

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

LINER SOURCE, INC.

Appellant/Petitioner,

Case No.: 1D19-1814

L.T. No.'s: DOAH Case No.: 18-4471

DOH Case No.: 2018-0172

v.

SPRING OAKS GREENHOUSES, INC.
and DEPARTMENT OF HEALTH

Appellee/Respondent,

APPELLANT'S MOTION TO CONSOLIDATE APPEALS

Appellant, Liner Source, 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 *Liner Source, Inc. v. Florida Department of Health and Dewar Nurseries, Inc.*, Case No. 19-1811; *Liner Source, Inc. v. Florida Department of Health and DeLeon's Bromeliads, Inc.*, Case No. 1D19-1815; *Liner Source, Inc. v. Florida Department of Health and Tree King-Tree Farm, Inc.*, Case No. 19-1813; *Liner Source, Inc. v. Florida Department of Health and Perkins Nursery, Inc.*, Case No. 19-1812; *Liner Source, Inc. v. Florida Department of Health and Bill's Nursery, Inc.*, Case No. 19-1810.

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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 codified at section 381.986, Florida Statutes (“Implementing Statute”).

The Implementing Statute created a limited class of ten licenses to be made available to certain qualifying applicants. Notably, the Implementing Statute directs the Department to license this class of ten approved applicants “no later than” October 3, 2017. (Emphasis added.) Almost two years 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, ready to apply for a MMTC license submitted its registration/application to operate a MMTC on October 8, 2018¹. For months, Appellant heard nothing from the Department regarding its registration/application.² At the end of March 2019, the Department sent a letter to Appellant's counsel, in which the Department stated that it was not accepting applications for MMTC registration. 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

¹ This was LSI’s second registration attempt. Pursuant to the “application process” contained in Section 381.986, Florida Statutes (2014), LSI went to the Office of Medical Marijuana’s address on the statutorily defined due date of October 3, 2017 to hand deliver its “application”/registration and application fee. At that time, a Department representative informed LSI that the OMMU office was not located at that address, refused to give any additional information and would not accept the “application”/registration and instead directed LSI to drop the highly confidential “application”/registration and application fee in an unattended and unsecure dropbox. LSI attempted to contact the OMMU office directly via telephone to accept the “application”/registration to no avail.

² 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.

and eight distinct MMTC applicants, wherein the Department agreed to grant MMTC licenses to the eight applicants. Six of these eight Final Orders are the subject of this appeal, as well as the appeals in Case Numbers 1D19-1810; 1D19-1811; 1D19-1812; 1D19-1813; and 1D19-1815.

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 the Implementing Statute. 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 1D19-1810; 1D19-1811; 1D19-1812; 1D19-1813; and 1D19-1815, Appellant has challenged these Final Orders and the underlying Joint Settlement Agreement.³

ARGUMENT

Consolidation

Appellant respectfully requests this Court consolidate this case with Case Numbers 1D19-1810; 1D19-1811; 1D19-1812; 1D19-1813; and 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

³ Another MMTC applicant, Louis Del Favero Orchids, Inc., has also appealed the Department's Final Orders to this Court. *See* Case Nos. 1D19-1772; 1D19-1777; 1D19-1778; 1D19-1780; 1D19-1781; 1D19-1782; 1D19-1783; 1D19-1784.

to consolidate the six cases. Allowing all six cases to travel together and be heard by the same panel of this Court will expedite the matters, minimize the cost of litigation and eliminate unnecessary repetition and confusion. Consolidating the appeals will not result in any delay, as Initial Briefs have not yet been filed in the matters.

Appellant has reached out to counsel for the Department who has stated that it has no position on the requested relief. Appellant has reached out to counsel for Spring Oaks Greenhouses, Inc. but has not received Spring Oak's position as of the time of this filing.

CONCLUSION

Based on the foregoing and that the aforementioned appeals all stem from the same Joint Settlement Agreement, Appellant respectfully request that this Court consolidate these cases.

WHEREFORE, Appellant respectfully requests that this Court:

a. Consolidate, for all purposes, this case with Case Nos. 1D19-1810; 1D19-1811; 1D19-1812; 1D19-1813; and 1D19-1815.

Respectfully submitted this 12th day of August, 2019.

PEARSON DOYLE MOHRE & PASTIS LLP

/s/ Karl E. Pearson

Karl E. Pearson, Esq.

Florida Bar No.: 438669

kpearson@pdmplaw.com

vskinner@pdmplaw.com
Courtney M. Crossland, Esq.
Florida Bar No.: 88596
ccrossland@pdmplaw.com
crussell@pdmplaw.com
485 N. Keller Road, Suite 401
Maitland, Florida 32751
Telephone: (407) 647-0090
Facsimile: (407) 647-0092
Attorney for Liner Source, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2019, a true and correct copy of the above and foregoing was electronically filed through the Florida Courts E-Filing Portal which will send a notice of electronic filing to all parties listed on the attached Service List.

PEARSON DOYLE MOHRE & PASTIS LLP

/s/ Karl E. Pearson
Karl E. Pearson, Esq.
Florida Bar No.: 438669
kpearson@pdmplaw.com
vskinner@pdmplaw.com
Courtney M. Crossland, Esq.
Florida Bar No.: 88596
ccrossland@pdmplaw.com
crussell@pdmplaw.com
485 N. Keller Road, Suite 401
Maitland, Florida 32751
Telephone: (407) 647-0090
Facsimile: (407) 647-0092
Attorney for Liner Source, Inc.

SERVICE LIST

<p>JOHN LOCKWOOD, ESQUIRE THOMAS J. MORTON, ESQUIRE THE LOCKWOOD LAW FIRM 106 EAST COLLEGE AVENUE SUITE 810 TALLAHASSEE, FLORIDA 32301 JOHN@LOCKWOODLAWFIRM.COM TJ@LOCKWOODLAWFIRM.COM <i>Counsel for Spring Oaks Greenhouses, Inc.</i></p>	<p>SEAN FRAZIER, ESQUIRE MARC ITO, ESQUIRE PARKER, HUDSON, RAINER & DOBBS LLP 215 SOUTH MONROE STREET SUITE 750 TALLAHASSEE, FLORIDA 32301 SFRAZIER@PHRD.COM MITO@PHRD.COM <i>Counsel for Louis Del Favero Orchids, Inc.</i></p>
<p>EDUARDO LOMBARD, ESQUIRE RADEY LAW FIRM 301 S. BRONOUGH STREET SUITE 200 TALLAHASSEE, FLORIDA 32301 ELOMBARD@RADEYLAW.COM <i>Counsel for Department of Health</i></p>	<p>GLENN BURHANS, JR., ESQUIRE GIGI ROLLINI, ESQUIRE STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A. HIGHPOINT CENTER 106 EAST COLLEGE AVENUE SUITE 700 TALLAHASSEE, FLORIDA 32301 GBURHANS@STEARNSWEAVER.COM GROLLINI@STEARNSWEAVER.COM <i>Counsel for East Coast Packers LLC</i></p>
<p>WILLIAM N. SPICOLA, ESQUIRE 204 SOUTH MONROE STREET SUITE 201 TALLAHASSEE, FLORIDA 32301 WILLIAMSPICOLAPA@GMAIL.COM <i>Counsel for Caribbean Distillers, LLC d/b/a Florida Distillers</i></p>	

