

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SOUTHCOAST FAIR HOUSING, INC. :
Plaintiff :
v. : C.A. No. 18-0536
: :
DEBRA SAUNDERS, in her capacity as Clerk of :
the Rhode Island Supreme Court, :
Defendant :

**DEFENDANT’S, DEBRA SAUNDERS, in her official capacity as Clerk of the
Rhode Island Supreme Court, MOTION TO DISMISS**

Defendant moves pursuant to Federal Rule Civil Procedure 12(b)(1) and (6) to dismiss Plaintiff’s complaint. A memorandum of law in support thereof is attached.

Respectfully submitted,

Defendant,

**DEBRA SAUNDERS, in her official
Capacity as Clerk of the Rhode Island
Supreme Court**

By Her Attorney,

**PETER F. NERONHA
ATTORNEY GENERAL**

/s/ Michael W. Field _____

/s/ Andrea Shea _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2019, I filed and served the foregoing document through the electronic filing system to:

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/s/ Karen M. Ragosta

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SOUTHCOAST FAIR HOUSING, INC.	:	
Plaintiff	:	
v.	:	C.A. No. 18-0536
	:	
DEBRA SAUNDERS, in her capacity as Clerk of	:	
the Rhode Island Supreme Court,	:	
Defendant	:	

DEFENDANT’S, DEBRA SAUNDERS, in her official capacity as Clerk of the Rhode Island Supreme Court, MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

“Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions.” *See Leis v. Flynt*, 439 U.S. 438 (1979). Here, the Plaintiff, SouthCoast Fair Housing, Inc., submitted an application to the Rhode Island Supreme Court seeking to practice law pursuant to Article II, Rule 11 of the Rhode Island Supreme Court Rules. The Rhode Island Supreme Court denied the application and this lawsuit challenging the basis of the denial ensued. Because the *Rooker-Feldman* doctrine precludes this Court’s subject-matter jurisdiction, and relief may not otherwise be granted, the Motion to Dismiss must be granted.

II. FACTUAL BACKGROUND

Rhode Island Supreme Court Article II, Rule 11 provides, in relevant part, “[n]onprofit organizations incorporated in this state for the purpose of providing legal assistance to the indigent and that provide legal assistance to a defined and limited class of clients, may practice law in their own names through attorneys who are members of the Rhode Island Bar, subject to the approval of this [Rhode Island Supreme] Court.” Rule 11 continues, in relevant part, that non-profit organizations, such as SouthCoast Fair Housing, Inc. (“SouthCoast”), “shall follow the application and registration requirements imposed on limited liability entities pursuant to Rule 10.” R.I. Sup. Ct. art. II, Rule 11.

According to Rule 10, “[a] limited liability entity may not engage in the practice of law unless and until it applies to and receives from this [Rhode Island Supreme] Court a license to operate as a limited liability entity and only so long as such licensee remains in good standing.” R.I. Sup. Ct. art. II, Rule 10(c). After an application is received by the Clerk of the Rhode Island Supreme Court, the “Clerk shall review the copy of the limited liability entity charter and the application for license to determine if all requirements of law and these rules have been complied with and notify the court of his or her findings.” R.I. Sup. Ct. art. II, Rule 10(c). Thereafter, “[t]he [C]ourt may then order the issuance of a license to practice to the

limited liability entity or may refer the application for further consideration to such committee as it may appoint or designate.” R.I. Sup. Ct. art. II, Rule 10(c).

Consistent with this process, on or about May 22, 2017, SouthCoast sent an application to the Rhode Island Supreme Court for a license to practice law as a nonprofit organization pursuant to Article II, Rule 11.¹ Amended Complaint, ¶ 27, *Exhibit A*.² In due course, the Rhode Island Supreme Court entered an Order denying SouthCoast’s application. Amended Complaint, ¶ 28, *Exhibit B*. After detailing R.I. Sup. Ct. art II, Rule 11, the Supreme Court’s September 29, 2017 Order stated, in relevant part:

[a]s a nonprofit corporation incorporated in Massachusetts, SouthCoast Fair Housing, Inc. is not a nonprofit organization ‘incorporated in this state,’ as required by Rule 11. Furthermore, SouthCoast Fair Housing Inc. has indicated that it provides legal services to some indigent clients; however, [as] it [] appears from the application filed with this Court and the communication related thereto, that the entity’s purpose is not limited to servicing the indigent. In this way the entity is not

¹ Southcoast’s application was marked received by the Rhode Island Supreme Court Clerk’s Office on June 15, 2017, but this discrepancy in dates is immaterial to the issues presented to this Court.

² Consistent with the standard of review for a Motion to Dismiss, it is assumed that all factual allegations in the Complaint are true. This Court may consider matters of public record, including documents from state court proceedings, without being required to convert a 12(b)(6) motion to a motion for summary judgment. *In Re Colonial Mortgage Bankers Corp.*, 324 F.3d 12, 15 (1st Cir. 2003); *Boateng v. InterAmerican University, Inc.*, 210 F.3d 56, 60 (1st Cir. 2000) cert. denied 531 U.S. 904. Additionally, “courts have made narrow exceptions for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiff’s claim; or for documents sufficiently referred to in the complaint.” *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993); *Cruz v. Melecio*, 204 F.3d 14, 21 (1st Cir. 2000)(allows a court considering a 12(b)(6) Motion to consider “not only the complaint but also matters fairly incorporated within it and matters susceptible to judicial notice.”). Exhibits A and B properly fall within the purview of these exceptions.

incorporated ‘for the purpose of providing legal assistance to the indigent,’ as required by Rule 11.

