prevail, plaintiffs must carry the burden on all four elements. *Id.* The court finds that plaintiffs have met their burden. Oxford House has demonstrated a substantial likelihood of success on the merits (which will be discussed below). Oxford House has shown a substantial threat of irreparable injury if the injunction is not granted. Oxford House has shown that the threatened injury to plaintiffs outweighs the threatened harm to the city. Finally,

the court finds that granting the preliminary injunction will not disserve the public interest.

The Fair Housing Act and Fair Housing Act Amendments represent “a broad mandate to eliminate discrimination against and equalize housing opportunities for disabled individuals.” *Bronk v. Ineichen*, 54 F.3d 425, 428 (7th Cir. 1995). The FHA makes it unlawful to discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling because of handicap. Discrimination specifically includes: a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford handicapped persons equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). The Act defines “handicap” in § 3602(h) as follows:

- (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities,
  - (2) a record of having such an impairment, or
  - (3) being regarded as having such an impairment,
- but such term does not include current, illegal use of or addiction to a controlled substance.

This definition of handicap in the FHA, taken from Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, has been frequently interpreted by the courts to cover alcoholics and drug addicts. See *U.S. v. S. Mgmt. Corp.*, 955 F.2d 914, 922-23 (4th Cir. 1992); *Sullivan v. City of Pittsburgh*, 811 F.2d 171, 182 (3d Cir. 1987); *Rodgers v. Lehman*, 869 F.2d 253, 258 (4th Cir. 1989); *Crewe v. U.S.*

*Office of Pers. Mgmt.*, 834 F.2d 140, 141-42 (8th Cir. 1987). Numerous courts have found that recovering alcoholics and drug addicts, who are not currently using illegal drugs, are handicapped under the FHA. See *U.S. v. Borough of Audubon, N.J.*, 797 F.Supp. 353 (D.N.J. 1991); *Oxford House, Inc. v. Town of Babylon*, 819 F.Supp. 1179 (E.D.N.Y. 1993); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F.Supp. 450 (D.N.J. 1992). “Alcoholism, like drug addiction, is an ‘impairment’ under the definitions of a disability set forth in the FHA, the ADA, and the Rehabilitation Act.” *Reg’l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 (2d Cir. 2002).

Nonetheless, defendant correctly urges this court to make an individualized inquiry regarding the applicability of the FHA criteria to the residents of the Shawn Drive and Drusilla Oxford Houses. The court finds that Oxford House has sufficiently established, for the purposes of a preliminary injunction, that the residents of the Drusilla and Shawn Drive Oxford Houses meet the definition of handicapped under the FHA. The testimony at the June 29 hearing established that the residents have a mental or physical impairment – alcoholism and drug addiction – which substantially limits one or more major life activities. The evidence established that the residents are not currently using drugs and that steps are taken, such as random drug testing, to ensure that the residents are not using drugs. The testimony established that the residents faced substantial impairment in caring for themselves, working, and finding housing. The court is not persuaded by defendant’s assertion that the residents’ present

ability to be employed, pay bills, and care for themselves defeats their qualification as handicapped under the FHA. On the contrary, that the residents were previously unable to accomplish these tasks but are currently able to do so merely underscores the ameliorative effects of the Oxford House environment.

Oxford House has also established that it was denied a reasonable accommodation. Plaintiffs have established that the requested accommodation is both reasonable and necessary to afford handicapped persons equal opportunity to use and enjoy housing. Oxford House residents explained how the Oxford House environment has helped alleviate some of the debilitating effects of their addictions. Testimony at the June 29 hearing established the ameliorative effects of the Oxford House environment – that residents were held accountable, given responsibility, provided mutual support for each other's recovery, were required to go to 12-step recovery meetings, and held their own weekly meetings in each house.

