

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JG IL, LLC, EMERALD COAST, LLC and)	
ReNu LLC,)	
)	
Plaintiffs,)	
)	Judge Matthew Kennelly
v.)	
)	Case No.: 21-cv-04063
ILLINOIS DEPARTMENT OF)	
FINANCIAL AND PROFESSIONAL)	
REGULATION, and MARIO TRETO, JR.)	
IN HIS OFFICIAL CAPACITY AS ACTING)	
SECRETARY,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs, JG IL LLC (“JG IL”) EMERALD COAST, LLC and ReNu LLC by and through its undersigned attorneys, Loevy & Loevy, complain against Defendants ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and MARIO TRETO, JR. IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY, as follows:

1. Plaintiffs are each applicants for the Illinois Conditional Adult Use Dispensing Organization Licenses (“Conditional Licenses”). Plaintiffs each timely submitted 75 applications pursuant to Section 15-25 and Section 15-30 of the Cannabis Regulation and Tax Act (“CRTA”). Each of the Plaintiffs met the statutory definition of a Social Equity Applicant (“SEA”) and none of the Plaintiffs have previously operated a retail dispensary in Illinois.

2. That application process was intense. Plaintiffs' applications each were hundreds of pages long. Thousands of applications were submitted by hopeful applicants.

3. The Illinois Department of Financial and Professional Regulation ("Department" or "IDFPR") is responsible for awarding the Conditional Licenses. Pursuant to the CRTA (as amended by Public Act 102-0098 (effective July 15, 2021)), IDFPR will select eligible applicants in three separate lotteries: (a) a Qualifying Applicant Lottery pursuant to Section 15-35 of the CRTA (up to 55 licenses); (b) a Social Equity Justice Involved Lottery pursuant to Section 15-35.10 (up to 55 licenses); and (c) a Tied Applicant Lottery pursuant to Section 15-30.20 of the CRTA and 68 Ill. Adm. Code 1291.50 (up to 75 licenses).

4. Each of the three lotteries has a point threshold which an applicant's application must meet to qualify to participate in the respective lottery. IDFPR awarded scores in an initial round in which several applicants achieved a perfect score. All other applicants (including the three Plaintiffs) were allowed an opportunity to cure their applications, and these were scored in a post-cure period second round.

5. This suit concerns Plaintiffs' rights to participate in the Tied Applicant Lottery, which is presently scheduled to commence on August 19, 2021. The point cut-off for participation is 252 points, which constitutes a perfect score.

6. Earlier this week, on July 28, 2021, IDFPR announced the scores awarded to each applicant through the second grading round.

7. Plaintiff JG IL received a perfect score on 17 of the 18 application sections (also called exhibits). However, on Exhibit P (SEA status) JG IL received 0 out of 50 possible points, rendering it ineligible for any of the three lotteries. Plaintiff Emerald Coast received perfect scores on all but Exhibit T (veteran ownership), receiving 0 out of 5 points. And ReNu received

perfect scores except for Exhibit T and Exhibit S (Illinois resident-ownership), receiving 0 out of 5 points on each.

8. Each of the forgoing exhibits were scored in a binary manner. The applicant either received 0 points or received full points.

Erroneous Scoring of JG IL

9. Applicants could qualify for SEA status in one of two ways. First, the applicant could qualify so long as 51% of its workforce resides in a “Disproportionately Impacted Area” (DIA) or had been convicted of certain expungement-eligible marijuana-related offenses (or in the immediate family of such person).

10. A DIA means a census tract or comparable geographic area that has a poverty rate of at least 20%; where 75% or more of the children in the area participate in the federal free lunch program; where at least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program; or which has an average unemployment rate that is more than 120% of the national average for a period of at least 2 consecutive calendar years preceding the date of the application; and (2) has high rates of arrest, conviction, and incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis. The Department of Commerce determined and published a list of DIAs.

11. Second, the applicant could be majority owned (51% or more) by a person or persons who have lived in a DIA for at least five of the preceding ten years or had been convicted of certain expungement-eligible marijuana-related offenses (or in the immediate family of such person).

12. Plaintiff JG IL qualified for SEA status because more than 51% of its workforce resides in an DIA. It submitted the requisite proof and should have received the 50 points on Exhibit P.

13. On information and belief, based on enquiry with other applicants who applied for SEA status based on the residence of their employees, IDFPR discriminated against applicants in this category during the second grading round, falsely refusing to award them SEA points. Multiple other applicants who sought to establish SEA status by meeting the employment prong were wrongfully denied points on Exhibit P.

14. Moreover, IDFPR separately demonstrated antipathy towards applicants who sought to demonstrate SEA status via employment, as opposed to ownership, by excluding the former from the Social Equity Justice Involved Lottery entirely. That lottery is only available to applicants demonstrating SEA status via ownership. Moreover, the entire scoring distribution was structured such that the failure to demonstrate SEA status would automatically exclude an applicant from all three lotteries. Of the total possible 252 points, 50 were allocated to the demonstration of SEA status and were awarded on a binary basis (either 0 or 50). The point cutoff for the respective lotteries are set at 213, 213, and 252, respectively. Thus, an applicant that did not qualify for SEA status is excluded from all three lotteries.

