

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

ORGANIC BLOOMS, LLC,
NIAGARA NUGGET, LLC, BLACKMARK LLC, and
WINDWARD MANAGEMENT LLC

**VERIFIED PETITION
AND COMPLAINT**

Petitioners-Plaintiffs,

Index No.:

For a Judgment Pursuant to CPLR Article 78 and § 3001

—against—

NEW YORK STATE CANNABIS CONTROL BOARD
and NEW YORK STATE OFFICE OF CANNABIS
MANAGEMENT,

Respondents-Defendants.

Petitioners-Plaintiffs ORGANIC BLOOMS, LLC, NIAGARA NUGGET, LLC, BLACKMARK, LLC, and WINDWARD MANAGEMENT, LLC (hereinafter, “Petitioners”), by their attorneys, RUPP PFALZGRAF LLC, MARC A. ROMANOWSKI, Esq., for their Verified Petition and Complaint against the Respondents-Defendants NEW YORK STATE CANNABIS CONTROL BOARD and NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT (hereinafter, “Respondents”), respectfully allege and state:

Introduction

1. Petitioners are commencing this hybrid action/special proceeding to, among other things, challenge the actions Respondents have taken in excess of their statutory authority permitted under the Marihuana Regulation and Taxation Act.

2. As set forth below, Respondents’ actions and decisions have been made in violation of lawful procedure and effected by error of law and arbitrary and capricious.

Parties

3. Petitioner, ORGANIC BLOOMS, LLC, is a limited liability company formed and existing under the laws of New York State.

4. Petitioner NIAGARA NUGGET, LLC is a limited liability company formed and existing under the laws of New York State.

5. Petitioner BLACKMARK LLC is a limited liability company formed and existing under the laws of New York State.

6. Petitioner WINDWARD MANAGEMENT LLC is a limited liability company formed and existing under the laws of New York State.

7. Upon information and belief, and at all times relevant to this action, Respondent NEW YORK STATE CANNABIS CONTROL BOARD (“CCB”) is the oversight body of the Office of Cannabis Management. The Board is responsible for approving the comprehensive regulatory framework for New York’s cannabis industry. CCB maintains its principal place of business in the W. Averell Harriman State Office Building Campus, Building 9, in the City and County of Albany, New York.

8. Upon information and belief, and at all times relevant to this action, Respondent NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT (“OCM”) is tasked with implementing a regulatory framework for medical and adult-use cannabis and hemp in the State of New York pursuant to the Cannabis Law. OCM maintains its principal place of business in the

W. Averell Harriman State Office Building Campus, Building 9, in the City and County of Albany, New York.

9. Petitioners have standing to pursue the claims asserted herein and this special proceeding was timely commenced.

Jurisdiction and Venue

10. This Court has subject matter jurisdiction over this proceeding against Respondents pursuant to New York State Civil Practice Law and Rules (“CPLR”) §§ 7801-7806 which permits judicial review of the actions of bodies or officers and CPLR § 3001 for a Declaratory Judgement.

11. Venue properly lies in Albany County pursuant to CPLR §§ 506(b) and 7804(b) because, upon information and belief, CCB’s and OCM’s principal offices are located in Albany, New York, and it is where the material events giving rise to this proceeding took place.

Factual and Procedural Background

12. On March 31, 2021, Governor Andrew Cuomo signed the Marihuana Regulation and Taxation Act (“MRTA”) into law, legalizing recreational cannabis use for adults over the age of twenty-one and establishing OCM as the principal regulatory agency for cannabis in New York.

13. Pursuant to MRTA § 10(19), the application period for adult-use cannabis retail dispensary licenses shall be “opened for all applicants at the same time.”

14. In 2022, Respondents CCB and OCM created the Conditional Adult Use Retail Dispensary (“CAURD”) program, limited only to applicants with a prior cannabis conviction and qualifying business experience. *See generally*, 9 NYCRR § 116.

15. Prior to filing an application for licensure, applicants are required under MRTA § 76(1) to notify the municipality in which the proposed premises is located of the applicant's intent to file an application.

16. However, CCB and OCM permitted CAURD applicants to apply for adult use retail dispensary licenses without identifying proposed premises and without municipal notification.

17. Respondents CCB and OCM authorized an adult use retail dispensary license application period from August to September of 2022, wherein only CAURD applicants were eligible to apply.

18. Over a year later, Respondents CCB and OCM authorized an application period wherein all applicants were permitted to apply, from October 3 to December 18, 2023.

19. Upon information and belief, in this application period, Respondents permitted some retail dispensary license applicants to apply "provisionally," i.e. without identifying a proposed premises and without municipal notification.

20. Petitioners applied during this application period and complied with all rules and requirements for their respective licensure applications.

