

DOCKET NO. HHB CV 23-6080040-S

SOUTHFORK LLC, AND
RESOURCE RECYCLING, LLC

v.

SOCIAL EQUITY COUNCIL

: SUPERIOR COURT

:

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: J.D. OF NEW BRITAIN

:

:

:

: OCTOBER 23, 2023

MOTION TO DISMISS

Under Practice Book § 10-30, Defendant, Social Equity Council (“Council”), moves to dismiss the administrative appeal filed by Plaintiffs Southfork LLC (“Southfork”) and Resource Recycling, LLC (“Resource”) (collectively, the “Plaintiffs”) for lack of subject matter jurisdiction. The Court lacks subject matter jurisdiction to adjudicate an administrative appeal against the defendants under Conn. Gen. Stat. § 4-183 because the legislature has not provided a right to appeal the Council’s denial of an equity joint venture (“EJV”) application. See Conn. Gen. Stat. § 21a-420m. Even if the Court were to find that it has subject matter jurisdiction, it should dismiss plaintiff Resource’s appeal because it failed to file an appeal within forty-five days of the Council’s decision to deny its application, as required under the Uniform Administrative Procedure Act, Conn. Gen. Stat. § 4-183(c).

DEFENDANT

SOCIAL EQUITY COUNCIL

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: J.D. OF NEW BRITAIN

v.

SOCIAL EQUITY COUNCIL

: OCTOBER 23, 2023

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

In this administrative appeal filed pursuant to Conn. Gen. Stat. §§ 4-183 and 21a-420g(g), plaintiffs Southfork LLC (“Southfork”) and Resource Recycling, LLC (“Resource”) allege that they are aggrieved by a decision on or about May 24, 2023, by the defendant Social Equity Council (the “SEC” or the “Council”), denying plaintiffs’ cannabis retailer equity joint venture (“EJV”) applications based on Conn. Gen. Stat. § 21a-420m(h) of the Responsible and Equitable Regulation of Adult-Use Cannabis Act (“RERACA”), Conn. Gen. Stat. § 21a-420 *et seq.* In enacting RERACA, the legislature did not provide a right to appeal under the Uniform Administrative Procedure Act (“UAPA”) for the denial of an EJV application. Conn. Gen. Stat. § 21a-420m. Accordingly, the Court lacks subject matter jurisdiction over this administrative appeal, thus, it should be dismissed.

Even if the Court finds that it has subject matter jurisdiction, plaintiff Resource failed to file an appeal within forty-five days of the Council’s decision to deny its application, as required under the UAPA. Therefore, the appeal as to Resource should be dismissed for lack of subject matter jurisdiction, irrespective of the Court’s decision as to Southfork.

BACKGROUND

A. The Social Equity Application Process Under RERACA

In 2021, the General Assembly passed RERACA, legalizing adult-use cannabis in Connecticut and creating a licensing system for the various entities in the cannabis supply chain with the Connecticut Department of Consumer Protection (“DCP”) as the licensing authority.

One of the goals of RERACA—and the primary goal of the Council—is to “promote and encourage full participation in the cannabis industry by persons from communities that have been disproportionately harmed by cannabis prohibition and enforcement.” Conn. Gen. Stat. § 21a-420d(f).

To that end, RERACA established certain opportunities for “social equity applicants,” such as lower license fees, access to certain financing opportunities, and eligibility for certain license categories. A “social equity applicant” is expressly defined in RERACA as:

a person that has applied for a license for a cannabis establishment, where such applicant is at least sixty-five per cent owned and controlled by an individual or individuals, or such applicant is an individual, who:

(A) Had an average household income of less than three hundred per cent of the state median household income over the three tax years immediately preceding such individual’s application; and

(B)

(i) Was a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application; or

(ii) Was a resident of a disproportionately impacted area for not less than nine years prior to attaining the age of eighteen.

Conn. Gen. Stat. § 21a-420(48) (Rev. to 2022).¹

Among other things, the Council is tasked with prescribing the documentation necessary for applicants to submit to establish that the applicable ownership, residency, and income requirements for social equity applicants are met. Conn. Gen. Stat. § 21a-420g(a). The Council is also responsible for reviewing such documentation necessary to confirm that an applicant

¹ Public Act No. 23-79 amended RERACA, effective July 1, 2023, including the definition of a social equity applicant. Conn. Gen. Stat. § 21a-420 *et seq.* (Rev. to 2022) is the relevant version of RERACA for the present appeal.

qualifies as a social equity applicant. Conn. Gen. Stat. § 21a-420g(a). Section 21a-420g sets forth the process for applying for social equity status: (1) DCP determines the number of licenses to be awarded for a particular cannabis establishment license—50% of which will be awarded to social equity applicants—and posts the application period on its website;² (2) a lottery is held to choose those applications for social equity consideration; and (3) applications for social equity consideration that are chosen through the lottery are forwarded to the Council, which then reviews and determines whether the applicants meet the social equity criteria. Conn. Gen. Stat. §§ 21a-420g(b) & (e) (Rev. to 2022). Not later than thirty days after the Council notifies an applicant of its determination that it does not qualify under the criteria as a social equity applicant, the applicant may appeal from such determination to the Superior Court. Conn. Gen. Stat. § 21a-420g(d)(1) (Rev. to 2022).

