IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

Case No. 1D19-1772
Lower Tribunal Case Nos.: DOAH 18-4471; DOH 18-0172

LOUIS DEL FAVERO ORCHIDS, INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF HEALTH, an executive branch agency of the State of Florida and SPRING OAKS GREENHOUSES, INC.,

Appellees.

APPELLANT'S MOTION TO CONSOLIDATE AND EXPEDITE APPEALS

Appellant, Louis Del Favero Orchids, Inc., pursuant to Florida Rule of Appellate Procedure 9.300, hereby moves this Court to consolidate for all purposes the above-styled appeal with the appeals pending before this Court in *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Dewar Nurseries, Inc.*, Case No. 19-1777; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and DeLeon's Bromeliads, Inc.*, Case No. 1D19-1778; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Hart's Plant Nursery, Inc.*, Case No. 19-1780; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Perkins Nursery, Inc.*, Case No. 19-1781; *Louis Del Favero Orchids, Inc. v.*

Florida Department of Health and Redland Nursery, Inc., Case No. 19-1782; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Tree King-Tree Farm, Inc.*, Case No. 19-1783; and, *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Bill's Nursery, Inc.*, Case No. 19-1784.

Additionally, pursuant to Florida Rule of Appellate Procedure 9.300, Appellant hereby moves this Court to expedite these appeals in the interest of justice and to prevent further delay.

BACKGROUND

In 2016, Florida voters overwhelmingly approved a constitutional amendment legalizing the use of medical marijuana for the treatment of debilitating conditions in Florida. *See* art. X, § 29, Fla. Const. In addition to legalizing the use of medical marijuana for qualifying patients, the amendment created a new category of business entities to engage in the lawful cultivation, production, and/or distribution of medical marijuana to qualifying patients, known as Medical Marijuana Treatment Centers ("MMTCs"). Art. X, § 29(b)(5), Fla. Const.

In a special session, the Florida Legislature passed Senate Bill No. 8-A, described as "an act relating to the medical use of marijuana." This act went into effect on June 23, 2017, and is codif ed at section 381.986, Florida Statutes.

Relevant to this case, section 381.986(8)(a)2., Florida Statutes (2018), created a limited class of ten licenses to be made available to certain qualifying applicants. Within this class, section 381.986(8)(a)3. specifically directs the Department to give a preference to MMTC applicants that own one or more facilities that are or were used for "the canning, concentrating, or otherwise processing of citrus fruit or citrus molasses." Notably, section 381.986(8)(a)2. directs the Department to license this class of ten approved applicants "**no later than"** October 3, 2017. (Emphasis added.) Over a year and a half after this deadline, the Department has yet to provide any notice of opening an application period where competing applications might be evaluated and compared.

Nevertheless, Appellant, eager to apply for a MMTC license and endeavoring to seek any advantage it could to secure one of only ten available licenses, purchased a Citrus Processing Facility in Safety Harbor, Florida for $750,000. After purchasing the citrus processing facility, Appellant, on October 8, 2018, filed a notice of MMTC registration with the Department of Health. Nine days later, on October 17, 2018, Appellant supplemented its notice by filing an application to operate a MMTC, along with an application fee in the amount of $60,830.

For months, Appellant heard nothing from the Department regarding its application.[1] Accordingly, pursuant to section 120.60(1), Florida Statutes (2018), which provides for licensure by default on any application for a license that is not approved or denied within ninety days, on January 17, 2019, Appellant notified the Department of its intent to claim licensure by default.

Five days later, after remaining silent for months, the Department sent a letter to Appellant's counsel, in which the Department admitted that it took no action on Appellant's application. *See* Appendix to Appellant's Motion at 52-53. In an attempt to explain itself, the Department wrote that it had not yet opened the application period, and therefore, had no duty to act on Appellant's application. The Department explained that it would publish notice to the public of when it would begin accepting applications, along with a deadline for doing so.

As of this filing, the Department has yet to publish notice of any application period. Despite failing to publish any notice of an application period opening, on April 19, 2019, the Department issued eight separate Final Orders that "incorporated by reference" a Joint Settlement Agreement between the Department and eight distinct MMTC applicants, wherein the Department agreed to grant

[1] Meanwhile, other litigation was taking place in circuit court, regarding the constitutionality of section 381.986, Florida Statutes. *See Florigrown, LLC v. Fla. Dep't of Health, Office of Med. Marijuana, et al.*, Case No. 2017-CA-2549 (Fla. 2d Cir. Ct. __). The Department fiercely defended the constitutionality of section 381.986, Florida Statutes, while simultaneously refusing to adhere to its requirements.