The court is not persuaded that granting the requested accommodations for the Shawn Drive and Drusilla homes would unduly burden the city or deform its ordinary zoning authority. Ellen Miller, Assistant Planning Director with the Baton Rouge Planning Commission, and Cynthia Bohrer, Senior Special Attorney with the Parish Attorney's Office and section chief for code enforcement which includes planning and zoning, testified on behalf of defendant. Miller and Bohrer both conceded that the only process for obtaining a reasonable accommodation from the requirements of the U.D.C. is to utilize the special home provision

(which by its express terms only applies to homes for individuals with developmental disabilities). Apart from the special home provision, the only other option is to have the Metropolitan Council pass a resolution to waive or amend the U.D.C., as Miller and Bohrer testified that the planning commission does not waive or otherwise grant variances from the U.D.C. Based on the evidence produced at the June 29 hearing, the only reasonable accommodation procedure the city has presently in place (the special home provision) applies only to individuals with developmental disabilities. Therefore the city's complaints about the impact of allowing Oxford House's request are unpersuasive, as Oxford House has no other viable alternative.

In its most recent opposition memoranda (doc. 39), defendant also re-urges its motion for involuntary dismissal, which was made at the June 29 hearing. For the reasons stated above, the court denies defendant's motion for involuntary dismissal.

Defendant has also raised the argument that this action is barred by the Anti Injunction Act. The court finds that Oxford House is not a party nor is it in privity<sup>2</sup> with a party to the ongoing state court proceedings<sup>3</sup> commenced by the

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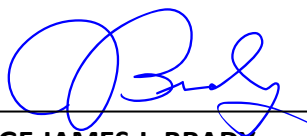
<sup>2</sup> A non-party will be considered in privity where the party to the first suit is so closely aligned with the nonparty's interest as to be his virtual representative. *Benson & Ford, Inc. v. Wanda Petrol. Co.*, 833 F.2d 1172, 1174-75 (5th Cir. 1987) (noting also that privity can exist when: a nonparty has succeeded to a party's interest in property; a nonparty controlled the original suit; or a nonparty's interests were adequately represented by the party to the original suit). In order for virtual representation to arise, "there must be an express or implied legal relationship between the party and the nonparty in which [the] party to the first suit [is] accountable to [the] non-party." *Royals Ins. Co. v. Quinn-L Capital Corp.*, 960 F.2d 1286 (5th Cir. 1992). The owners of the Drusilla and Shawn Drive homes are the parties to the state court action. The owners are not "accountable" to Oxford House. These owners have no express or implied legal relationship with Oxford House.



city. As such, the Anti Injunction Act does not bar this court from issuing a preliminary injunction. See *Chezem v. Beverly Enterprises-Texas, Inc.*, 66 F.3d 741, 742 (5th Cir. 1995).

Accordingly, Oxford House's request for preliminary injunction (doc. 3) is GRANTED. The City of Baton Rouge is HEREBY ENJOINED from enforcing its two unrelated persons rule<sup>4</sup> against the dwellings located at 4224 Drusilla Lane and 1858 Shawn Drive. Plaintiffs' motion (doc. 32) for leave to supplement the record is DENIED and defendant's motion (doc. 33) to strike is GRANTED insofar as it requests the court not to consider record documents 29-1 and 29-2 for purposes of this ruling.

Signed in Baton Rouge, Louisiana, on July 27, 2011.



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**JUDGE JAMES J. BRADY**  
**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF LOUISIANA**

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<sup>3</sup> The state court proceedings referred to are: "City of Baton Rouge/Parish of East Baton Rouge v. Danjean Causeway, LLC" and "City of Baton Rouge/Parish of East Baton Rouge v. Raymond K. Roy and Glenda M. Roy" in the 19th Judicial District Court, Parish of East Baton Rouge, Case Numbers 600130, Section 27 and 601697, Section 26, respectively.

<sup>4</sup> The "two unrelated persons rule" refers to the rule prohibiting more than two unrelated persons from residing in an A-1 zone, as stated in the City's Unified Development Code.