

DOCKET NO.: HHB-CV-22-6074406-S SUPERIOR COURT
LEAF CT LLC :
v. : JUDICIAL DISTRICT OF
SOCIAL EQUITY COUNCIL : NEW BRITAIN
: TAX AND ADMINSTRATIVE
: APPEALS SESSION

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: AUGUST 8, 2023

MEMORANDUM OF DECISION

In the two above captioned administrative appeals, the plaintiff, Leaf CT LLC (Leaf) appeals the denial by the defendant, the Social Equity Council (SEC), of Leaf's applications for a cannabis cultivator license¹, see HHB-CV-22-6074406-S, and a cannabis hybrid retailer license², see HHB-CV-22-6074907-S, under the Responsible and Equitable Regulation of Adult-Use Cannabis Act (RERACA).³ Because the reason for the SEC's denial of Leaf's two applications is the same – namely, that Leaf failed to demonstrate that its chosen social equity

¹ See General Statutes § 21a-420(13).

² See General Statutes § 21a-420(29).

³ See P.A. 21-1; General Statutes § 21a-420 et seq.

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applicant,⁴ Nicholle West, lived in a disproportionately impacted area (DIA)⁵ for “not less than five of the ten years immediately preceding [Leaf’s] application” – the court decides both of the above captioned appeals in this single memorandum of decision.⁶ In support of its appeals, Leaf argues that (1) the SEC’s denial of Leaf’s applications violates RERACA § 21a-420d(f) requiring that the SEC encourage participation in the cannabis industry by persons living in DIA communities; (2) the SEC violated the notice of hearing provisions of RERACA § 21a-421p(c); (3) the SEC violated Leaf’s due process rights by refusing to allow Leaf to amend its applications; and (4) the SEC’s refusal to allow Leaf to amend its application was arbitrary and capricious because the SEC allowed, indeed encouraged, applicants denied equity joint venture (EJV) licenses⁷ to amend their applications. For the reasons set forth below, the court rejects each of Leaf’s arguments. Therefore, the court dismisses both of Leaf’s appeals.

FACTS

The administrative records before the court demonstrates the following facts as relevant to this memorandum of decision which, except where noted, are not in dispute.

⁴ See General Statutes § 21a-420(48).

⁵ See General Statutes § 21a-420(17).

⁶ Both appeals were argued together.

⁷ See General Statutes § 21a-420u.

Leaf is a limited liability company. Nicholle West owns a 65% membership share of Leaf. On May 3, 2022, Leaf filed two applications with the SEC seeking to be designated as a social equity applicant for a cannabis cultivator license and a cannabis hybrid retailer license. See Return of Record (ROR), at 251-261, (HHB-CV-22-6074406-S) (herein after, the “Cultivator Appeal”); ROR, at 240-249 (HHB-CV-22-6074907-S) (herein after the “Hybrid Retailer Appeal”). In both applications, Leaf based its qualification as a social equity applicant on Ms. West. As relevant to these appeals, in order to qualify as a social equity applicant, Ms. West must demonstrate that she “was a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application.” See § 21a-420(48).⁸ The instructions on both of the applications submitted by Leaf to the SEC state in the “important definitions” section of the applications that a “social equity applicant” is defined as “a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application.” See ROR, at 253 (Cultivator Appeal); ROR, at 241 (Hybrid Retailer Appeal). Additionally, Leaf’s application in the Cultivator Appeal defines “social equity applicant,” under the “Equity Joint Venture” section as “a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application.” ROR, at 253 (Cultivator Appeal); see also ROR at 255 (defining social equity applicant as “must have been residents

⁸ The parties agree that Leaf meets the income and ownership requirements for social equity applicant status. See § 21a-420(48). See also ROR, at 380-381 (Cultivator Appeal); ROR, at 350-351 (Hybrid Retailer Appeal).

of a disproportionately impacted area for at least [] five of the 10 years immediately before applying for the license....); see also ROR at 254 (defining social equity applicant as “they must have been residents of a disproportionately impacted area for at least [] five of the 10 years immediately before applying for the license....). Also, in the “Social Equity Council Requirements” section of the application filed by Leaf in the Hybrid Retailer Appeal, “social equity applicant” is defined as “a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application.” See ROR, at 242. Similarly, in the “Social Equity Applicant (SEA) Residency Verification” section of the application filed by Leaf in the Hybrid Retailer Appeal, “social equity applicant” is defined as “they must have been residents of a disproportionately impacted area for at least [] five of the 10 years immediately before applying for the license....” See ROR, at 243 (Hybrid Retailer Appeal); see also id. at 247 (stating the same definition of “social equity applicant.”).

