

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

In re Barry Wayne HULTMAN :  
: Civ. No. 3:01cv1186 (PCD) *Lead Case*  
:  
In re Dorothy HULTMAN : Civ. No. 3:01cv1187 (PCD) *Consolidated Case*

MEMORANDUM OF DECISION

Appellant Barry Wayne Hultman<sup>1</sup> appeals *pro se*<sup>2</sup> from the May 24, 2000 decision of the Bankruptcy Court granting summary judgment in favor of appellee State of Connecticut, Department of Social Services (“DSS”). For the reasons set forth herein, the appeal is denied.

**I. BACKGROUND**

Appellant was the administrator of a long-term care facility that participated in the Medicaid program. DSS issued to appellant a notice of regulatory violations and proposed sanctions, which allegations appellant denied in their entirety. A nineteen-day hearing was held to decide the alleged violations.<sup>3</sup>

The hearing officer issued a proposed final decision finding that appellant made false

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<sup>1</sup> Appellant Dorothy Hultman was the president of the facility. On March 11, 2002, appellee filed a suggestion of death in accordance with FED. R. CIV. P. 25(a) as to appellant Dorothy Hultman and no appellate brief was filed on her behalf as there was no motion for a substitute. It is further noted that the underlying facts would be virtually identical Dorothy Hultman, as president of the long-term care facility, was subject to the same administrative proceedings and judgment as was her son, Barry Hultman. Hereafter, “appellant” refers only Barry Hultman.

<sup>2</sup> Appellant’s appeal is construed under the liberal standard afforded *pro se* submissions, *see Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972).

<sup>3</sup> Appellant was represented by counsel at the hearing and had the opportunity to cross-examine witnesses.

misrepresentations of material fact in his Medicaid claims in violation of § 17-83k-3 (1), (5), (8), and (9) of the Regulations of Connecticut State Agencies. The decision was adopted by the DSS, at which time appellant was suspended from the Medicaid program and ordered to pay restitution to DSS of approximately \$1,150,000.00, an amount equal to DSS's overpayments under the Medicaid program.

Appellant appealed the DSS decision to the Connecticut Superior Court, *see Hultman v. Dep't of Social Servs.*, 47 Conn. Supp. 228, 236, 783 A.2d 1265 (2000). The issues involved in that appeal were as follows:

- (1) the hearing officer's findings of fact are based entirely on unreliable hearsay;
- (2) the conclusions of law of the decision do not logically or reasonably follow from the facts;
- (3) the order lacks adequate standards for the calculation of the overpayments by the department to the plaintiffs, and the recommended suspension is over zealous; and
- (4) the plaintiffs' constitutional rights to due process were hindered due to the vast amount of publicity prior to both the hearing and the decision.

*Id.* at 234. The Superior Court rejected all claims of error. Appellant did not appeal from the decision of the Superior Court.<sup>4</sup>

Appellant filed his Chapter 7 petition after the close of the hearings before the DSS. Appellee commenced adversary proceedings against appellant claiming that the judgment debts owed DSS were nondischargeable and subsequently moved for summary judgment on its claims. The Bankruptcy Court granted summary judgment in favor of appellee concluding that appellant was collaterally estopped from attacking the state court proceedings finding that

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<sup>4</sup> The failure to appeal renders the decision of the Superior Court a final judgment. *See CTB Ventures 55, Inc. v. Rubenstein*, 39 Conn. App. 684, 696, 667 A.2d 1272 (1995).

appellant committed Medicaid fraud and that such fraudulent conduct rendered the debt nondischargeable. *See In re Hultman*, 263 B.R. 402, 406 (Bankr. D. Conn. 2001).

## II. DISCUSSION

Appellant argues that the Bankruptcy Court improperly found collateral estoppel when a different standard of fraud was applied in the state court proceedings and under § 523(a)(2)(A). Appellant further argues that appellee had an inadequate basis for its calculation of the debt owed it by appellant.

A decision of the Bankruptcy Court granting summary judgment in favor of appellee is reviewed *de novo*. *See In re Treco*, 240 F.3d 148, 155 (2d Cir.2001). Such a decision will be upheld if, viewing the record in the light most favorable to the non-movant, there is no genuine disputed issue of material fact. *Id.*

The findings of a state agency are entitled to the same preclusive effect as would be accorded by a state court. *See Univ. of Tenn. v. Elliott*, 478 U.S. 788, 799, 106 S. Ct. 3220, 92 L. Ed. 2d 635 (1986); *Kosakow v. New Rochelle Radiology Assocs.*, 274 F.3d 706, 730 n.7 (2d Cir. 2001). As such, the Connecticut law governing collateral estoppel is applied, *see Kosakow*, 274 F.3d at 730 n.7, which accords preclusive effect to administrative adjudications when the parties had an adequate opportunity to litigate, *Convalescent Ctr. v. Dep't of Income Maint.*, 208 Conn. 187, 195, 544 A.2d 604 (1988).

