

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 31 2008

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U.S. COURT OF APPEALS

JOHN M. WOLFE, as Trustee for
SOUTH COAST CAB CO., INC.; IRENE
RODITIS and SAVVAS RODITIS,

Plaintiffs-Appellants,

v.

THE CITY OF ANAHEIM, et al.,

Defendants-Appellees.

No. 07-56031

D.C. No. CV- 99-416-GLT

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Gary L. Taylor, District Judge, Presiding

Argued and Submitted November 17, 2008
Pasadena, California

Before: RYMER and M. SMITH, Circuit Judges, and KORMAN,* District Judge.

South Coast Cab, Inc. and its owners Irene and Savvas Roditis (together
“South Coast”) appeal from the district court’s final judgment rejecting their
challenges to the City of Anaheim’s (“City”) procedure for awarding taxicab

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Edward R. Korman, Senior United States District Judge for
the Eastern District of New York, sitting by designation.

franchises. The final judgment includes, *inter alia*, an order granting the City's motion to dismiss South Coast's 42 U.S.C. § 1983 causes of action and a subsequent order granting summary judgment in favor of the City on South Coast's Sherman Act claim. South Coast appeals as the assignees of the Chapter 7 Bankruptcy Trustee, the named plaintiff, who disclaimed his interest in this appeal. We affirm.

The district court did not err in dismissing South Coast's 42 U.S.C. § 1983 causes of action. South Coast lacked standing to challenge the franchise ordinance because it never applied for a franchise. *Madsen v. Boise State Univ.*, 976 F.2d 1219, 1220 (9th Cir. 1992) (collecting cases). While South Coast argues that it would have been futile to have applied for a franchise, this issue was resolved against it in a related state court proceeding. Thus, South Coast is precluded from relitigating the issue here. *See, e.g., Allen v. McMurry*, 449 U.S. 90, 95-96 (1980).

Nor did the district court err in granting summary judgment in favor of the City on South Coast's Sherman Act cause of action. The City and its employees acting in their official capacity are immune from antitrust damages under the Local Government Antitrust Act of 1984 ("LGAA"). *See* 15 U.S.C. § 35(a). Moreover, South Coast may not avoid the LGAA's restrictions by asserting a § 1983 claim for

damages based on alleged violations of the Sherman Act. The existence of express and more limited remedy provisions in the Sherman Act (15 U.S.C. § 15), is a clear “indication that Congress did not intend to leave open a more expansive remedy under § 1983.” *See City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121 (2005).

AFFIRMED.