

DOCKET NO: HHBCV246088609S

SUPERIOR COURT

D&B WELLNESS, LLC
V.
CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION Et Al

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

4/3/2025

ORDER

ORDER REGARDING:
10/21/2024 102.00 MOTION TO DISMISS PB 10-30

The foregoing, having been considered by the Court, is hereby:

ORDER:

The motion to dismiss is granted as to counts one and two. The motion to dismiss is denied as to counts three and four.

The facts of this matter are not in dispute. On April 19, 2023, the plaintiff, D&B Wellness, LLC, received approval to convert its existing medical marijuana dispensary license to a hybrid retailer license under General Statutes § 21a-420u. Under the terms of § 21a-420u, if a dispensary licensee who is converting to a hybrid retailer license creates at least one equity joint venture (EJV) approved by the Social Equity Council (SEC) within 14 months of its initial approval to convert to a hybrid retailer, that licensee is entitled to a reduced license fee of \$500,000 instead of the normally applicable fee of \$1 million. See General Statutes § 21a-420u(a); (g). In this case, it is undisputed that D&B submitted an EJV application to the SEC on December 27, 2023, and again on April 24, 2024. It is further undisputed that D&B's EJV application was twice denied by the SEC because of administrative errors on the part of the defendant, the Department of Consumer Protection (DCP), that resulted in out of date and incorrect information being considered by the SEC. After DCP corrected its mistakes and the proper information was considered by the SEC, D&B's EJV application was finally approved by the SEC on August 6, 2024. Nevertheless, because D&B's EJV application was not approved by the SEC within 14 months (in other words, by June 19, 2024) of its initial April 19, 2023, approval to convert to a hybrid retailer license, DCP is seeking to collect the full \$1 million hybrid retailer licensee fee from D&B (as opposed to the discounted fee of \$500,000).

In counts one and two, D&B proceeds pursuant to General Statutes § 4-183 and alleges that DCP's failure to forward D&B's correct EJV application information to the SEC (count one) and DCP's imposition of the \$1million fee (count two) violates statutory mandates. In count three, D&B seeks injunctive relief. In count four, D&B seeks an order of mandamus asking the court to order that DCP not enforce the \$1million fee.

"Section § 4-183 (a) 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 'final 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' '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.” (Internal citation omitted.) *High Watch Recovery Ctr., Inc. v. Dep’t of Pub. Health*, 347 Conn. 317, 328–29, 297 A.3d 531, 537–38 (2023). A “‘contested case status is limited to proceedings in which an agency is required by statute to provide an opportunity for a hearing to determine a party’s legal rights or privileges.’” *Id.*, at 329; see also *Town of E. Hampton v. Dep’t of Pub. Health*, 80 Conn. App. 248, 255, 834 A.2d 783, 788 (2003) (“... the UAPA mandates, as a predicate for contested case status, that a party must have enjoyed a statutory right to a hearing.”)

Here, none of the provisions of General Statutes § 21a-420u provide a statutory right to a hearing. Therefore, DCP’s imposition of the \$1 million license fee does not result from a contested case and is not appealable. D&B’s citation to *Miller’s Pond Co., LLC v. Rocque*, 71 Conn App. 395 (2002), is unavailing because in that matter the statute at issue, General Statutes § 22a-371(b), did contain a statutory right to a hearing. See *Miller’s Pond*, 71 Conn App. 406.

The court denies the motion to dismiss as to counts three and four. DCP points to no applicable authority holding that the court does not have jurisdiction to decide requests for injunctions or to issue mandamus orders. The only issue on a motion to dismiss is whether the court has jurisdiction to hear the claim, not whether the relief requested may be appropriate in the case at bar.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: MATTHEW JOSEPH BUDZIK
Processed by: Colleen Jalowiec

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.