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PRESS RELEASE

Court of Appeal Sides with Dana Point and Upholds Injunction Against Drug Treatment Facility

Dana Point, CA (September 4, 2019) – New Method Wellness, Inc. (New Method), has been operating a drug treatment facility and houses some of its patients in three residences (the Properties) located in residential zones in the City of Dana Point (Dana Point). Dana Point filed a lawsuit against it on the basis the Properties were required to be licensed by the State, and without appropriate licenses were and unlawfully operating in violation of Dana Point’s zoning ordinance.

The trial court agreed with the City, and found the homes were indeed being used as part of a drug treatment facility, were providing treatment on site, and hence required a State license. Accordingly, it issued an injunction ordering New Wellness to cease operations at the Properties. New Wellness appealed.

The Court of Appeal has sided with Dana Point and upheld the judgment entered by the trial court and the permanent injunction it issued. The Court ruled that the trial court properly found the evidence supported the fact the Properties were the residential component of a treatment facility, and that treatment was provided at the Properties. Both of these factors require a State License.

The Court emphasized that operating a business in a residential zone is a violation of the City’s zoning ordinance, and that any such violation is a nuisance for which an injunction can be

issued. It recognized that an exception exists based on a provision of State law that requires cities to treat licensed treatment facilities with six or fewer residents as if they are residences, not businesses; but, found that neither of the two elements of this exception applied.

The Court also addressed the arguments made by New Wellness referring to them as “a series of misfires”. The first “misfire” was an assertion that only the State can regulate and license treatment facilities. The Court states: “This argument is dead on arrival” since the City was merely enforcing its zoning code, not attempting to license New Wellness.

The second “misfire” was an assertion that the injunction violated the rights of the residents of the Properties under the American with Disabilities Act (ADA). The Court ruled “there is no evidence of that.” The City does not bar the residents from buying or renting homes in the area based on a disability, and rather is simply requiring that the Properties either cease providing treatment or become licensed, which they refused to do.

The final “misfire” was the assertion that the injunction resulted in a regulatory taking without compensation in violation of the United States Constitution. The Court rejected this argument noting New Wellness would have to demonstrate the injunction left the Properties with no economically viable use. The Court found that: “Residential property in Dana Point, particularly property as beautiful as New Method’s web site describes, is obviously economically viable as simple residential property.” It further stated that News Wellness “cannot acquire property in a residential zone, violate pre-existing valid ordinances, and then complain that the enforcement of those ordinances denied its property rights.”

“We are gratified the court agreed with the City’s position, and upheld the injunction against these unlicensed facilities,” said Dana Point City Manager Mark Denny. The City takes complaints about businesses operating illegally seriously, and will investigate those complaints to determine if a business is unlawfully providing unlicensed treatment in a residential zone.

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