Accordingly, the request that this Court grant a license allowing SouthCoast Fair Housing, Inc. to practice law in Rhode Island as a legal service organization is hereby denied without prejudice. *Exhibit B.*

The Supreme Court’s Order was dated September 29, 2017, “[e]ntered as an Order of this Court,” and signed by its Clerk, Debra Saunders, in her official capacity. *See* Amended Complaint, ¶ 28; Exhibit B.

About one year later, on or about September 26, 2018, SouthCoast filed this lawsuit. *See* ECF # 1. After the Defendant filed a Motion to Dismiss based upon, *inter alia*, the *Rooker-Feldman* Doctrine, SouthCoast filed the instant Amended Complaint, re-alleging violations of the First Amendment, the Due Process Clause, the Equal Protection Clause, and the Privileges and Immunities Clause. *See* ECF # 11.

In an apparent response to avoid the *Rooker-Feldman* Doctrine, SouthCoast avers in its Amended Complaint that it “alleges the circumstances surrounding the September 29 Order not for the purposes of seeking review of the September 29, Order, but only for the purposes of establishing standing to demonstrate that [SouthCoast’s] challenge to the constitutionality of Rule 11 is ripe for adjudication.” Amended Complaint, ¶ 29. Later, SouthCoast avers that it has standing because it “applied for a license to practice law as a nonprofit corporation, *which license was denied* because it did not meet the requirements of Rule 11 to be organized within

the state of Rhode Island and to restrict its services to indigent clients.” Amended Complaint, ¶ 33 (emphasis added). SouthCoast seeks against Defendant Saunders, *inter alia*, declaratory relief³ to include a declaration that Rule 11 violates various provisions of the United States Constitution. *See* Amended Complaint, p. 9-10.

III. STANDARD OF REVIEW

The standard for reviewing a Motion to Dismiss has been well-explained:

[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’ To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’ *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)(internal citations omitted).

The United States Supreme Court continued that two tenets support this standard. First, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions [and t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do

³ In its original complaint, SouthCoast also sought injunctive relief but this relief has been dropped, presumably on the basis of 42 U.S.C. § 1983.

not suffice.” *Id.* at 1949. Second, “only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.* at 1950. “Determining whether a complaint states a plausible claim for relief will * * * be a context specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Id.*

IV. LEGAL ANALYSIS

A. This Court Lacks Subject-Matter Jurisdiction Pursuant to the *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine arose from the United States Supreme Court’s decisions in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *Feldman* is remarkably similar to the present matter and considered whether a federal district court had jurisdiction to review the denial of a bar application (for an individual) by the highest court in the District of Columbia (the District of Columbia Court of Appeals). *Feldman*, 460 U.S. at 463.

Feldman applied to the Committee on Admissions of the District of Columbia Bar (“Committee”), but was denied on the basis he had not graduated from an approved law school. *Id.* at 466. After a hearing, the Committee reaffirmed its denial and stated that only the District of Columbia Court of Appeals could waive

the approved law school requirement. *Id.* Thereafter, Feldman petitioned the District of Columbia Court of Appeals for a waiver, which was denied. *Id.* at 468.

Feldman – like SouthCoast in this case – sued in federal district court. The district court granted the defendants’ motion to dismiss on the ground that it lacked subject-matter jurisdiction, *id.* at 470, but on appeal, the Court of Appeals reversed. On certiorari, the United States Supreme Court determined that its precedent “clearly establish that the proceedings in the District of Columbia Court of Appeals surrounding Feldman’s * * * petition for waiver were judicial in nature.” *Id.* at 479. Having resolved this threshold issue, the Court continued that:

it is clear that [Feldman’s] allegations that the District of Columbia Court of Appeals acted arbitrarily and capriciously in denying the[] petition[] for waiver and that the court acted unreasonably and discriminatorily in denying the[] petition[] in view of its former policy of granting waivers to graduates of unaccredited law schools * * * required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case. These allegations are inextricably intertwined with the District of Columbia Court of Appeals’ decisions, in judicial proceedings, to deny the respondent[’]s petition[]. The District Court, therefore, does not have jurisdiction over these elements of the respondent[’]s complaint[]. *Id.*

Several decades later, the Court clarified that the *Rooker-Feldman* doctrine is confined to cases “brought by state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005).

The First Circuit Court of Appeals had its first post-*Exxon Mobil* opportunity to examine the *Rooker-Feldman* doctrine, and after noting that *Exxon Mobil* altered its understanding of the *Rooker-Feldman* doctrine, explained that “[i]f federal litigation is initiated after state proceedings have ended, and the plaintiff *implicitly* or explicitly ‘seek[s] review and rejection of [the state] judgment,’ * * * then a federal suit seeking an opposite result is an impermissible attempt to appeal the state judgment to the lower federal courts, and, under *Rooker-Feldman*, the federal courts lack jurisdiction.” *Federacion de Maestros de Puerto Rico v. Junta de Relaciones Del Trabajo de Puerto Rico*, 410 F.3d 17, 24 (1st Cir. 2005) (emphasis added). In doing so, the Court of Appeals summarized that:

[w]hile appealability under § 1257⁴ is not *necessary* to satisfy the *Exxon Mobil* ‘ended’ test, it will almost always be *sufficient*. Put another way, if a state court decision is final enough that the Supreme Court *does* have jurisdiction over a direct appeal, then it is final enough that a lower federal court *does not* have jurisdiction over a collateral attack on that decision.

