Commission on Human Rights and Opportunities ex rel.	: Connecticut Commission on Human Rights and Opportunities
	:
Betty Gabriel	: CHRO No. 0620141
	: EEOC No. 16aa600013
	:
Rose Ann Carlson	: CHRO No. 0620142
	: EEOC No. 16aa600014
v.	:
	:
Town of Fairfield	: June 30, 2009

Ruling re: the respondent's motion to preclude relitigation of factual findings and certain legal issues

I

On June 17, 2009, the respondent filed a "motion to preclude relitigation of factual findings in *O'Halloran v. Fairfield* and to preclude relitigation of certain legal issues as a result of the *O'Halloran v. Fairfield* decision". The commission filed its objection on June 29, 2009. For the reasons set forth, the respondent's motion is denied.

II

In March 2005, Josephine O'Halloran, Betty Gabriel, Rose Ann Carlson and Matt Decker applied for the position of zoning inspector in the Town of Fairfield's (respondent) planning and zoning department. Decker was the successful candidate.

Thereafter, in September 2005, O'Halloran, Gabriel and Carlson separately filed affidavits of illegal discriminatory practice with the commission. They alleged that the respondent violated Title VII and General Statutes §§ 46a-58 (a) and 46a-60 (a) (1) when it refused to hire them for the position of zoning inspector because of their sex. O'Halloran's affidavit, CHRO No. 0620146, was certified for public hearing on April 17, 2007. Her public hearing was held on diverse days between April 28, 2008 and August 25, 2008 and the final decision, dismissing her affidavit, was issued on May 20, 2009. The affidavits of Gabriel and Carlson were certified for public hearing on August 11, 2008, and their consolidated public hearing is scheduled to commence in September 2009.

In its pending motion, the respondent argued that the doctrine of collateral estoppel should apply so as to preclude, in the Gabriel and Carlson hearing, the relitigation of the factual and legal findings determined in connection with the final decision issued in *O'Halloran*. The respondent proposed 51 factual findings and 23 legal findings that it asserted were either found or implied in the *O'Halloran* decision.

III

"[C]ollateral estoppel, or issue preclusion . . . prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties or those in privity with them upon a different claim. . . . An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted

for determination, and in fact determined . . . An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered." (Citations omitted; internal quotation marks omitted.) *Powell v. Infinity Ins. Co*., 282 Conn. 594, 600 - 01 (2007).

"While it is commonly recognized that privity is difficult to define, the concept exists to ensure that the interests of the party against whom collateral estoppel is being asserted have been adequately represented because of his purported privity with a party at the initial proceeding. . . . There is no prevailing definition of privity to be followed automatically in every case. It is not a matter of form or rigid labels; rather it is a matter of substance. In determining whether privity exists, we employ an analysis that focuses on the functional relationships of the parties. Privity is not established by the mere fact that persons may be interested in the same question or in proving or disproving the same set of facts. Rather, it is, in essence, a shorthand statement for the principle that collateral estoppel should be applied only when there exists such an identification in interest of one person with another as to represent the same legal rights so as to justify preclusion." (Citations omitted; internal quotation marks omitted.) *Young v. Metropolitan Property & Casualty Ins. Co.*, 60 Conn. App. 107, 114, cert. denied, 255 Conn. 912 (2000).

Because the doctrines of res judicata and collateral estoppel "are judicially created rules of reason that are enforced on public policy grounds . . . we have observed that whether to apply either doctrine in any particular case should be made based upon a

consideration of the doctrine's underlying policies, namely, the interests of the defendant and of the courts in bringing litigation to a close . . . and the competing interest of the plaintiff in the vindication of a just claim. . . . . These [underlying] purposes are generally identified as being (1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial system; and (3) to provide repose by preventing a person from being harassed by vexatious litigation." (Citation omitted; internal quotation marks omitted.) *Powell v. Infinity Ins. Co*., supra, 282 Conn 601.