There is no question, therefore, that applicants disputing the Council's *determination of social equity status* have a right to an appeal to the Superior Court. Such is not the case, however, with equity joint ventures.

B. The Equity Joint Venture Application Process Under RERACA

Among the license types created under RERACA are EJV licenses, which permit joint ventures between certain cannabis establishments that hold medical marijuana licenses and social equity applicants.³ See Conn. Gen. Stat. §§ 21a-420m, 21a-420j, & 21a-420u (Rev. to 2022). The legislature created EJV licenses to encourage already licensed medical marijuana companies to partner with social equity applicants when expanding into

² The exception to this procedure was a certain class of cultivator licenses which were awarded at the commencement of the adult-use program. See Conn. Gen. Stat. § 21a-420o. Section 420o did not require a lottery and did not limit the number of licenses that could be awarded, but it also did not provide for this type of license to be awarded beyond the initial three-month application period.

³ RERACA defines an “Equity Joint Venture” as “a business entity that is at least fifty per cent owned and controlled by an individual or individuals, or such applicant is an individual, who meets the criteria of subparagraphs (A) and (B) of subdivision (48) of this section.” Conn. Gen. Stat. § 21a-420(22) (Rev. to 2022).

the adult-use cannabis market. RERACA permits the creation of EJVs for producers,⁴ dispensaries,⁵ and cultivators.⁶ Unlike other licenses created under RERACA, EJV applications to the Council are not required to be submitted in a prescribed time period and are not subject to a lottery. When submitted, the Council evaluates whether EJV applicants meet the social equity criteria. Conn. Gen. Stat. § 21a-420d(k).

Under its original iteration, RERACA did not restrict the number of EJVs that a producer could create through the license expansion permitted under Conn. Gen. Stat. § 21a-420/.⁷ On May 24, 2022, however, RERACA was amended to limit the number of EJVs that a producer receiving license expansion pursuant to § 21a-420/ could create. Conn. Gen. Stat. § 21a-420m(h); See P.A. 22-103, § 6. Section 21a-420m(h) provides:

No producer that receives license expansion authorization under section 21a-420/ shall create more than two equity joint ventures. No such producer shall apply for, or create, any additional equity joint venture if, on the effective date of this section, such producer has created at least two equity joint ventures that have each received a provisional license.

Conn. Gen. Stat. § 21a-420m(h).

The legislature placed a cap on EJVs to address a concern that large medical marijuana licensees could dominate the marketplace by applying for an unlimited number of EJVs. When proposing the amendment to the legislature, the Council provided the following testimony:

[b]y limiting the number of EJVs associated with a medical marijuana license, the state will open the market to a more diverse group of social equity cannabis establishments in terms of business ownership. By allowing medical marijuana licensees to create an unlimited number of EJVs, that may lead to market dominance of large medical licensees and a small number of social equity applicant owners. For example, under the current law, one medical marijuana producer could create twenty EJV retailers with one social equity qualified individual without going through the lottery process.

⁴ Conn. Gen. Stat. § 21a-420m (Rev. to 2022).

⁵ Conn. Gen. Stat. § 21a-420u (Rev. to 2022).

⁶ Conn. Gen. Stat. § 21a-420j (Rev. to 2022).

⁷ Conn. Gen. Stat. § 21a-420/ authorizes a licensed medical marijuana producer to expand their business through social equity partnerships.

Conn. Joint Standing Committee Hearings, General Law, Pt. 2, 2022 Sess., p. 993-94 (Testimony of Ginne-Rae Clay, Interim Executive Director of SEC, & Andrea Comer, Chair of SEC, dated March 8, 2022); *Id.*, p. 850, remarks of Representative Candelaria (explaining that legislature’s intent in enacting EJV cap was “to avoid a monopoly”).

None of the relevant statutes authorizing the creation of EJVs provide applicants the right to appeal a Council decision to deny their application. Conn. Gen. Stat. §§ 21a-420j, 21a-420m, & 21a-420u (Rev. to 2022). This is in stark contrast to Conn. Gen. Stat. § 21a-420g(e), which explicitly provides for a right to an appeal to lottery applicants. In the full context of RERACA, the distinction is significant and rational.