⁴ 28 U.S.C. § 1257 (a) provides:

[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Id. at 26-27 (emphases in original). *See also id.* at 27 (“we examine the posture of the case in the state court – i.e., whether ‘state proceedings [have] ended,’ * * * – and the relief sought in the federal court”).

Here, there can be no question that the Rhode Island Supreme Court’s September 29, 2017 Order denying SouthCoast’s application to practice law constitutes a “judicial proceeding.” SouthCoast’s application to practice law in Rhode Island mirrors, in all material respects, Feldman’s application to practice law in the District of Columbia.

In *Feldman*, the Supreme Court recounted the essence of a “judicial proceeding” and explained:

[a] judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.

Feldman, 460 U.S. at 477 (quoting *Prentis v. Atlantic Coast Line*, 211 U.S. 210, 226 (1908)). Applying this principle to Feldman’s bar application, the Court concluded that:

[w]hen it issued a per curiam order denying Feldman’s petition, it determined as a legal matter that Feldman was not entitled to be admitted to the bar without examination or to sit for the bar examination. The court had adjudicated Feldman’s ‘claim of a present right to admission to the bar,’ * * * and rejected it. This is the essence of a judicial proceeding.

Id. at 480-81 (internal citation omitted).

Similarly, in this case, when the Rhode Island Supreme Court examined SouthCoast's application to practice law and denied its application by an Order dated September 29, 2017, this constituted a "judicial proceeding." In particular, the Rhode Island Supreme Court "investigate[d], declare[d] and enforce[d] liabilities as they [stood] on present or past facts and under laws supposed already to exist." *Feldman*, 460 U.S. at 477. See also *In re Summers*, 325 U.S. 561, 568-69 (1945) ("When the claim is made in a state court and a denial of the right is made by judicial order, it is a case which may be reviewed under Article III of the Constitution when federal questions are raised and proper steps taken to that end, in this Court.").

In doing so, the Rhode Island Supreme Court made a judicial determination that SouthCoast's application failed to satisfy R.I. Sup. Ct. art. II, Rule 11, and therefore, denied the application. See *Exhibit B* ("the request that this Court grant a license allowing SouthCoast Fair Housing, Inc. to practice law in Rhode Island as a legal service organization is hereby denied without prejudice"). As *Feldman* makes clear, this is the essence of a judicial proceeding. *Feldman*, 460 U.S. at 479 ("[a] claim of a present right to admission to the bar of a state and a denial of that right is a controversy.").

Having determined that SouthCoast's application to practice law constitutes a "judicial proceeding," the *Rooker-Feldman* doctrine will serve as a jurisdictional bar to the suit if "the losing party in state court filed suit in federal court after the state

proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment.” *Exxon Mobil*, 544 U.S. at 291. More recently, the Court of Appeals explained that “a litigant could not avoid the impact of the *Rooker-Feldman* doctrine simply by recasting his claims in federal court as arising under the United States Constitution, where adjudicating these claims would ‘necessarily require reviewing the merits of the Rhode Island Supreme Court’s decision.’” *Sinapi v. Rhode Island Bd. of Bar Examiners*, 910 F.3d 544, 549 (1st Cir. 2018).

First, there is no question as to the timing of this lawsuit: SouthCoast filed suit on September 26, 2018, *after* the Rhode Island Supreme Court denied its application via an Order dated September 29, 2017. Therefore, state court proceedings ended *prior* to the initiation of this federal lawsuit.⁵ SouthCoast makes this sequence of events pellucid. *See* Amended Complaint, ¶ 28 (noting its application was denied by the Rhode Island Supreme Court on September 29, 2017).

The second requirement of the *Rooker-Feldman* doctrine is also satisfied because SouthCoast complains “of an injury caused by the state-court judgment and

⁵ For purposes of *Rooker-Feldman*, state court proceedings “end,” *inter alia*, “when the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved” and when “the state action has reached a point where neither party seeks further action.” *Federacion de Maestros de Puerto Rico*, 410 F.3d at 24. As *Federacion* summarized, “if a state court decision is final enough that the Supreme Court *does* have jurisdiction over a direct appeal, then it is final enough that a lower federal court *does not* have jurisdiction over a collateral attack on that decision”). *Id.* at 27 (emphases in original).

seek[s] review and rejection of that judgment.” *Exxon Mobil*, 544 U.S. at 291. Analysis of this second prong requires this Court to examine “the relief sought in the federal court.” *Federacion de Maestros de Puerto Rico*, 410 F.3d at 27 (alteration in original, internal citation omitted). In resolving this inquiry, the First Circuit has looked to whether the concluded state court issue and the pending federal court issue present the same “core issues.” *Puerto Ricans for Puerto Rico Party v. Dalmau*, 544 F.3d 58, 68 (1st Cir. 2008).

The Court of Appeals has explained that:

[w]hile the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceedings as, in substance, anything other than a prohibited appeal of the state-court judgment.

Hill v. Town of Conway, 193 F.3d 33, 39 (1st Cir. 1999)(quoting *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 23 (1987) (Marshall, J., concurring). *See also id.* (“*Rooker-Feldman* precludes a federal action if the relief requested in the federal action would effectively reverse the state court decision or void its holding.”) (quoting *Snider v. City of Excelsior Spring, Missouri*, 154 F.3d 809, 811-12 (8th Cir. 1998)).

Through this lawsuit, SouthCoast makes clear that it contends it has been injured *as a result* of the September 29, 2017 Order and asks this Court to grant it

the relief that the Rhode Island Supreme Court denied. Stated differently, “the relief for which the plaintiffs prayed would, if granted, effectively void the state court’s judgment.” *Id.* at 40. *See also Davison v. Government of Puerto Rico-Puerto Rico Firefighters Corps*, 471 F.3d 220, 223 (1st Cir. 2006) (“To find for Plaintiffs now would require us to declare that the state court wrongly decided Plaintiffs’ claim.”).

