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SUPERIOR COURT

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SOUTHFORK LLC and
RESOURCE RECYCLING, LLC

SUPERIOR COURT
JUDICIAL DISTRICT OF
NEW BRITAIN
JUDICIAL DISTRICT OF
NEW BRITAIN

v.

TAX AND ADMINISTRATIVE
APPEALS SESSION

SOCIAL EQUITY COUNCIL

APRIL 30, 2024

MEMORANDUM OF DECISION

The defendant, the Social Equity Council (SEC), moves to dismiss the appeal of the plaintiffs, Southfork LLC (Southfork) and Resource Recycling, LLC (Resource Recycling) for lack of subject matter jurisdiction. Southfork and Resource Recycling applied for Equity Joint Venture (EJV) licenses under the Responsible and Equitable Regulation of Adult-Use Cannabis Act (RERACA)¹ and were denied. The SEC argues that the court lacks jurisdiction to hear this appeal because the denial of an EJV license is not an appealable final order under the Uniform Administrative Procedures Act (UAPA) and the relevant provisions of RERACA² do not provide a statutory right of appeal. As more fully set forth below, the court agrees with the SEC and, therefore, dismisses this appeal.

¹ See General Statutes § 21a-420 et seq.

² See General Statutes §§ 21a-420j; 21a-420m; 21a-420u (Rev. to 2022).

Electronic notice sent to all counsel of record:
1) J. Mirman / A. Millinger 2) J. Blake, M. Nunes, A. Keilty.
A. Jordanopoulos, Ct Officer 4-30-24

FACTS

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

RERACA legalizes adult-use cannabis in Connecticut. Entities authorized to sell cannabis under RERACA are licensed by the Department of Consumer Protection. Among the license types created under RERACA are EJV³ licenses. EJV licenses permit joint ventures between social equity applicants⁴ and certain cannabis establishments that hold medical marijuana licenses. See General Statutes §§ 21a-420m, 21a-420j, & 21a-420u (Rev. to 2022).

On May 4, 2022, Southfork and Resource Recycling submitted EJV applications to the SEC. Southfork's application was assigned the application number ACRE0014084

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." General Statutes § 21a-420(22) (Rev. to 2022).

⁴ A "social equity applicant" is,

"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."

General Statutes § 21a-420(48) (Rev. to 2022)

(hereinafter, the “Southfork application”) and Resource Recycling’s application was assigned the application number ACRE0014614 (hereinafter, the “Resource Recycling application”). On July 28, 2022, the SEC met to consider the Southfork application and the Resource Recycling application. See Return of Record (ROR), at 219-233. Neither representatives of Southfork nor Resource Recycling spoke at the July 28th meeting. *Id.* Neither Southfork nor Resource Recycling contend that they had a right to be heard at the July 28th meeting. At the July 28, 2022 meeting, the SEC voted to deny the Southfork application and the Resource Recycling application. See ROR, at 226. On July 29, 2022, the SEC informed Southfork that the SEC had denied the Southfork application citing a failure to satisfy RERACAs’ ownership and control provisions. See ROR, at 235-237.

The parties agree that at the time Southfork and Resource Recycling submitted their applications, RERACA did not limit the number of EJV licenses any entity could hold. Nevertheless, in 2022, the General Assembly passed P.A. 22-103,⁵ which, *inter alia*, prohibited marijuana “producers”⁶ licensed under RERACA from holding more than two EJV licenses. See General Statutes § 21a-420m(h).

On April 14, 2023, Southfork submitted a new EJV application to the SEC and that new application was assigned the application number ACRE0015675 (hereinafter the “2023 Southfork application”). On May 24, 2023, the SEC met to consider the 2023 Southfork

⁵ P.A. 22-103 became effective on May 24, 2022.

⁶ See General Statutes § 21a-420(42).

application. See ROR, at 587-591. No representative of Southfork spoke at the May 24th meeting. Id. Southfork does not contend that it had a right to be heard at the May 24th meeting. At the May 24, 2023 meeting, the SEC voted to deny the 2023 Southfork application. See ROR, at 589. On May 24, 2023, the SEC denied the 2023 Southfork application because Southfork's proposed EJV partner, Theraplant LLC, already held the maximum number of two EJV licenses. See ROR, 593-595. The May 24, 2023, denial letter from the SEC to Southfork stated that Southfork could appeal the SEC's denial decision to the Superior Court within thirty days pursuant to General Statutes § 21a-420g(g). On May 24, 2023,⁷ § 21a-420g(g) stated, in relevant part, "[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 Superior Court in accordance with section 4-183." (Emphasis added). On May 24, 2023, RERACA defined "the department" as the Department of Consumer Protection (DCP). See General Statutes § 21a-420(15).