MMTC licenses to the eight applicants. These eight Final Orders are the subject of this appeal, as well as the appeals in Case Numbers 1D19-1777; 1D19-1778; 1D19-1780; 1D19-1781; 1D19-1782; 1D19-1783; and 1D19-1784.

These eight Final Orders came after the Department stated unequivocally in a prior administrative proceeding that at least six of these eight applicants did not qualify for a MMTC license under section 381.986(8)(a)2.a. *See* Appendix to Appellant's Motion at 15. Additionally, in that same prior administrative proceeding, the Department stated unequivocally that only two licenses, from the statutory pool of ten, remained.

In this appeal, as well as in Case Numbers 1D19-1777; 1D19-1778; 1D19-1780; 1D19-1781; 1D19-1782; 1D19-1783; and 1D19-1784, Appellant has challenged these Final Orders and the underlying Joint Settlement Agreement.[2]

ARGUMENT

Consolidation

Appellant respectfully requests this Court consolidate this case with Case Numbers 1D19-1777; 1D19-1778; 1D19-1780; 1D19-1781; 1D19-1782; 1D19-1783; and 1D19-1784.

[2] Appellant is not the only MMTC applicant that has been hamstrung by the Department's actions. Another MMTC applicant, Liner Source, Inc., has also appealed the Department's Final Orders to this Court. *See* Case Nos. 1D19-1810; 1D19-1811; 1D19-1812; 1D19-1813; 1D19-1814; 1D19-1815.

Because the appeal in this case, as well as the appeals in the aforementioned cases stem from the same Joint Settlement Agreement, it would be most efficient to consolidate the eight cases. There should be one record on appeal, and all eight cases should travel together and be heard by the same panel of this Court. Consolidating the appeals will not result in any delay, as the briefing has not yet begun in any of the cases.

Expedited Treatment

In addition to consolidation, Appellant respectfully requests this Court review these cases on an expedited basis.

Florida Rule of Appellate Procedure 9.300(d)(10) contemplates the filing of motions for expeditious review where the facts and circumstances demand it. Indeed, courts are "always willing to expedite appeals where the justice of the cause requires it." *Muniz v. Muniz*, 789 So. 2d 370, 373 n.2 (Fla. 3d DCA 2001) (Sorondo, J., concurring); *see also Schrader v. Fla. Keys Aqueduct Auth.*, 840 So. 2d 1050, 1054-55 (Fla. 2003) (granting motion to expedite appeal where appellee argued that timing was critical to receive certain state funding); *Perez v. Perez*, 769 So. 2d 389, 392 (Fla. 3d DCA 1999).

This Court has already recognized that cases stemming from this new constitutional amendment warrant expedited review. *See Fla. Dep't of Health, Office of Med. Marijuana Use v. Florigrown, LLC*, Case No. 1D18-4471, order

expediting appeal, entered Dec. 18, 2018. The Court should do the same in this case, where the Department has now issued eight MMTC licenses after previously representing that only two licenses remained and that it was not yet accepting MMTC applications, all without considering Appellant's MMTC application submitted almost a year ago.

Appellant has expended significant resources to comply with the statutes and regulations that govern MMTC licensure in Florida. However, at every turn, the Department has either unjustifiably delayed the process or taken actions that directly contradict its earlier representations to Appellant.

The justice of the cause requires that this Court expedite this appeal. *See Muniz*, 789 So. 2d at 373 n.2 (Sorondo, J., concurring).

Appellant is authorized to represent that the Department, Spring Oaks Greenhouses, Inc., Perkins Nursery, Inc., DeLeon's Bromeliads, Inc., Redland Nursery Inc., Dewar Nurseries, Inc., Tree King-Tree Farm, Inc., Bill's Nursery, Inc., and Hart's Plant Nursery, Inc. oppose this motion and will file written responses.

CONCLUSION

Because this and the aforementioned appeals all stem from the same Joint Settlement Agreement, the Court should consolidate these cases. Additionally, to prevent further delay, and consistent with this Court's prior ruling in *Florida*

Department of Health, Office of Medical Marijuana Use v. Florigrown, LLC, Case No. 1D18-4471, the Court should expedite these appeals.

WHEREFORE, Appellant respectfully requests that this Court:

a. Consolidate, for all purposes, this case with Case Nos. 1D19-1777; 1D19-1778; 1D19-1780; 1D19-1781; 1D19-1782; 1D19-1783; and 1D19-1784; and

b. Expedite these appeals.

Respectfully submitted this 28th day of May, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 28, 2019, a copy of the foregoing was furnished via e-mail to the following:

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