Here, SouthCoast alleges that:

27. On or about May 22, 2017, [SouthCoast] sent an application to the Defendant⁶ for a license to practice law as a nonprofit organization pursuant to Rule 11.

28. By Order dated September 29, 2017 (the ‘September 29 Order’), Defendant rejected [SouthCoast’s] application for a license to practice because [SouthCoast] did not meet the requirements of Rule 11, in that (a) [SouthCoast] is not incorporated under the laws of the State of Rhode Island, and (b) [SouthCoast] does not limit its services exclusively to ‘indigent’ persons.

Amended Complaint, ¶¶ 27-28.

To be sure, in the next paragraph SouthCoast contends that it references “the September 29 Order not for the purposes of seeking review of the September 29 Order, but only for the purpose of establishing standing and to demonstrate that [SouthCoast’s] challenge to the constitutionality of Rule 11 is ripe for adjudication,” Amended Complaint, ¶ 29; but this attempted saving language – included within the Amended Complaint only after the State raised *Rooker-Feldman* in its original

⁶ The Application was actually addressed to the Rhode Island Supreme Court, Bar Administrator.

Motion to Dismiss – only solidifies the *Rooker-Feldman* bar and illustrates that subject-matter jurisdiction may “not be sacrificed to elementary mechanics of captions and pleading.” *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997) (11th Amendment). For example, through its own words, SouthCoast avers that it references the circumstances of the September 29, 2017 Order “for the purposes of establishing standing,” Amended Complaint, ¶ 29, or in other words, SouthCoast alleges it has been injured as a result of the September 29, 2017 Order.

Even aside from Paragraph 29, SouthCoast later asserts that it:

has standing to sue in this action because it has been adversely affected by Rule 11. Specifically, [SouthCoast] applied for a license to practice law as a nonprofit corporation, *which license was denied* because it did not meet the requirements of Rule 11 to be organized within the state of Rhode Island and to restrict its services to indigent clients. *As a result*, [SouthCoast] is not able to fulfill its mission to advocate for persons in the State of Rhode Island who have suffered discriminatory and unfair treatment of the Fair Housing Act, irrespective of their income level or indigent status.

Amended Complaint, ¶ 33 (emphases added). As set forth by SouthCoast, “[a]s a result” of the Supreme Court September 29, 2017 Order, it is unable to practice law in Rhode Island. At the very least, SouthCoast asks this Court implicitly to overturn the September 29, 2017 Order. *Federacion de Maestros de Puerto Rico*, 410 F.3d at 24.

Lastly, the relief sought by SouthCoast makes clear that both the state matter and this matter concern the same “core issues” and that to find for SouthCoast would

“require us to declare that the state court wrongly decided Plaintiffs claim.” *Davison*, 471 F.3d at 223. Specifically, the September 29, 2017 Order denies SouthCoast’s application because it was not “incorporated in this state” and because it is not incorporated “for the purpose of providing legal assistance to the indigent.”

Exhibit B. By comparison, SouthCoast asks this Court to declare that:

1. “the requirement of Rule that a nonprofit organization practicing law pursuant to that Rule may only represent ‘indigent’ persons violates rights protected by the First and/or Fourteenth Amendments of the United States Constitution;
2. “[t]he words ‘to the indigent,’ as used in Rule 11, are in violation of the constitutional rights of nonprofit organizations seeking to practice law in the State,” and
3. “the requirement of Rule 11 that a nonprofit organization practicing law pursuant to that Rule must be organized under the laws of the State of Rhode Island violates the Privileges and Immunities Clause and the Equal Protection Clause of the Fourteenth Amendment and of Article IV § 2 of the United States Constitution.” Amended Complaint, p. 9-10.

“[W]here federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceedings as, in substance, anything other than a prohibited appeal of the state-court judgment.” *Hill*, 193 F.3d at 39 (quoting *Pennzoil Co.*, 481 U.S. at 23) (Marshall, J., concurring). Accordingly, because the request relief – if granted – would necessarily conflict with and undermine the September 29, 2017 Order, the *Rooker-Feldman* doctrine bars this Court’s subject-matter jurisdiction.

B. Res Judicata and Collateral Estoppel Bar this Action

“It is well established that state law is controlling in determining the preclusive effect to be given a state judgment in a federal court.” *Texaco Puerto Rico, Inc., v. Medina*, 834 F.2d 242, 245 (1st Cir. 1987). In Rhode Island, *res judicata* bars the relitigation of all issues that “‘were tried or might have been tried’ in an earlier action.” *Huntley v. State*, 63 A.3d 526, 531 (R.I. 2013). The doctrine serves as a bar to a second cause of action where there exists: (1) “identity of parties;” (2) “identity of issues;” and (3) “finality of judgment in an earlier action.” *Torrado Architects v. Rhode Island Dep’t of Human Servs.*, 102 A.3d 655, 658 (R.I. 2014). With respect to collateral estoppel, the following factors must be satisfied: “(1) the parties are the same or in privity with the parties of the previous proceeding; (2) a final judgment on the merits has been entered in the previous proceeding; [and] (3) the issue or issues in question are identical in both proceedings.” *Foster-Glocester Reg’l Sch. Comm. v. Bd. of Review*, 854 A.2d 1008, 1014 (R.I. 2004).