Under the original iteration of RERACA, EJV applicants that were denied based on social equity considerations were free to revise and resubmit their applications as many times as they wished as they were not subject to the time restrictions and lottery restraints that applied to other social equity applicants applying for non-EJV licenses. Thus, denied EJV applicants do not have the same economic interests at stake as non-EJV applicants, who cannot apply for social equity status again until another license application period is announced and whose application is dependent on selection through the social equity lottery.

Under the current statute, the Council is prohibited from approving more than two EJVs created by the same producer. Conn. Gen. Stat. § 21a-420m(h). The Council has no discretion to approve more than two EJVs. Under these circumstances, there is no relief a court could grant a denied EJV applicant. Accordingly, there is no rational reason why the statute would authorize a right to an appeal in the present matter.

C. Factual Background

The Plaintiffs and two additional Connecticut limited liability companies, UMN Equity Joint Venture (“UMN”) and Transformative Alliances, LLC (“TALL”), each formed itself as an EJV affiliated with licensed Connecticut medical cannabis producer Theraplant,

LLC. Compl. ¶ 3. Plaintiffs, UMN, and TALL submitted four separate applications for cannabis retailer EJV licenses pursuant to the producer license expansion in § 21a-420m on or about May 4, 2022. Compl. ¶ 4. Southfork and Resource's applications were assigned application numbers ACRE0014084 and ACRE0014614, respectively.⁸ Compl. ¶ 4. The Council denied Plaintiffs' applications ACRE0014084 and ACRE0014614 based on their failure to satisfy the ownership and control criteria. Compl. ¶ 5; Application Determination Report ("ADR") for Application ACRE0014084, Bates No. 00236-37. TALL and UMN were subsequently approved by the Council for EJV licensure in August 2022. Compl. ¶ 6.

On or about April 14, 2023, Southfork submitted a new application for an EJV retailer license, assigned number ACRE0015675. Compl. ¶ 7; Southfork Application ACRE0015675, Bates No. 00238-00586. Resource did not submit a new application. Compl. ¶ 13. On May 24, 2023, the Council denied Southfork's application ACRE0015675. Exhibit A. In the ADR, the Council cited Conn. Gen. Stat. § 21a-420m(h), stating that, "[t]he records of the SEC show that the Council has already approved the maximum number of two (2) equity joint ventures for the licensed dispensary/hybrid facility or producer applicant. Therefore, the SEC cannot approve this equity joint venture. Theraplant LLC has previously been approved for applications ACRE.0014925 and ACRE.0015079." Exhibit B.⁹

The Plaintiffs subsequently brought this action against the Defendant on June 23, 2023, citing to Conn. Gen. Stat. §§ 21a-420g(g) and 4-183 in their complaint.

⁸ In the complaint, Plaintiffs allege that Southfork's initial application was assigned Number "0015675." As illustrated in the Record, this is incorrect. Southfork's initial application was assigned ACRE0014084. ACRE0015675 is the application number assigned to Southfork's second application after the Council denied application ACRE0014084.

⁹ In the May 24, 2023 Denial Letter, the Council erroneously stated that Southfork had a right to appeal the denial pursuant to § 21a-420g(g). Exhibit A. As detailed more fully below, the statute cited by the Council does not provide a right to appeal the denial of an EJV application.

LEGAL STANDARD

Under Practice Book § 10-30, “[a] motion to dismiss shall be used to assert . . . lack of jurisdiction over the subject matter.” “A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” *Wilcox v. Webster Ins., Inc.*, 294 Conn. 206, 213 (2009). “[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.” *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n.12 (2003). “[O]nce the issue of subject matter jurisdiction is raised, it must be immediately acted upon by the court.” *Gurliacci v. Mayer*, 218 Conn. 531, 545 (1991). “Jurisdiction over the subject matter goes to the competency of a court to render a valid judgment.” *Park City Hosp. v. Comm’n on Hosp. & Health Care*, 14 Conn. App. 413, 419 (1988), *aff’d*, 210 Conn. 697 (1989). “The requirement of subject matter jurisdiction cannot be waived by any party and can be raised at any stage of the proceedings.” *Burton v. Dominion Nuclear Conn., Inc.*, 300 Conn. 542, 550 (2011).

ARGUMENT

I. THE COUNCIL DID NOT RENDER A “FINAL DECISION” UNDER THE UNIFORM ADMINISTRATIVE PROCEDURE ACT, CONN. GEN. STAT. § 4-183

In order for the Court to have subject matter jurisdiction under the UAPA, there must have been a final decision by the Council. The Council did not render a final decision in this matter.