15. Had JG IL received the 50 points on Exhibit P, it would have received an additional two-point bonus for its Exhibit L, for which it received a perfect score, because its 250 point score would have been tied with the other perfect scoring applicants in the BLS. Accordingly, it would have been a tied applicant that is entitled to participate in the Tied Applicant Lottery.

Erroneous Scoring of Emerald Coast

16. Applicants could qualify for the five veteran ownership points under Exhibit T by demonstrating that the company was owned at least 51% by veterans.

17. Emerald Coast submitted the requisite proof that Matthew Hagglund and Alan Dordek together owned 51% of Emerald Coast and of their military service and honorable discharge. It should have received the 5 points.

18. Had Emerald Coast received the 5 points on Exhibit T, it would have received an additional two-point bonus for its Exhibit L, for which it received a perfect score, because its 250 point score would have been tied with the other perfect scoring applicants in the BLS. Accordingly, it would have been a tied applicant that is entitled to participate in the Tied Applicant Lottery.

Erroneous Scoring of ReNu

19. As with Emerald Coast, ReNu should have received 5 points of its Exhibit T. It submitted the requisite proof that Miquita Houston and Herold Feldman who together owned 51% of ReNu and that each served in the military and were honorably discharged.

20. ReNu should also have received 5 points for Exhibit S. Applicants could qualify for 5 points on Exhibit S by demonstrating that the company was at least 51% owned by Illinois residents. ReNu submitted the requisite proof demonstrating that it was 98% owned by Illinois residents.

21. Had ReNu received the 5 points on Exhibit S and the 5 points on Exhibit T, it would have received an additional two-point bonus for its Exhibit L, for which it received a perfect score, because its 250 point score would have been tied with the other perfect scoring

applicants in the BLS. Accordingly, it would have been a tied applicant that is entitled to participate in the Tied Applicant Lottery.

Plaintiffs' Attempts to Obtain a Due Process Hearing from IDFPR

22. Immediately after receiving notice of their score results from IDFPR, Plaintiffs each demanded a hearing from the IDFPR in which to prove that its applications had been erroneously scored, and specifically requested that the hearing take place quickly enough to allow the Plaintiff to participate in the Tied Applicant Lottery. In particular, each Plaintiff wrote: "Because due process requires a hearing in a timely manner at a point in time where meaningful relief can be granted, [Plaintiff], hereby demands that the hearing take place sufficiently in advance of the scheduled lotteries that [Plaintiff] can still be included in the lotteries if an error is found."

23. On July 29, 2021, IDFPR wrote back stating in summary that it would not be responding to requests for hearings.

COUNT I – 42 USC 1983, DUE PROCESS

24. Plaintiffs incorporates all paragraphs of this complaint as if fully set forth herein.

25. Plaintiffs complied with all requirements for a perfect score under the rules for SEA, veteran, and Illinois residency rules. IDFPR had no discretion to deny them points on those respective exhibits.

26. Moreover, Plaintiffs have a property interest in their right to participate in the Tied Applicant Lottery and were entitled to a hearing from IDFPR to demonstrate its error at a meaningful time. Because the Tied Applicant Lottery will be held not later than August 19, 2021, the hearing must proceed forthwith.

27. IDFPR has denied Plaintiffs a hearing at a meaningful time.

28. Plaintiffs will be irreparably harmed by the Due Process violation unless their applications are included in the Tied Applicant Lottery.

28. Defendants, ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and MARIO TRETO, JR. IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY should be enjoined against excluding Plaintiff's applications from the Tied Applicant Lottery until such time as Plaintiff has been afforded Due Process.

Alternatively, the Court should hold a due process hearing in advance of the Tied Applicant Lottery, allow Plaintiffs an opportunity to prove the IDFPR's errors, and then enjoin IDFPR from excluding Plaintiffs from the lottery.

COUNT II – 42 USC 1983, EQUAL PROTECTION

29. Plaintiffs incorporate all paragraphs of this complaint as if fully set forth herein.

30. Plaintiff JG IL complied with all requirements for a perfect score on Exhibit P under the SEA rules. IDFPR had no discretion to deny it the points on those respective exhibits.

31. Moreover, IDFPR discriminated against Plaintiff by preferring applicants who met the SEA definition via 51% or greater ownership instead of 51% or greater employment. This discrimination was on the basis of several protected classifications.

32. Pleading additionally and in the alternative, the discrimination lacked a rational basis.

33. Comparable applicants who sought to satisfy the SEA requirements via ownership instead of employment were treated better in the grading process.

34. Defendants, ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and MARIO TRETO, JR. IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY should be enjoined against excluding Plaintiff's applications from

the Tied Applicant Lottery until such time as Plaintiff has been afforded Due Process.

Alternatively, the Court should hold a due process hearing in advance of the Tied Applicant Lottery, allow Plaintiffs an opportunity to prove the IDFPR's errors, and then enjoin IDFPR from excluding Plaintiffs from the lottery.

WHEREFORE, Plaintiffs, JG IL, LLC, Emerald Coast LLC, and ReNu LLC respectfully demands as follows:

1. Temporary, preliminary and final injunctive relief requiring Defendants, ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and MARIO TRETO, JR. IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY, to include all of Plaintiffs' applications in the Tied Applicant Lottery;
2. An award of damages, attorneys fees and costs; and,
3. Such other provisional and final relief as may prove appropriate.

RESPECTFULLY SUBMITTED,

/s/ Jon Loevy
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