Here, both *res judicata* and collateral estoppel bar this action. Both the matter before the Supreme Court and the matter pending before this Court involve the same party against whom preclusion is asserted, SouthCoast. Additionally, as discussed *supra*, both actions involve the same core issues.

Lastly, *Feldman* makes clear that when the Supreme Court issued its September 29, 2017 Order, this was a final judgment. *Feldman*, 460 U.S. at 480-81

(“When it issued a *per curium* order denying Feldman’s petition, it determined as a legal matter that Feldman was not entitled to be admitted to the bar without examination or to sit for the bar examination.”). Stated differently, since the finality requirement of *Rooker-Feldman* has been satisfied, the finality requirement for issue and claim preclusion must also be satisfied. See *Federacion de Maestros de Puerto Rico*, 410 F.3d 17, 24 (1st Cir. 2005) (“[w]hile appealability under § 1257 is not necessary to satisfy the *Exxon Mobil* ‘ended’ test, it will almost always be sufficient”). Accordingly, issue and claim preclusion also bar this lawsuit.

C. SouthCoast Has Named the Wrong Defendant

It is axiomatic that, if successful, a court must be able to grant relief to a prevailing plaintiff. Here, even if this Court finds for SouthCoast, any relief awarded against Defendant Saunders – the Clerk of the Supreme Court – would be ineffectual because the Clerk of the Supreme Court has no authority to effectuate the relief SouthCoast asks this Court to grant.

SouthCoast, for instance, seeks certain declarations that Rule 11’s in-state and indigency requirement are unconstitutional. See Amended Complaint, p. 9-10. But, respectfully, these declarations and any subsequent relief this Court may grant would have no effect on the Clerk of the Rhode Island Supreme Court since it is only the Supreme Court – and not the Clerk – that has the authority to grant SouthCoast a license. *In re Ferrey*, 774 A.2d 62, 65 (R.I. 2001) (“This Supreme Court alone

possesses sole authority to determine who may, and who may not, engage in the practice of law in this state.”); *Rhode Island Bar Ass'n v. Auto. Serv. Ass'n*, 55 R.I. 122, 179 A. 139, 142 (1935) (Supreme Court “alone has the power to license attorneys and counselors at law in the courts of this state, and to admit them to practice law”). Consistent with this authority art. II, Rule 11 vests in the Supreme Court – and not the Clerk – the sole authority to grant SouthCoast a license:

- “A limited liability entity may not engage in the practice of law unless and until it applies to and *receives from this Court* a license to operate as a limited liability entity and only so long as such license remains in good standing,” Art. II, Rule 11(c) (emphasis added);
- “*The court may then order the issuance of a license to practice to the limited liability entity or may refer the application for further consideration to such committee as it may appoint or designate,*” Art. II, Rule 11(d)(6) (emphasis added);
- “In issuing a license *the Court* shall consider whether the limited liability entity meets the standards of admission imposed upon individual attorneys.” Art. II, Rule 11(f) (emphasis added).

Accordingly, since only the Rhode Island Supreme Court can grant or deny SouthCoast a license, any relief directed to/at the Clerk of the Supreme Court would be ineffective. On this ground alone, the Motion to Dismiss should be granted.

V. CONCLUSION

For the reasons detailed above, this Court is without subject-matter jurisdiction to review this matter, which challenges and seeks specific relief relative

to the denial of SouthCoast's application. Defendant prays this Motion to Dismiss is granted.

Respectfully submitted,

Defendant,

**DEBRA SAUNDERS, in her official
Capacity as Clerk of the Rhode Island
Supreme Court**

By Her Attorney,

**PETER F. NERONHA
ATTORNEY GENERAL**

/s/ Michael W. Field

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I hereby certify that on this 14th day of January, 2019, I filed and served the foregoing document through the electronic filing system to:

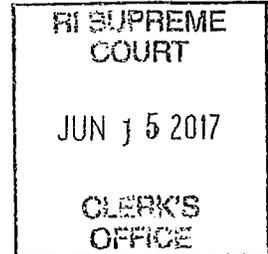
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Re: Limited Liability Entities Admission

Enclosed please find SouthCoast Fair Housing's (SCFH) application for Limited Liability Entity License. SCFH is a Massachusetts non-profit corporation with 501(c)(3) status. SCFH's registration with the RI Secretary of State was approved on April 21, 2017. SCFH is modeled after other non-profit fair housing organizations around the country. SCFH works to eliminate housing discrimination through education and outreach, advocacy, and enforcement. To our knowledge, SCFH is the first non-profit fair housing organization in Rhode Island.

SCFH intends to provide legal services in Rhode Island through attorneys on staff: Kristina da Fonseca and James Crowley. As a non-profit entity, SCFH's board consists of both attorney(s) and non-attorneys. A list of current board members is attached.

SCFH will fill an unmet need for fair housing services in the State of Rhode Island. Please do not hesitate to contact me if you require further information or documentation. Thank you in advance for your consideration of this application.

Sincerely,

Kristina da Fonseca, Esq.

Executive Director



RHODE ISLAND SUPREME COURT
 APPLICATION FOR LIMITED LIABILITY ENTITY LICENSE
 ART. II, RULE 10

A limited liability entity may not engage in the practice of law unless and until it applies to and receives from this court a license to operate as a limited liability entity and only so long as such license remains in good standing. Art. II, Rule 10.

RHODE ISLAND
 SUPREME
 COURT
 JUN 15 2017
 CLERK'S
 OFFICE

Section A. General Information.