The UAPA provides, in relevant part, that “[a] person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section.” Conn. Gen. Stat. § 4-183(a). “The UAPA grants the Superior Court jurisdiction over appeals of agency decisions only in certain limited and well delineated circumstances.” *Ferguson Mech. Co. v. Dep’t of Pub. Works*, 282

Conn. 764, 771 (2007). The Supreme Court has “consistently held that the Superior Court has jurisdiction only over appeals from a ‘final decision’ of an administrative agency.” *Derwin v. State Employees Retirement Comm’n*, 234 Conn. 411, 418 (1995).

The UAPA defines “final decision” as “the agency determination in a *contested case* The term does not include a preliminary or intermediate ruling or order of an agency, or a ruling of an agency granting or denying a petition for reconsideration.” (emphasis added) Conn. Gen. Stat. § 4-166(5); *East Hampton v. Dep’t of Public Health*, 80 Conn. App. 248, 254-55 (2003), cert. denied, 267 Conn. 915 (2004). Section 4-166(4) defines a “contested case” as “a proceeding . . . in which the legal rights, duties or privileges of a party are required by statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held” Conn. Gen. Stat. § 4-166(4).

“The test for determining contested case status [is] . . . well established and requires an inquiry into three criteria, to wit: (1) whether a legal right, duty or privilege is at issue, (2) and is statutorily [or regulatorily] required to be determined by the agency, (3) through an opportunity for hearing or in which a hearing is in fact held.” *High Watch Recovery Center, Inc. v. Dep’t of Public Health*, 347 Conn. 317, 328 (2023). “That is, the UAPA mandates, as a predicate for contested case status, that a party must have enjoyed a statutory right to a hearing.” *East Hampton v. Dep’t of Public Health*, supra, 80 Conn. App. 255. “A hearing is generally defined as a [p]roceeding of relative formality . . . generally public, with definite issues of fact and of law to be tried, in which . . . parties proceeded against have [a] right to be heard. . . . In order for a proceeding to qualify as a ‘hearing’ for the purposes of § 4-166[4], the party must have a statutory or regulatory right to be heard by the agency.” *Ferguson Mech. Co. v. Dep’t of Pub. Works*, supra, 282 Conn. 773.

The plain language of RERACA does not require that the Council conduct a hearing on EJV applications denied pursuant to § 21a-420m(h). See *New England Dairies, Inc. v. Comm’r of Agriculture*, 221 Conn. 422, 429 (1992) (holding that Superior Court was without jurisdiction

where plain language of statute did not require agency to hold a hearing). Section 21a-420d(k) tasks the Council with establishing and evaluating the criteria necessary to form an EJV. This section merely requires that the Council “review and approve or deny in writing such equity joint venture.” Conn. Gen. Stat. §21a-420d(k). Significantly, neither § 21a-420d(k) nor § 21a-420m, the specific statute under which Southfork submitted its application, contain a requirement that the Council hold a hearing because there is no right to a hearing in connection with the Council’s review of EJV applications. See Conn. Gen. Stat. §§ 21a-420m(c)-(h) (Rev. to 2022).

Thus, the Council did not render a final decision in a contested case pursuant to § 4-183. Therefore, this Court lacks subject matter jurisdiction under the UAPA.

II. RERACA DOES NOT PROVIDE THE RIGHT TO APPEAL THE COUNCIL’S DECISION TO DENY AN EJV APPLICATION

Furthermore, none of the three statutes that authorize the formation of EJVs provide a right to an appeal. See Conn. Gen. Stat. §§ 21a-420m, 21a-420j, & 21a-420u (Rev. to 2022); see also *Bingham v. Dep’t of Public Works*, 286 Conn. 698, 702 (2008) (“It is well established that the right to appeal an administrative action is created only by statute and a party must exercise that right in accordance with the statute in order for the court to have jurisdiction.”). The plain language of §§ 21a-420m, 21a-420j, & 21a-420u (Rev. to 2022) do not create the right to appeal.

Unlike applications for non-EJV licenses, the EJV statutes do not provide time restraints or submission limits for the EJV application process to the Council. If an EJV application is denied by the Council, the applicant may resubmit to the Council without incurring additional fees or being subject to a lottery. See Conn. Gen. Stat. § 21a-420m. The only restraint is the legislature’s statutory cap on the number of EJVs a producer, dispensary, or cultivator can create through expansion. As indicated in testimony to the Joint Standing Committee, the legislature imposed the cap to avoid market dominance of large medical licensees. Conn. Joint Standing Committee Hearings, *supra*, p. 993-94. Any relief afforded by the Court in the present

matter would be in direct contradiction with the statutory cap and the public policy underlying the amendments to RERACA.