In support of her application to be considered a social equity applicant, Ms. West submitted the following relevant documents: (1) a federal W-2 tax form from 2018 showing an address on Pine Street in Waterbury; (2) tax returns for 2019, 2020, and 2021 showing the same Pine Street, Waterbury address; (3) a mortgage statement dated February of 2022 showing the Pine Street, Waterbury address; and (4) a Connecticut driver’s license issued in February of 2022 showing the Pine Street, Waterbury address. The SEC accepted the 2019, 2020, and 2021 tax returns as sufficiently demonstrating that Ms. West lived in Waterbury for the entirety of those three years (2019, 2020, and 2021). Nevertheless, the SEC concluded that Ms. West’s February 2022 license and February 2022 mortgage statement only

demonstrated Ms. West's residence in Waterbury up to the date of those documents, i.e., up to February of 2022, not for the entire year of 2022. Finally, the SEC concluded that Ms. West's 2018 W-2 form was not sufficient evidence to demonstrate that she resided in Waterbury in 2018 at any time during that year (2018). The SEC concluded that Ms. West's W-2 was mailed to Ms. West at the Pine Street address after the close of the 2018 tax year, or, in other words, sometime in 2019. Ms. West's 2018 W-2 nowhere states that, at the time Ms. West earned the wages set forth on the 2018 W-2, she was living at the Pine Street address. On the basis of the documents submitted by Leaf/Ms. West, the SEC concluded that Leaf had demonstrated that Ms. West had resided in a DIA (Waterbury) for a total of 3.1 years (all of 2019, all of 2020, all of 2021, and until February of 2022) of the 10 years preceding Leaf's two applications. See ROR, at 379 (Cultivator Appeal); ROR, at 349 (Hybrid Retailer Appeal).

On August 19, 2022, the SEC sent a letter to Leaf informing Leaf that the SEC had determined that Leaf did not qualify as a social equity applicant under § 21a-420(48). ROR, at 347 (Hybrid Retailer Appeal).

LEGAL STANDARD

The scope of judicial review in an administrative appeal is generally confined to the record. See General Statutes § 4-183(i) (“[t]he appeal shall be conducted by the court without a jury and shall be confined to the record.”). “An appeal from an administrative tribunal should ordinarily be determined upon the record of that tribunal, and only when that record fails to present the hearing in a manner sufficient for the determination of the merits of the

appeal, or when some extraordinary reason requires it, should the court hear the evidence.”
(Internal quotation marks omitted.) *Adriani v. Commission on Human Rights & Opportunities*, 220 Conn. 307, 325-26, 596 A.2d 426 (1991).

“Judicial review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency’s findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . This so-called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . [I]t imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and to provide a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action. . . . The United States Supreme Court, in defining substantial evidence in the directed verdict formulation, has said that it is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. . . . This substantial evidence rule is embodied in General Statutes § 4-183 (j) (5) and (6)”
(Internal quotation marks omitted.) *Commission on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, 352, 680 A.2d 1261 (1996).

“[E]vidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred . . . [The substantial evidence

rule] imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and to provide a more restrictive standard of review” (Internal quotation marks omitted.) *Samperi v. Inland Wetlands Agency*, 226 Conn. 579, 588, 628 A.2d 1286 (1993). A court shall not substitute its judgment for that of the subject agency as to the weight of evidence on questions of fact and it shall affirm the agency’s decision unless it finds that substantial rights of the appellant have been prejudiced. See General Statutes § 4-183(i). “The question is not whether the trial court would have reached the same conclusion, but whether the record before the agency supports the decision reached.” *Calandro v. Zoning Commission*, 176 Conn. 439, 440, 408 A.2d 229 (1979) (citing *Conley v. Board of Education*, 143 Conn. 488, 492, 123 A.2d 747 (1956)).