Authorized Representative: Kristina da Fonseca
 Legal Name of Entity: SouthCoast Fair Housing, Inc.
 Local Address:* 1005 Main Street, #1210, Pawtucket, RI 02860
 Telephone No.: 401-285-2550 Fax No.: _____
 Entity Contact Person: Kristina da Fonseca Email: Kristina@southcoastfairhousing.org
 Entity State of Incorporation: Massachusetts Total number of Practicing Attorneys:** 2

**If no local address, list address of principal office. If the entity maintains additional offices, on a separate sheet, please provide addresses and note which office is the entity's principal office.*

***Use the total number of attorneys practicing law on behalf of the entity to calculate the amounts of insurance required by G.L. §§ 7-5.1-8, 7-12-58, and 7-16-3.3.*

Section B. Entity Name. *All law firm names shall comply with Article II, Rule 10 and Article V, Rule 7.5 of the Supreme Court Rules, as amended. A limited liability entity shall operate under the entity name as listed in the records of the Rhode Island Secretary of State and shall not operate under a fictitious business name. Entity names shall include the full or last name of one or more principal attorneys actively practicing law on behalf of the law firm except, if otherwise lawful, law firms may use as, or continue to include in, its name the name or names of one or more of its deceased or retired attorneys or of a predecessor firm in a continuing line of succession. Entity names may describe the nature of the firm's legal practice in terms that are accurate, descriptive, and informative and not comparative, or suggestive of the ability to obtain results. Law firm names that are misleading as to the identity of the attorney or attorneys practicing law with the firm are prohibited.*

Use additional sheets, if necessary, when providing the below information.

Section C. Type of Limited Liability Entity. *Check appropriate type of limited liability entity.*

- Professional Service Corporation *(Provide information for shareholders, directors and officers below)*
- Limited Liability Partnership *(Provide information for partners below)*
- Limited Liability Company *(Provide information for managers and members below)*

Name	Business Address including Email	Date and State of Bar Admission
See attached list of Directors		

Section D. Local Attorneys. *The following attorney(s) will practice law in Rhode Island through the limited liability entity (include attorneys listed in Section C who will practice law in Rhode Island):*

Name	Business Address including Email	Rhode Island Bar #	Relationship
Kristina da Fonseca	257 Union Street, New Bedford, MA 02740 Kristina@southcoastfairhousing.org	7811	<input type="checkbox"/> Partner <input type="checkbox"/> Associate <input checked="" type="checkbox"/> Other*
James Crowley	1005 Main Street, Pawtucket, RI 02860 James@southcoastfairhousing.org	9405	<input type="checkbox"/> Partner <input type="checkbox"/> Associate <input checked="" type="checkbox"/> Other*
			<input type="checkbox"/> Partner <input type="checkbox"/> Associate <input type="checkbox"/> Other*

**If "other" please attach a description of the relationship between the local attorney and the entity.*

Section E. Payment and documentation. Please check below to indicate that the required payment and copies of the following documents are attached.

- Check in the amount of \$200.00 made payable to the *Rhode Island Supreme Court*. (A \$125.00 late fee is required if the application is being filed more than thirty (30) days of registering with the Rhode Island Secretary of State.)
- Limited Liability Entity Charter filed with the Rhode Island Secretary of State (Domestic LLEs) or Certificate of Registration from the Rhode Island Secretary of State (Foreign LLEs).
- Current insurance certificate. (A current insurance certificate must always be on file with the Court.)

Limited liability entities shall indicate in the records of the Rhode Island Secretary of State that the purpose of the entity is to engage in the practice of law.

Section F. Other Practice of Law. Does any individual associated with this entity practice law on behalf of another incorporated or a separate unincorporated law firm? Yes No

If yes, please state the entity name and address and indicate when prior written approval of the Supreme Court was obtained.

Entity Name and Address	Date of Approval
Kristina da Fonseca has practiced in Massachusetts in an unincorporated firm: Law Office of Kalife & da Fonseca. Attorney da Fonseca is working on winding down her work with that firm.	
Alexander J. Kalife practices in Massachusetts in an unincorporated firm: Law Office of Kalife & da Fonseca.	

Section G. Names and Subsidiaries.

1. If the entity name includes the names of any attorneys who are not currently principal attorneys actively practicing law on behalf of the entity, please attach detailed information on whether such attorneys are deceased, retired, or how such attorneys are otherwise affiliated with the entity.
2. Is the entity registered in this or any other jurisdiction to practice law under a different name than that listed in Section A. of this application? Yes No
If yes, please list and attach detailed information about any additional name(s) under which the entity is registered to transact business, including any and all fictitious business names.
3. Please attach a list of all subsidiaries or parent companies affiliated with the entity applicant noting whether each is a subsidiary or parent of the applicant entity.

Section H. Fitness Review.

1. Is each attorney in the entity in good standing in this state or, if licensed to practice elsewhere, in every state or jurisdiction in which he or she is licensed? Yes No
If no, please explain.
2. Have the attorneys employed by or associated with the entity or related entities ever been disbarred, suspended, reprimanded, censured or otherwise disciplined? Yes No
If yes, please provide detailed information about each instance giving rise to the disciplinary action and how each was resolved.
3. Does the entity practice law in any other jurisdiction? Yes No
If yes, please provide proof that the entity is properly registered and/or licensed (if required) to conduct business in each jurisdiction where its attorneys practice law on behalf of the entity.
4. Have any charges or complaints, formal or informal, been made or filed against the entity or related entities with a consumer protection agency relating to its operations in this or in any other jurisdiction? Yes No
If yes, please attach detailed information about the charges and/or complaints and how each was resolved.
5. Has the entity or related entities ever been the subject of any litigation relating to its practice of law in this or in any other jurisdiction? Yes No
If so, please attach detailed information about the litigation and its status.
6. Has the authority of the entity or related entities to conduct business in this or any other jurisdiction ever been revoked or suspended? Yes No
If so, please attach detailed information about the revocation or suspension and its status.
7. Has the entity or related entities ever applied for and been refused the authority to practice law in this or any other jurisdiction? Yes No
If yes, please attach detailed information about denial of the application.