III. CONN. GEN. STAT. § 21A-420G(G) DOES NOT PROVIDE A RIGHT TO APPEAL DENIAL OF AN EJVS APPLICATION

Plaintiffs also bring this action pursuant to § 21a-420g(g) (Rev. to 2022).¹⁰ Section 21a-420g(g) provides a limited right to appeal a decision of the *Department of Consumer Protection* based on certain enumerated grounds set forth in a separate statute. It does not, however, provide a right to appeal the Council's denial of an EJVS application based on the statutory cap set forth in § 21a-420m(h), nor does it provide the right to appeal any action of the Council at all.

“Whether the plaintiffs have a statutory right to appeal from the decision of the department is a question of statutory interpretation.” *Middlebury v. Dep’t of Environmental Protection*, 283 Conn. 156, 166 (2007). Section 1-2z provides that “[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” Conn. Gen. Stat. § 1-2z. “To determine the collectively expressed legislative intent, we look first to the language of the statute itself. If that language is plain and unambiguous, we go no further.” *New England Dairies, Inc. v. Comm’r of Agriculture*, supra, 429 (1992).

The version of § 21a-420g(g) that was effective during the relevant period provided, in part, that “[i]f an applicant or a single backer of an applicant is disqualified on the basis of any of the criteria set forth in subsection (e) of this section, the entire application shall be denied, and *such denial* shall be a final decision of the *department* Not later than thirty days after service of notice upon the applicant of a denial, the applicant may appeal *such denial* to the

¹⁰ Conn. Gen. Stat. § 21a-420g was amended by P.A. 23-79 § 25, effective June 26, 2023. For purposes of this appeal, the effective statute is Conn. Gen. Stat. § 21a-420g (Rev. to 2022).

Superior Court in accordance with section 4-183.” (emphasis added) Conn. Gen. Stat. § 21a-420g(g) (Rev. to 2022).

The “department” here refers to the Department of Consumer Protection, not the Council. Conn. Gen. Stat. § 21a-420(15) (Rev. to 2022). Indeed, § 21a-420g(e) provides three specific bases for DCP to deny licensure: (1) a backer with a disqualifying conviction; (2) the application exceeds a common ownership cap set forth in § 21a-420i;¹¹ or (3) a backer with an administrative finding or judicial decision that may substantively compromise the integrity of the cannabis program. Conn. Gen. Stat. § 21a-420g(e) (Rev. to 2022). Clearly, none of these bases for denial of a license have anything to do with the Social Equity Council or the statutory cap. Accordingly, the right to appeal provided for in § 21a-420g(g) (Rev. to 2022) is not applicable to the Council and is certainly not applicable to the Council’s denial of Southfork’s application.

IV. THE COUNCIL’S REPRESENTATION THAT APPLICANTS HAVE THE RIGHT TO APPEAL IN THE MAY 24, 2023 DENIAL LETTER IS IMMATERIAL

The portion of the Council’s denial letter indicating that Plaintiffs had thirty days to file an appeal with the Superior Court is nothing more than a scrivener’s error and cannot create a right to appeal where none exists. “It is well settled that appeals to courts from administrative officers or boards exist only under statutory authority and that unless a statute provides for such appeals, the courts are without jurisdiction to hear them. . . . A statutory right to appeal may be taken advantage of only by *strict compliance* with the statutory provisions by which it is created.” (emphasis in original) *Hefti v. Comm’n on Human Rights & Opportunities*, 61 Conn. App. 270, 273, cert. denied, 255 Conn. 948 (2001).

The Court must adhere to the mandatory requirements that circumscribe jurisdiction in the first place. *Id.*, 274. The Council cannot create a statutory right to appeal. The legislature,

¹¹ The cap set forth in Conn. Gen. Stat. § 21a-420i (Rev to 2022) pertains to common ownership of backers, i.e., investors, and is separate and distinct from the cap imposed by Conn. Gen. Stat. § 21a-420m(h).

alone, has the authority to create a statutory right to appeal of an administrative agency's decision. See *Summit Hydropower Partnership v. Comm'n of Environmental Protection*, 226 Conn. 792, 799-800 (1993) ("Judicial review of administrative decision is creature of statute."); *Gavigan v. Comm'r of Revenue Services*, Superior Court, judicial district of Hartford, CV-01-0508067-S, 2002 Conn. Super. LEXIS 171 (January 18, 2002, *Aronson, J.T.R.*) ("whether or not the clerk misinformed the plaintiff . . . is not germane to the issue of whether the court has subject matter jurisdiction to hear this case"). The legislature did not create a right to appeal for the EJVS application process and, without such statutory authority, the Court is deprived of jurisdiction.