21. Upon information and belief, Respondents have awarded over 460 CAURD licenses to date.

22. Upon information and belief, Respondents have stated plans to award only 250 licenses to applicants with locations and 450 licenses to provisional applicants.

23. To date, Petitioners have not received a determination on their pending licensure applications.

**AS AND FOR A FIRST CAUSE OF ACTION:
CCB AND OCM HAVE ACTED IN AN ARBITRARY AND CAPRICIOUS
MANNER BY IMPROPERLY WAIVING MRTA'S REQUIREMENT
TO IDENTIFY A LOCATION FOR A PROPOSED DISPENSARY
PRIOR TO SUBMITTING AN APPLICATION.**

24. Petitioners repeat, reallege and incorporate each paragraph hereinbefore mentioned.

25. An agency act is arbitrary and capricious if it is “without sound basis in reason.”

See Pell v. Bd. of Educ., 34 N.Y.2d 222, 231 (1974).

26. Respondents waiver of MRTA §76's requirement of a municipally-notified dispensary location solely for CAURD and provisional applicants was unreasonable and lacks any factual justification and is therefore arbitrary and capricious.

27. In waiving MRTA §76 for some applicants and not others, Respondents have acted in contravention of the statute and therefore outside of the scope of their statutory authority.

28. Respondents' decision to disregard the statutory requirement appears to be completely arbitrary and lacking a factual foundation.

29. Respondents' actions also afford particular applicants with less restrictions to applying for adult-use cannabis retail dispensary licenses while simultaneously burdening other applicants.

30. Despite MRTA's application to *all* applicants, Respondents have arbitrarily treated certain applicants differently than others without any factual basis or rational reason for doing so.

31. Respondents have therefore inconsistently applied MRTA §76 in an arbitrary and capricious manner.

**AS AND FOR A SECOND CAUSE OF ACTION:
DECLARATORY JUDGMENT.**

32. Petitioners repeat, reallege and incorporate each paragraph hereinbefore mentioned.

33. Respondents waiving of MRTA §76's requirement of a municipally-notified dispensary location for CAURD applicants was unreasonable, lacking factual justification, and in direct contravention with MRTA.

34. In waiving MRTA §76 for some applicants and not others, Respondents have acted in contravention of the statute and outside of the scope of their statutory authority.

35. An actual and justiciable controversy exists among the parties as to which a declaratory judgment setting forth respective rights and obligations under MRTA is necessary and appropriate pursuant to CPLR §3001.

36. Petitioners are injured parties as a result of Respondents' actions, specifically in Respondents having waived MRTA §76 requirements for CAURD and provisional applicants. As such, Petitioners have an interest relating to the subject matter of the action.

37. Accordingly, Petitioners request a declaration that Respondents' actions in waiving of MRTA §76 requirements for CAURD and provisional applicants were unlawful, and any and all licenses improperly granted pursuant to this program are invalid.

NO PRIOR APPLICATION


38. No prior requests for this relief have been made to this or any other court.

WHEREFORE, Petitioners respectfully request that this Court enter Judgment granting the Petition/Complaint in its entirety and awarding Judgment to the Petitioners as follows:

- A. Declaring Respondents' failure to enforce MRTA §76 to all applicants equally arbitrary and capricious as it was issued without rational basis in fact or law, in excess of Respondents' jurisdiction and outside of the scope of its regulatory authority, and annulling all licensure applications improperly granted in their entirety;
- B. Declaring Respondents' actions in waiving of MRTA §76 requirements for CAURD applicants were unlawful, and any and all licenses improperly granted pursuant to this program are invalid;
- C. Temporarily and preliminarily enjoining Respondents from awarding any adult-use cannabis retail licenses without a physical location and municipal notification through the conclusion of this proceeding;
- D. Awarding damages, costs and disbursements to Petitioners, including reasonable attorney's fees; and
- E. Granting such other and further relief, as this Court shall deem just, proper or equitable.

Dated: May 9, 2024
Buffalo, New York

RUPP PFALZGRAF LLC
Attorneys for Petitioners-Plaintiffs

By: 

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ATTORNEY VERIFICATION

STATE OF NEW YORK)
 : ss.
COUNTY OF ERIE)

I, Marc A. Romanowski, Esq., make the following affirmation, under penalty of perjury:

I am an attorney with Rupp Pfalzgraf LLC, attorneys for Organic Blooms, LLC, Niagara Nugget, LLC, Blackmark, LLC, and Windward Management, LLC. I have read the foregoing Verified Petition/Complaint and know its contents. The document is true to my own knowledge, except as to matters stated to be on information and belief. The basis for matters stated on information and belief is my investigation of the subject matter of this action.

This verification is made by me because the Petitioners-Plaintiffs reside outside the county where I maintain my office.

Dated: May 9, 2024
Buffalo, New York



Marc A. Romanowski, Esq.