“[A]s to questions of law, [t]he court’s ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts.” (Internal quotation marks omitted.) *MacDermid, Inc. v. Dept. of Environmental Protection*, 257 Conn. 128, 137, 778 A.2d 7 (2001). In making this determination, the court must “defer to the agency’s assessment of the credibility of witnesses.” *Miko v. Commission on Human Rights & Opportunities*, 220 Conn. 192, 200, 596 A.2d 396 (1991).

LEGAL ANALYSIS

a. Violation of RERACA § 21a-420d(f)

Leaf argues that the SEC violated RERACA § 21a-420d(f) stating the general instruction that the “council shall promote and encourage full participation in the cannabis industry by persons from communities that have been disproportionately harmed by cannabis prohibition and enforcement.” The court is not convinced.

Leaf’s argument is premised on two false assumptions: (1) that, for purposes of this appeal, Ms. West meets the DIA residency requirements necessary to qualify as a social equity applicant; and (2) that § 21a-420(48)’s requirement that a social equity applicant reside in a DIA “not less than five of the ten years immediately preceding the date of [an] application” is ambiguous and, therefore, its meaning must be construed in favor of Ms. West, who is (in Leaf’s view) a DIA resident whom the SEC is statutorily bound to assist pursuant to § 21a-420d(f).

As set forth above, a superior court’s review of an administrative agency’s decision is confined to the record before that agency. Here, Leaf bases its assertion that Ms. West was in fact a resident of a DIA for the appropriate amount of time under § 21a-420(48) on an affidavit submitted in this appeal only, not any evidence submitted to the administrative agency. See Doc. No. 112.00 Ex. 2, ¶ 7, *Id.* at Ex. 2, Exs. A, B. Ms. West’s affidavit asserting that she has been a resident of Waterbury continuously since 2005 is not part of the administrative record in this case, was not submitted to the SEC at the administrative level, and, therefore, cannot be considered by this court. Indeed, Leaf attempted to supplement the

administrative record with Ms. West's affidavit in the Cultivator Appeal, see Doc. No. 112.00 (Cultivator Appeal), and that request was denied by Judge Cordani in a written order. See Doc. No. 112.10 (Cultivator Appeal). Leaf made no similar request to supplement the record in the Hybrid Retailer Appeal. To the extent Leaf seeks to take advantage of § 4-183(i)'s authorization of evidence outside the record where "alleged irregularities in procedure before the agency are not shown in the record," the court rejects that argument. Leaf is not offering Ms. West's affidavit as evidence of a procedural irregularity committed by the SEC which the court would not otherwise be able to see in the existing administrative record. Instead, Leaf plainly seeks to offer Ms. West's affidavit as substantive evidence in support of a fact Leaf failed to prove at the administrative level, i.e., that Ms. West has been a resident of Waterbury continuously since 2005. Section 4-183(i) cannot be used to correct a failure to meet one's evidentiary burden before the administrative agency.

Turning to Leaf's argument that the SEC's instruction that social equity applicants "must have been residents of a disproportionately impacted area for at least [] five of the 10 years immediately before applying for the license..." is ambiguous, the court fails to perceive the ambiguity. The court concludes that the SEC's instruction is clear on its face, as is, the court concludes, § 21a-420(48)'s statutory mandate that a social equity applicant must be "a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application." As relevant to these appeals, the plain meaning of the SEC's instructions and § 21a-420(48)'s statutory terms are that a social equity applicant must be a resident of a DIA for at least five of the 10 years preceding the date of the

application, not simply for some lesser portion of the five years preceding the application. “A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings. . . . When the plain meaning and intent of the language is clear, a clause . . . cannot be enlarged by construction. There is no room for construction where the terms of a writing are clear and unambiguous, and it is to be given effect according to its language.” (Internal quotation marks omitted.) *Hansen v. Hansen*, 80 Conn. App. 609, 612, 836 A.2d 1228 (2003). Here, the court concludes that the meaning of the SEC’s instructions and § 21a-420(48)’s terms is clear. A social equity applicant must live in a DIA for a full five years preceding the date of the application.