V. PLAINTIFF RESOURCE FAILED TO FILE AN APPEAL WITHIN FORTY-FIVE DAYS OF THE COUNCIL'S DECISION TO DENY ITS APPLICATION

Even if the Court were to find that it has subject matter jurisdiction regarding plaintiff Southfork, which it should not, plaintiff Resource failed to file an appeal within forty-five days of the Council's decision to deny its application, as required under the UAPA, § 4-183(c), thus, the Court is without jurisdiction to hear plaintiff Resource's appeal. "The failure to file an appeal from an administrative decision within the time set by statute renders the appeal invalid and deprives the courts of jurisdiction to hear it." *Connelly v. Comm'r of Correction*, 149 Conn. App. 808, 813 (2014), *cert. denied*, 316 Conn. 905 (2015). "The right to appeal from an agency decision to the Superior Court is governed by § 4-183, and the failure to file an appeal within the forty-five day period set forth in § 4-183(c) deprives the court of subject matter jurisdiction to entertain an appeal." *Markley v. State Elections Enforcement Comm'n*, 339 Conn. 96, 106-107 (2021), citing *Glastonbury Volunteer Ambulance Assn., Inc. v. Freedom of Information Comm'n*, 227 Conn. 848, 854-55 (1993).

Plaintiff Resource did not resubmit an EJVS application after its initial denial in July 2022, nor did it file an appeal within forty-five days of the denial. Compl. ¶¶ 4 & 13. Instead, Resource

waited almost a full year to file its appeal. Accordingly, the Court is deprived of subject matter jurisdiction to adjudicate Resource's appeal.

CONCLUSION

For the foregoing reasons, the Defendant respectfully requests that the Court grant Defendant's motion to dismiss.

DEFENDANT

SOCIAL EQUITY COUNCIL

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CERTIFICATION

This is to certify that a copy of the foregoing has been, or immediately will be, served on the following counsel and self-represented parties of record on October 23, 2023.

Jeffrey J. Mirman
Hinckley, Allen & Snyder, LLP
20 Church St., 18th Floor
Hartford, CT 06103
Via Email, jmirman@hinckleyallen.com

Juris No. 444379
Michael A. Nunes
Assistant Attorney General

EXHIBIT A



May 24, 2023

SouthFork LLC

**Jerome Carnegie Hargreaves
55 Broad St
Middletown, CT 06457**

**License Type: Retailer
Business Type: LLC**

Application Number: 0015675

Dear Applicant,

This letter is to inform you that the Social Equity Council (SEC) denied your above referenced equity joint venture application in accordance with section 21a-420m(h) of the general statutes which provides that:

No producer that receives license expansion authorization under section 21a-420l shall create more than two equity joint ventures. No such producer shall apply for, or create any additional equity joint venture if, on the effective date of this section, such producer has created at least two equity joint ventures that have each received a provisional license.

The enclosed application determination report sets forth the grounds for this determination. If you wish to address deficiencies set forth in the report, you may resubmit a revised application, and the SEC will review that application.

Pursuant to Conn. Gen. Stat. § 21a-420g(g), you have a right to appeal this decision to the Superior Court within thirty (30) days from the date of this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ginne-Rae Clay".

Ginne-Rae Clay
Executive Director

cc: Social Equity Council
Department of Consumer Protection

01285

EXHIBIT B

State of Connecticut
Social Equity Adult-use Cannabis License
Application Determination Report (ADR)

Application Number	ACRE.0015675
License Type	ADULT-USE CANNABIS RETAILER (EJV)
Business Type	LIMITED LIABILITY COMPANY

Based on a review of the documentation provided within the Application, the review supports the determination that the Social Equity Applicant(s) **did not** meet all requirements constituting “social equity” status as defined in the State of Connecticut’s Public Act 21-1 “An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis” (§ 22-165). The results of this review are summarized below.

Residency Requirement: ☐ Eligible ☐ Ineligible

Check the criteria met:

☐	Resident of a disproportionately impacted area for at least five of the ten years immediately before applying
☐	Resident of a disproportionately impacted area for at least nine years before turning 18 years old.