Southfork and Resources Recycling filed this appeal on June 23, 2023. The Department of Consumer Protection is not a party to this appeal. See Complaint #100.30 (Compl.). In its request for relief, Southfork seeks an order overturning the SEC's denial of the 2023 Southfork application and an order declaring that the provisions of P.A. 22-103

⁷ P.A. 23-79, § 25 amended General Statutes § 21a-420g. P.A. 23-79 became effective June 26, 2023.

(which became effective May 24, 2022) may not be applied to the original Southfork application (which was filed May 4, 2022). See Compl. at 5.

LEGAL STANDARD

“There is no absolute right of appeal to the courts from a decision of an administrative agency. . . . Appeals to the courts from administrative agencies exist only under statutory authority. . . . Appellate jurisdiction is derived from the . . . statutory provisions by which it is created, and can be acquired and exercised only in the manner prescribed.” (Internal quotation marks omitted.) *High Watch Recovery Ctr., Inc. v. Dep’t of Pub. Health*, 347 Conn. 317, 328, 297 A.3d 531 (2023) (hereinafter *High Watch Recovery Ctr.*).

Section § 4-183(a) of the UAPA provides, in relevant part, that “[a] person who has exhausted all administrative remedies available . . . and who is aggrieved by a final decision may appeal to the Superior Court. . . .” Section 4-166 (5) (A) defines “[f]inal decision” as “the agency determination in a contested case[.]” A “contested case,” in turn, is defined as “a proceeding . . . in which the legal rights, duties or privileges of a party are required by state statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held[.]” General Statutes § 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. The legislature has the primary and continuing role in deciding which class of proceedings should enjoy the full panoply of procedural protections afforded by the

UAPA to contested cases, including the right to appellate review by the judiciary. Deciding which class of cases qualifies for contested case status reflects an important matter of public policy and the primary responsibility for formulating public policy must remain with the legislature.” (Citation omitted; internal quotation marks omitted.) *High Watch Recovery Ctr.*, *supra*, 347 Conn. 328-29.

“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 [the UAPA], the party must have a statutory or regulatory right to be heard by the agency.” (Internal quotation marks omitted.) *Ferguson Mech. Co. v. Dep’t of Pub. Works*, 282 Conn. 764, 773, 924 A.2d 846 (2007) (hereinafter *Ferguson Mech. Co.*).

LEGAL ANALYSIS

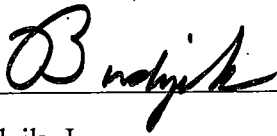
The court grants the SEC’s motion to dismiss for two reasons. First, the SEC’s denial of the 2023 Southfork application is not a final decision in a contested case, and, therefore, the SEC’s denial of the 2023 Southfork decision is not appealable under the UAPA. The SEC was neither statutorily required to hold a hearing on the 2023 Southfork application, nor was a hearing in fact held. It is undisputed that Southfork did not speak, present any evidence, or present any argument at the SEC’s June 23, 2023 meeting. Indeed, there is no evidence in the record that Southfork even attended the June 23, 2023 meeting, or that the June 23, 2023 SEC meeting was a “hearing” as that term is defined by controlling Connecticut law. See *Ferguson Mech. Co.*, 282 Conn. 773.

Secondly, Southfork has not identified any statute providing Southfork with a right to appeal the SEC's decision denying the 2023 Southfork application. The statute Southfork cites as authorizing this appeal is the 2022 version of General Statutes § 21-420g(g). As set forth above, the 2022 version of § 21-420g(g) authorizes appeals of certain final decisions of the Department of Consumer Protection, not the SEC. It is undisputed that the DCP is not a party to this action, nor has Southfork identified any decision by the DCP that it is appealing.

Finally, the court holds that the SEC's incorrect statement that Southfork may appeal the SEC's denial of the 2023 Southfork application is of no moment. Administrative appeals are matters of statutory rights. The SEC has no authority to create a statutory right of appeal where the legislature has not seen fit to create one. Finally, the court holds that the court is without jurisdiction to hear Southfork's request for a declaratory judgment directing that the 2023 provisions of § 21-420m(h) not be applied retroactively to the Southfork application. There is no evidence in the record that the SEC retroactively applied the 2023 provisions of § 21-420m(h) to the Southfork application (filed May 4, 2022). The SEC expressly stated that it denied the Southfork application for failing to satisfy RERACAs' ownership and control provisions. See ROR, at 235-237. There is no evidence in the record that the SEC denied the Southfork application because of the 2023 provisions of § 21-420m(h) limiting producers to a maximum of two EJV licenses. See *Mendillo v. Tinley, Renehan & Dost, LLP*, 329 Conn. 515, 524, 187 A.3d 1154 (2018) (“[T]he declaratory judgment procedure may not be utilized merely to . . . secure the construction of a statute if the effect of that construction will not affect a plaintiff's personal rights.”). (Internal quotation marks omitted.)

CONCLUSION

For all the foregoing reasons, the court grants the motion to dismiss filed by the Social Equity Council. This appeal is dismissed.



Budzik, J.