Section I. Verification. I certify that the information contained in this Limited Liability Entity License Application is correct as of this date. I agree to notify the Clerk of the Rhode Island Supreme Court within thirty (30) days of any amendments to the limited liability entity or of any change of the facts set forth herein.


Executive Director
5 / 22 / 2017
LLEA 6/15

SouthCoast Fair Housing, Inc.

Addresses

257 Union Street, New Bedford, MA 02740 - principal office

1005 Main Street, Pawtucket, RI 02860

SouthCoast Fair Housing, Inc.

Board of Directors

Name	Address	Date and State of Bar Admission
Alexander J. Kalife	721 County Street, New Bedford, MA 02740 Alexander@kflawoffice.com	RI 2007 MA 2007
Elizabeth Kalife	597 County Street, New Bedford, MA 02740	N/A
Matthew Shea	37 Winsegansett Avenue, Fairhaven, MA 02719	N/A
Jacqueline Pina	123 Bedford Street, New Bedford, MA 02740	N/A

SouthCoast Fair Housing, Inc.

Local Attorneys

Name	Title
Kristina da Fonseca	Executive Director
James Crowley	Staff Attorney



Policy No.: L1AA552055 02
Issue Date: 2/27/2017

AIX Specialty Insurance Company
2 Waterside Crossing, Suite 400, Windsor, CT 06095
Lawyers Professional Liability Policy
(NLADA Insurance Program)

NOTICE: THIS IS A **CLAIMS-MADE AND REPORTED POLICY**. PLEASE READ THE POLICY CAREFULLY.

THE LIMIT OF LIABILITY AVAILABLE TO PAY **DAMAGES** WILL BE REDUCED BY AMOUNTS WE PAY FOR **CLAIM EXPENSES** AS DEFINED IN THE POLICY. FURTHER NOTE THAT AMOUNTS INCURRED FOR **DAMAGES** ARE SUBJECT TO THE **DEDUCTIBLE**.

FOR SURPLUS LINES POLICYHOLDER NOTICE - PLEASE SEE DECLARATIONS ADDENDUM

DECLARATIONS

- Item 1. Named Insured:** SouthCoast Fair Housing, Inc.
- Item 2. Mailing Address:** 721 County Street, New Bedford, MA 02740
- Item 3. Policy Period** 2/16/2017 12:01 AM to 2/16/2018 12:01 AM

Coverage Summary

This policy includes only those Coverages designated with a "Yes" as "Included" in the Coverage Summary set forth below. If neither "Yes" nor "No" is designated for a listed Coverage, such Coverage is "Not Included."

Item 4. Coverage/Limit of Liability	Item 5. Deductible	Included (Yes/No)	Item 6. Premium
Lawyers Professional Liability \$500,000 Each Claim and \$1,000,000 in the aggregate Retroactive Date: 2/16/2015	\$5,000 Annual Aggregate	Yes	\$1,132.00
Management Liability Errors and Omissions Endorsement \$500,000 Each Claim and \$1,000,000 in the aggregate Retroactive Date: 2/16/2015	\$5,000 Annual Aggregate	Yes	\$453.00
Employment Practices Liability \$100,000 Each Claim and \$300,000 in the aggregate Retroactive Date: 2/16/2015	\$5,000 Annual Aggregate	Yes	\$396.00
Criminal Defense Endorsement \$50,000 Each Claim and \$50,000 in the aggregate Retroactive Date: 2/16/2015	\$5,000 Annual Aggregate	Yes	\$113.00
Punitive Damages Endorsement \$50,000 Each Claim and \$50,000 in the aggregate Retroactive Date: 2/16/2015	\$5,000 Annual Aggregate	Yes	\$57.00



Policy No.: L1AA552055 02
Issue Date: 2/27/2017

AIX Specialty Insurance Company
2 Waterside Crossing, Suite 400, Windsor, CT 06095
Lawyers Professional Liability Policy
(NLADA Insurance Program)

Coverage Summary (con't)

This policy includes only those Coverages designated with a "Yes" as "Included" in the Coverage Summary set forth below. If neither "Yes" nor "No" is designated for a listed Coverage, such Coverage is "Not Included."

Item 4. Coverage/Limit of Liability	Item 5. Deductible	Included (Yes/No)	Item 6. Premium
Outside Practice of Law Endorsement		Yes	\$113.00
Retroactive Date: 2/16/2015			
Primary Pro Bono Endorsement		Yes	\$0.00
Retroactive Date: 02/16/2015			
Additional Insured(s)		Yes	\$0.00
Retroactive Date:			
<i>Cancellation Notification Endorsement</i>		No	
Policy Premium:			\$2,264.00
Surcharges/Taxes:			
Surplus Lines Tax			\$90.56
Total Amount Due:			\$2,354.56

Item 7. Forms Attached at Issue:

914-0002-MA 11 11	AIX OFAC 08 12	914-0001CV-MA 09 10	914-0001 09 10	914-0059 09 10
SIG-0001 0910SL	XIL0002 06 07	AIX CLRG 04 13	914-0020 09 10	914-0021 01 12
914-0025 01 12	914-0027 01 12	914-0026 01 12	914-0028 09 10	