Income Requirement: ☐ Eligible ☐ Ineligible

Check the criteria met:

☐	Income was at or below 300% of the State Median Income for each of the previous three years. • Connecticut State Median Income: \$78,444.00 • 300% of State Median Income: \$235,332.00
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Ownership Requirement: ☐ Eligible ☐ Ineligible

Check the criteria met:

☐	A business or sole proprietor that has applied for a license for a cannabis establishment and is at least 65% owned and controlled by the social equity applicant.
☐	A business entity created by an expanding producer or converting dispensary facility and is at least 50% owned and controlled by the social equity applicant. (Equity Joint Venture)

Definitions of Ownership and Control:

<i>Ownership</i>
Ownership stake means the possession of equity in the capital, shares, stock, assets, or profits held in a cannabis business by a social equity applicant.
<i>Control</i>
Exercises operational authority over daily affairs of the business.
Has the voting power to direct the management, agents, and policies and receives the beneficial interests of the business.

Additional Notes:

The records of the SEC show that the Council has already approved the maximum number of two (2) equity joint ventures for the licensed dispensary/hybrid facility or producer applicant. Therefore, the SEC cannot approve this equity joint venture. Theraplant LLC has previously been approved for applications ACRE.0014925 and ACRE.0015079.



User Name: Michael Nunes

Date and Time: Monday, October 23, 2023 10:34:00AM EDT

Job Number: 208698108

Document (1)

1. [Gavigan v. Comm'r of Revenue Servs., 2002 Conn. Super. LEXIS 171](#)

Client/Matter: -None-

Search Terms: 2002 Conn Super LEXIS 171

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
-None-



Caution

As of: October 23, 2023 2:34 PM Z

Gavigan v. Comm'r of Revenue Servs.

Superior Court of Connecticut, Judicial District of Hartford

January 18, 2002, Decided ; January 18, 2002, Filed

CV010508067S

Reporter

2002 Conn. Super. LEXIS 171 *; 2002 WL 207587

Dennis Gavigan v. Commissioner of Revenue Services

Notice: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Core Terms

motion to dismiss, hear, lack subject matter jurisdiction, subject matter jurisdiction, clerk of the court, strict compliance, clerk's office, pro se, provisions, mandatory, taxpayer, Appeals, sheriff, summons, mailed, misled

Case Summary

Procedural Posture

Plaintiff taxpayer filed a tax appeal from a determination of defendant Commissioner of Revenue Services, Connecticut. The commissioner moved to dismiss the tax appeal based on lack of subject matter jurisdiction, alleging that the taxpayer failed to complete service in accordance with [Conn. Gen. Stat. §§ 12-730, 52-64](#).

Overview

The taxpayer commenced the action by filing the summons and complaint with the clerk of the court. A copy of the complaint was mailed to the commissioner. However, the taxpayer failed to serve a copy of the complaint on the attorney general in accordance with [Conn. Gen. Stat. §§ 12-730, 52-64](#). The taxpayer opposed dismissal on the ground that he relied upon information from a clerk of the court that all the taxpayer had to do was file the complaint in the clerk's office. The taxpayer claimed that, as a pro se party unskilled in the law, he had a right to rely on the information from the

clerk. The superior court held that whether or not the clerk misinformed the taxpayer regarding the requirements of service was not germane to the issue of whether the court had subject matter jurisdiction. The statutory right of appeal required strict compliance with the statutory provisions by which it was created. Even if the taxpayer was misled by the clerk, the principles of strict compliance still applied. Since the taxpayer failed to properly serve the complaint, the superior court lacked subject matter jurisdiction to hear his tax appeal.

Outcome

The superior court granted the commissioner's motion to dismiss the appeal.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue

Tax Law > State & Local Taxes > Administration & Procedure > Judicial Review

Tax Law > State & Local Taxes > Administration & Procedure > General Overview

[HN1](#) [📄] Reviewability, Jurisdiction & Venue

[Conn. Gen. Stat. § 12-730](#) provides that an aggrieved taxpayer may appeal from a determination of the Connecticut Commissioner of Revenue Services within one month after the notice of the commissioner's determination is mailed to the taxpayer, and such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action.

Administrative Law > Judicial
Review > Reviewability > Jurisdiction & Venue

Tax Law > State & Local Taxes > Administration &
Procedure > General Overview

[HN2](#) **Reviewability, Jurisdiction & Venue**

[Conn. Gen. Stat. § 52-64](#) provides that service of civil process against the Connecticut Commissioner of Revenue Services in any appeal authorized may be made by leaving a true and attested copy of the process, including the declaration or complaint, with the attorney general or at his office in Hartford, Connecticut.

Administrative Law > Judicial
Review > Reviewability > Jurisdiction & Venue

Governments > Legislation > Statutory Remedies &
Rights

[HN3](#) **Reviewability, Jurisdiction & Venue**

Appeals to courts from administrative agencies exist only under statutory authority. A statutory right of appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created. Such provisions are mandatory, and, if not complied with, the appeal is subject to dismissal.