There is little question as to the extent of litigation involved. The hearings on the question of Medicaid fraud continued for nineteen days. The hearing officer submitted a proposed final decision, to which appellant was permitted to file exceptions. Appellant was

permitted to, and ultimately did, appeal the DSS decision to the Superior Court. The only relevant question raised by appellant is whether the question of fraud actually litigated in those proceedings is sufficiently analogous to the standard of fraud before the Bankruptcy Court to constitute an issue adequately litigated and thus entitled to preclusive effect in federal proceedings. Barring sufficient dissimilarity, appellant may not collaterally attack the state court proceedings. *See Johnson v. De Grandy*, 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994) (“a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party’s claim that the state judgment itself violates the loser’s federal rights”).

Appellant argues that fraud for purposes of 11 U.S.C. § 523(a)(2)(A) is limited to common law fraud, which is not analogous to the definition of fraud as found by the DSS. Section 523(a)(2)(A) provides that a “discharge . . . does not discharge an individual debtor from any debt . . . for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.” Fraud for purposes of § 523(a)(2)(A) is defined by the general common law of torts rather than the law of any particular state. *See Field v. Mans*, 516 U.S. 59, 70 n.9, 116 S. Ct. 437, 444, 133 L. Ed. 2d 351 (1995). The definitions of the *Restatement of Torts* have been found to appropriately reflect the common law. *See id.* The *Restatement (Second) of Torts*, § 525, provides that “[o]ne who fraudulently makes a misrepresentation of fact, opinion, intention or

law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.” *See* RESTATEMENT (SECOND) OF TORTS, § 537 (“The recipient of a fraudulent misrepresentation can recover against its maker for pecuniary loss resulting from it if, but only if, (a) he relies on the misrepresentation in acting or refraining from action, and (b) his reliance is justifiable.”)

In contrast, the state court proceedings centered on § 17-83k-3 of the Regulations of Connecticut State Agencies, which provides in relevant part:

All vendors are subject to the federal and state laws and rules and regulations governing the programs in which they participate. Following are examples of violations by vendors of these laws, rules or regulations which constitute good cause for the imposition of administrative sanctions against such vendors:

(1) Accepting payment for goods provided to and/or services performed for any beneficiary under Chapter 302 of the Connecticut General Statutes, which payment exceeds the amount(s) due or authorized by law for such goods and/or services.

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(5) Knowingly and willfully making, or causing to be made, any false statement or misrepresentation of material fact for the purpose of claiming or determining payment.

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(8) Any of the fraudulent acts and/or false reporting proscribed under federal or state statutes.

(9) Failure of a vendor to comply with any provision of a contract or agreement which is in effect between said vendor and the Department of Income Maintenance.

The hearing officer referred to 42 C.F.R. § 433.304, which defines fraud as “an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that

constitutes fraud under applicable Federal or State law.”

There is no discernible difference between the definition of fraud applied through 42 C.F.R. § 433.304 and the *Restatement* version that would substantiate appellant’s argument that the substantive law on the element of damages differs. The reference to “unauthorized benefit” represents the quantification of damages for which appellant was held responsible. The restitution order, which by definition implicates a benefit unjustly enjoyed rather than a benefit that may be received, represents the quantification of the overpayments. It is therefore not apparent, in light of the findings of appellee as to appellant’s intent, appellee’s reliance on the claims for payment submitted, and the damages thereby sustained, that the legal standard for fraud differed to any appreciable degree from the *Restatement* definition. Appellant’s remaining issue as to the improper calculation of damages is construed as an improper collateral attack on the damages determination of appellee and the Superior Court. Appellant is not entitled to so contest the validity of the state court findings of fact after the judgment became final.<sup>5</sup> The Bankruptcy Court therefore properly granted summary judgment.

### III. CONCLUSION

Appellant’s appeal from the judgment of the Bankruptcy Court is **denied**. The Clerk shall close the file.

SO ORDERED.

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<sup>5</sup> The Superior Court directly addressed plaintiff’s argument as to any miscalculation of overpayment ordered as restitution. *See Hultman*, 47 Conn. Supp. at 238 (concluding that “[o]verpayments reflected . . . were determined by the hearing officer based upon reliable and credible evidence”).

Dated at New Haven, Connecticut, September \_\_, 2002.

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Peter C. Dorsey  
United States District Judge