Policy No.: **L1AA552055 02**
Issue Date: **2/27/2017**

AIX Specialty Insurance Company
2 Waterside Crossing, Suite 400, Windsor, CT 06095
Lawyers Professional Liability Policy
(NLADA Insurance Program)

Item 8. Forms Attached by Endorsement:

Item 9. NOTICE OF A CLAIM: Report any claim or potential claim to the Company as required by Section G.
DUTIES IN THE EVENT OF CLAIM(S) OR POTENTIAL CLAIM(S):

AIX Specialty Insurance Company
P.O. Box 15145
Worcester, MA 01615

Lawyers Professional Liability Claims Telephone No.: 800-558-6688
Facsimile: 616-643-1079
Report a claim online: hanoverprofessionals@hanover.com

The Declarations, the Professional Liability Coverage(s), and any endorsement attached thereto, constitute the entire agreement between the Company and the Insured.



Policy No.: L1AA552055 02
Issue Date: 2/27/2017

AIX Specialty Insurance Company
2 Waterside Crossing, Suite 400, Windsor, CT 06095
Lawyers Professional Liability Policy
(NLADA Insurance Program)

SURPLUS LINES DISCLOSURE

**MASSACHUSETTS SURPLUS LINES POLICYHOLDER
NOTICE:**

- A. The surplus lines insurer with whom the insurance was placed is not licensed in Massachusetts and is not subject to Massachusetts regulations; and
- B. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.



State of Rhode Island and Providence Plantations
Department of State | Office of the Secretary of State
Nellie M. Gorbea, Secretary of State

Certification Number: **17050090910**

The office of the Secretary of State of the State of Rhode Island and Providence Plantations,
HEREBY CERTIFIES, that

SouthCoast Fair Housing, Inc.

a Massachusetts non-profit corporation, qualified to do business in Rhode Island on

April 21, 2017

Effective

April 21, 2017

IT IS FURTHER CERTIFIED that as of this date said foreign non-profit corporation is
authorized to transact business in this state and is in good standing according to our records.

SIGNED AND SEALED ON

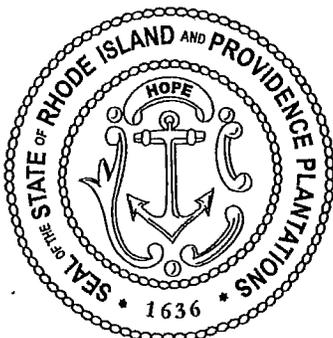
Wednesday, May 31, 2017

Handwritten signature of Nellie M. Gorbea in cursive.

Secretary of State

Handwritten signature of Debra Antonelli in cursive.

Authorized Agent





The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the
Commonwealth

March 21, 2017

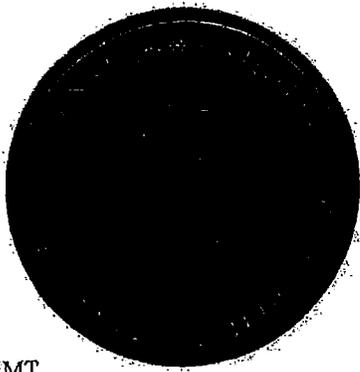
TO WHOM IT MAY CONCERN:

I hereby certify that according to the records of this office

SOUTHCOAST FAIR HOUSING, INC.

is a domestic corporation organized on **October 31, 2012 (Chapter 180)**.

I further certify that there are no proceedings presently pending under the Massachusetts General Laws Chapter 180 section 26A, for revocation of the charter of said corporation; that the State Secretary has not received notice of dissolution of the corporation pursuant to Massachusetts General Laws, Chapter 180, Section 11, 11A, or 11B; that said corporation has filed all annual reports, and paid all fees with respect to such reports, and so far as appears of record said corporation has legal existence and is in good standing with this office.



In testimony of which,
I have hereunto affixed the
Great Seal of the Commonwealth
on the date first above written,

William Francis Galvin

Secretary of the Commonwealth

Supreme Court

SouthCoast Fair Housing, Inc. :

LLE-17-00021

ORDER

SouthCoast Fair Housing, Inc., a nonprofit corporation incorporated in the Commonwealth of Massachusetts, has filed an application to practice law in this State as a legal service organization pursuant to Article II, Rule 11 of the Rhode Island Supreme Court Rules.

For the following reasons, the application is denied without prejudice.

Article II, Rule 11 (Legal Service Organizations) provides, in full:

“Nonprofit organizations incorporated in this state for the purpose of providing legal assistance to the indigent and that provide legal assistance to a defined and limited class of clients, may practice law in their own names through attorneys who are members of the Rhode Island Bar, subject to the approval of this Court. These organizations shall follow the application and registration requirements imposed on limited liability entities pursuant to Rule 10 but shall be exempt from the payment of application and registration fees. Organizations providing legal assistance pursuant to this rule may practice law under a trade name as approved by the Court.”

As a nonprofit corporation incorporated in Massachusetts, SouthCoast Fair Housing, Inc. is not a nonprofit organization “incorporated in this state,” as required by Rule 11. Furthermore, SouthCoast Fair Housing, Inc. has indicated that it provides legal services to some indigent clients; however, it appears from the application filed with this Court and the communication related thereto, that the entity’s purpose is not limited to serving the indigent. In this way the entity is not incorporated “for the purpose of providing legal assistance to the indigent,” as required by Rule 11.

Accordingly, the request that this Court grant a license allowing SouthCoast Fair Housing, Inc. to practice law in Rhode Island as a legal service organization is hereby denied without prejudice.

Entered as an Order of this Court this *29th* day of *September 2017*.

By Order,


Clerk