Civil Procedure > ... > Subject Matter
Jurisdiction > Jurisdiction Over Actions > General
Overview

Governments > Courts > Clerks of Court

Administrative Law > Judicial
Review > Reviewability > Jurisdiction & Venue

Governments > Courts > Court Personnel

[HN4](#) **Subject Matter Jurisdiction, Jurisdiction Over Actions**

In cases involving administrative appeals, even where appellants may have been misled by the actions or inactions of employees of the clerk's office, the Connecticut Supreme Court has not deviated from the established principles of strict compliance. While the trial court can show some degree of leniency toward a party when there is evidence that it was misguided by

court personnel, the court cannot disregard established and mandatory requirements which circumscribe jurisdiction in the first instance.

Judges: Arnold W. Aronson, Judge Trial Referee.

Opinion by: Arnold W. Aronson

Opinion

MEMORANDUM OF DECISION ON MOTION TO DISMISS

The Commissioner moves to dismiss the plaintiff's tax appeal due to lack of service as required by [General Statutes § 12-730](#) and [§ 52-64](#), which deprives the court of subject matter jurisdiction.

The pro se plaintiff commenced this action by filing the summons and complaint with the clerk of the court on April 24, 2001. However, the complaint was not served on the Attorney General in accordance with [General Statutes § 12-730](#) and [§ 52-64](#). On July 17, 2001 the plaintiff mailed a copy of the complaint to the Commissioner.

The plaintiff opposes this motion to dismiss on the ground that he relied upon information he claims was given to him by a clerk of the court that service by a sheriff was not necessary. Although he paid a filing fee and recognizance, the plaintiff states that he was told by the clerk that the only thing he had to do was file the [*2] complaint in the clerk's office. The plaintiff claims that, as a pro se party unskilled in the law that he had a right to rely on the information he received from the clerk.

[HN1](#)  [Section 12-730](#) provides that an aggrieved taxpayer may appeal from a determination of the Commissioner within one month after the notice of the Commissioner's determination is mailed to the taxpayer and "such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action." [HN2](#)  [Section 52-64](#) provides that service of civil process against the Commissioner of Revenue Services "in any appeal authorized . . . may be made by leaving a true and attested copy of the process, including the declaration or complaint, with the Attorney General or at his office in Hartford."

The plaintiff recognizes that an appeal taken from the

action of the Commissioner should be commenced by Judge Trial Referee service in accordance with [§ 52-64](#), but contends that the alleged misstatements by the clerk to him that service by a sheriff was unnecessary provides a basis for the court to conclude that it has jurisdiction since the Commissioner has filed his appearance.

Whether [*3] or not the clerk misinformed the plaintiff regarding the need to make service in this case is not germane to the issue of whether the court has subject matter jurisdiction to hear this case. [HN3](#)^[↑] "Appeals to courts from administrative agencies exist only under statutory authority . . . A statutory right of appeal may be taken advantage of only by *strict compliance* with the statutory provisions by which it is created . . . Such provisions are mandatory, and, if not complied with, the appeal is subject to dismissal." (Citations omitted; emphasis in original; internal quotation marks omitted.) [Hefti v. Commission On Human Rights And Opportunities](#), 61 Conn. App. 270, 273, 763 A.2d 688, cert. denied, 255 Conn. 948, 769 A.2d 62 (2001); see [Jade Aircraft Sales v. Crystal](#), 43 Conn. Supp. 10, 12-13, 637 A.2d 415, 10 Conn. L. Rptr. 512 (1994).

In *Hefti*, the plaintiff claimed that the clerk misled her, resulting in her failure to timely file her appeal. The court in *Hefti*, relying on [Tarnopol v. Connecticut Siting Council](#), 212 Conn. 157, 165, 561 A.2d 931 (1989), affirmed the trial court's decision that it lacked subject [*4] matter jurisdiction to hear the plaintiff's case. [HN4](#)^[↑] "In cases involving administrative appeals, even where appellants may have been misled by the actions or inactions of employees of the clerk's office, our Supreme Court has not deviated from the established principles of strict compliance." [Hefti v. Commission on Human Rights and Opportunities](#), *supra*, 61 Conn. App. at 274. "While the trial court can show some degree of leniency toward a party when there is evidence that it was misguided by court personnel, the court cannot disregard established and mandatory requirements which circumscribe jurisdiction in the first instance." [Tarnopol v. Connecticut Siting Council](#), *supra*, 212 Conn. at 165; see [Hefti v. Commission on Human Rights and Opportunities](#), *supra*, 61 Conn. App. at 274.

Since the plaintiff failed to properly serve the complaint in this action, the court lacks subject matter jurisdiction to hear this matter. The Commissioner's motion to dismiss is granted.

Arnold W. Aronson