Courts have "recognized, however, that the application of either doctrine has dramatic consequences for the party against whom it is applied, and that we should be careful that the effect of the doctrine does not work an injustice. . . . Thus, [t]he doctrines of preclusion . . . should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies. . . . Accordingly, on occasion, we have recognized exceptions to the general policy favoring application of the doctrines of res judicata and collateral estoppel." (Citations omitted; internal quotation marks omitted.) Id.

IV

It is evident that collateral estoppel is inapplicable to the claims of Gabriel and Carlson. Although O'Halloran, Gabriel and Carlson applied for the same job position and filed complaints of sex discrimination when the sole male applicant was hired, the specific issue of whether the respondent discriminated was not necessarily determined. The presiding referee concluded "that *[O'Halloran] and commission have failed to sustain their burden* in presenting a prima facie case. Furthermore, had I found that a prima facie case had been established *[O'Halloran] and the commission have failed to demonstrate* that the reasons produced by the respondent for not promoting [O'Halloran] were in fact a pretext for discrimination." (Emphasis added.) *Commission on Human Rights & Opportunities ex rel. Josephine O'Halloran v. Fairfield*, CHRO No. 0620146, Final decision, 42. Thus, the presiding referee concluded that O'Halloran and the commission did not prove discrimination; he did not conclude that the respondent did not discriminate. The distinction between finding that O'Halloran did not prove her discrimination case and finding that the respondent did not discriminate is a distinction that may be subtle but is nevertheless significant with respect to the application of collateral estoppel to Gabriel and Carlson.

Further, in *O'Halloran*, the presiding referee specifically noted that: "Facts relating to the [sic] Carlson and Gabriel were made and provided to offer context as to panel that Devonshuk had to pick from. These facts are not meant to offer any opinion

as to the strength or weakness of cases they currently have pending at this commission." *CHRO ex rel. O'Halloran v.* Fairfield, supra, 10 n. 2. Thus, by the terms of the final decision itself, the presiding referee was clearly aware of Gabriel's and Carlson's discrimination complaints and did not intend his findings in *O'Halloran* to be applied to the merits of their cases.

Finally, under the facts of these cases, the policies underlying collateral estoppel and the anti-discrimination statutes favor not applying collateral estoppel. First, while judicial economy is often promoted by minimizing repetitive litigation, the statutory purpose of the commission is to investigate and adjudicate discrimination claims. Further, adjudicating whether Gabriel' and Carlson were discriminated against is not repetitive of whether O'Halloran was discriminated against. Also, that O'Halloran's claim happened to have been adjudicated prior to the claims of Gabriel and Carlson should not be the sole reason for precluding Gabriel and Carlson from being heard.

Second, a finding of discrimination in either or both of these cases would not be inconsistent with the judgment in *O'Halloran*. As previously discussed, in *O'Halloran* the presiding referee concluded that O'Halloran had not proven her case; he did not conclude that the respondent did not discriminate.

Third, while the respondent should be free from vexatious litigation, the claims by Gabriel and Carlson are not, on their face, vexatious. Prior to certifying their affidavits for public hearing, the commission, pursuant to statute, conducted a

preliminary merit assessment review of their claims and retained their complaints for investigation. Following the investigations, the commission concluded that reasonable cause existed to believe that a discriminatory employment practice may have occurred.

Finally, Connecticut's "fair employment practices statutes were enacted to eliminate discrimination in employment. They are remedial and receive a liberal construction." *Vollemans v. Wallingford*, 103 Conn. App. 188, 219 (2007), aff'd, 289 Conn. 57 (2008). "Indeed, the important and salutary public policy expressed in the antidiscrimination provisions of the act cannot be overstated." *Thibodeau v. Design Group One Architects, LLC.*, 260 Conn. 691, 709 (2002).

V

In summary, the factual findings and legal conclusions determined in the *O'Halloran* final decision do not apply to the claims of sex discrimination by Gabriel and Carlson. Those factual findings and legal conclusions are, however, dispositive as to any of O'Halloran's claims that may arise in the Gabriel and Carlson public hearing.

_____
Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
Ms. Betty Gabriel
Ms. Rose Ann Carlson
Cheryl A. Sharp, Esq.
Eileen Kennelly, Esq.
Robin B. Kallor, Esq.