Moreover, the court concludes that the interpretation of RERACA’s social equity applicant residency requirements proffered by Leaf would lead to absurd results and contravene the purpose of RERACA § 21a-420d(f). Leaf asserts that the SEC’s instruction regarding the DIA residency requirements for a social equity applicant is ambiguous because it could mean that a social equity applicant must only live in a DIA for some (unspecified) period of time during five of the ten years preceding an application. In other words, Leaf argues that the SEC’s instruction explaining § 21a-420(48) could reasonably be interpreted as requiring Ms. West to demonstrate only that she lived in Waterbury for as little as one day during five of the ten years preceding her application, i.e., one day in 2018, one day in 2019, one day in 2020, one day in 2021, one day in 2022. Indeed, Leaf argues that this is exactly how it reasonably interpreted the SEC’s instruction. See Doc. No. 119.00, at 8 (Cultivator

Appeal; Doc. No. 120.00, at 8 (Hydrid Retailer Appeal). The court finds that such an interpretation of the SEC's instructions and the terms of § 21a-420(48) would contravene the purpose of RERACA § 21a-420d(f).

Section 21a-420d(f) requires that the SEC encourage participation in the cannabis industry "by persons from communities that have been disproportionately harmed by cannabis prohibition and enforcement." If the court were to accept Leaf's proffered interpretation of § 21a-420(48), persons could live in a DIA for extraordinarily short periods of time (perhaps as little as five days spread out over five years) and still qualify for social equity applicant status. In light of the SEC's statutory mandate to assist "persons from communities that have been disproportionately harmed by cannabis prohibition and enforcement," that is an absurd result. A person cannot be reasonably thought to be from a DIA community, or to have experienced the harmful effects of cannabis prohibition and enforcement, after spending such short periods of time in that community. The court concludes that the legislature did not intend § 21a-420(48)'s provisions to be interpreted in a manner that would contravene the legislature's purpose in including social equity status as part of RERACA in the first instance.

For clarity and completeness, the court finds that there is substantial evidence in the record supporting the SEC's conclusion that Ms. West resided in Waterbury for only three years and two months (from the beginning of 2019 through February of 2022) based on the 2019, 2020 and 2021 tax returns and the mortgage statement and driver's license from February of 2022. The court also finds that it was a reasonable conclusion and a reasonable factual inference for the SEC to conclude that a W-2 for the 2018 tax year was mailed to Ms.

West's mailing address in 2019 (after completion of the 2018 tax year) and that Ms. West's 2018 W-2 did not otherwise contain evidence that she lived in Waterbury in 2018.

b. Violation of RERACA § 21a-421p(c)

Leaf argues that the SEC failed to comply with the notice provisions of RERACA § 21a-421p(c). Section 21a-421p(c) states, in relevant part, that “[u]pon refusal to issue or renew a license or registration, the commissioner shall notify the applicant of the denial and of the applicant’s right to request a hearing within ten days from the date of receipt of the notice of denial.” By its express terms, § 21a-421p(c) applies only to license or registration denials and imposes notice obligations only on the Commissioner of Consumer Protection. See General Statutes § 21a-420(10). Section 21a-421p(c) does not impose notice obligations on the SEC, which is an independent statutory body created by RERACA § 21a-420d and which is administratively part of the Department of Economic and Community Development. See General Statutes § 21a-420d(a). The SEC did not violate the notice provisions of § 21a-421p(c) because the SEC has no notice obligations under § 21a-421p(c), nor was Leaf denied any license or registration by the SEC.

c. Violation of Leaf’s Due Process Rights

Leaf argues that the SEC violated its due process rights because (1) Leaf reasonably misinterpreted the SEC’s instructions with respect to DIA residency requirements, and (2) the SEC refused to allow Leaf to supplement its application for social equity applicant status. The court rejects Leaf’s argument regarding its misinterpretation of the DIA residency requirements for the reasons set forth in section a. of this memorandum of decision.

With respect to Leaf's argument that the SEC refused to allow Leaf to amend its application to provide additional evidence supporting Ms. West's residency in a DIA, the court concludes that it can find no evidence in the administrative record that Leaf ever requested such an amendment. Indeed, the only evidence in the record is that the SEC allowed Leaf to amend its application to add evidence demonstrating that Ms. West owned at least 65% of Leaf. See ROR, at 380-381 (Cultivator Appeal); ROR, at 350-351 (Hybrid Retailer Appeal). The court can find no evidence in the record that Leaf made a similar request to amend its application with respect to Ms. West's DIA residency, despite knowing that the SEC had rejected this portion of Leaf's application. See ROR, at 378-379 (Cultivator Appeal); ROR, at 348-349 (Hybrid Retailer Appeal). Leaf cites no statutory or common law authority for the proposition that an administrative agency has an affirmative duty to contact an applicant to solicit amendments or corrections to an otherwise defective administrative application.

Additionally, although no constitutional due process right exists in an administrative proceeding, our Connecticut Supreme Court has "recognized a common-law right to fundamental fairness in administrative hearings." *Grimes v. Conservation Commission of the Town of Litchfield*, 243 Conn. 266, 273, 703 A.2d 101 (1997). "The only requirement [in administrative proceedings] is that the conduct of the hearing shall not violate the fundamentals of natural justice. Fundamentals of natural justice require that 'there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary. . . .'" (internal

citations omitted.) Id; see also *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669, 711, 99 A.3d 1038 (2014) (“The right to fundamental fairness in administrative proceedings encompasses a variety of procedural protections. . . . In a number of administrative law cases . . . we have characterized these procedural protections as ‘due process’ rights. . . . Although the ‘due process’ characterization, at first blush, suggests a constitutional source, there is no discussion in these cases of a property interest in terms of constitutional due process rights. These decisions are, instead, based on a line of administrative law cases and reflect the development, in Connecticut, of a common-law right to due process in administrative hearings . . . [that] is not coextensive with constitutional due process.”).

Here, the court concludes that the SEC did not violate any notions of fundamental fairness by failing to affirmatively contact Leaf to solicit corrections to deficiencies in Leaf’s social equity applicant application. Fundamental fairness requires only notice, an opportunity to present evidence, and an opportunity to cross examine an adversary. See *Grimes*, supra, 243 Conn. 273. There is no dispute that Leaf received notice of its opportunity to file a social equity applicant application and the court has found that the instruction on how to do so is clear on its face. Leaf had an opportunity to present its evidence in support of its social equity applicant and there was no adversary or contrary evidence to cross examine.

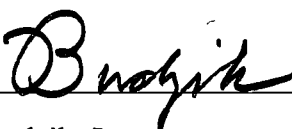
d. Refusal to allow Leaf to Amend its Application

Leaf argues that an alleged SEC decision not to allow Leaf to amend its social equity applicant application was arbitrary, capricious, and an abuse of discretion. As set forth in

section c. of this memorandum of decision, the court can find no evidence in the administrative record that Leaf ever requested that the SEC allow Leaf to amend its application to present additional information on Ms. West's residency in a DIA. Therefore, the court concludes that the SEC made no decision not to allow Leaf to amend its application with respect to Ms. West's residence in a DIA and, thus, there is no decision by the SEC that could be considered arbitrary, capricious, or an abuse of discretion. To the extent Leaf argues that the SEC's policy of affirmatively encouraging applicants denied equity joint venture (EJV) licenses to amend their applications was arbitrary and capricious because it treated EJV applicants differently than social equity applicants, the court disagrees. The process and procedure for applying for social equity applicant status is set forth in General Statutes § 21a-420g. The process and procedure for qualifying as an EJV is set forth in General Statutes § 21a-420u. Each statute sets out different requirements and different procedures to apply for each, separate designation. Therefore, the court concludes social equity applicants are not similarly situated to EJV applicants such that it would be arbitrary and capricious for the SEC, in its discretion, to have differing application procedures.

CONCLUSION

For all the foregoing reasons, this appeal is dismissed. A copy of this memorandum of decision shall be filed on the docket in both appeals.



Budzik, J.