

OCT 18, 2022 08:33 AM


Clay Pate, Clerk
Tift County, Georgia

IN THE SUPERIOR COURT OF TIFT COUNTY
STATE OF GEORGIA

GA BIOSCIENCE RESEARCH, INC.,)
)
Petitioner,)
)
v.)
)
GEORGIA ACCESS TO MEDICAL)
CANNABIS COMMISSION;)
)
and)
)
BOTANICAL SCIENCES, LLC; TRULIEVE)
GA, INC.; FFD GA HOLDINGS, LLC;)
THERATRUE GEORGIA, LLC; NATURES)
GA, LLC; and TREEVANA REMEDY, INC.,)
)
Respondents.)

CIVIL ACTION
FILE NO. 2022CV0364

ORDER

This matter comes before the Court on the Motion to Dismiss or, in the Alternative, Transfer Venue to Fulton County filed by Respondents FFD GA Holdings, LLC; TheraTrue Georgia, LLC; Natures GA, LLC, and Treevana Remedy, Inc. (the “Class 2 Motion to Dismiss”) and the Motion to Dismiss or, in the Alternative, Transfer Venue to Fulton County and Motion to Vacate the September 22, 2022 Stay filed by Respondents Botanical Sciences, LLC and Trulieve, GA, Inc. (the “Class 1 Motion to Dismiss” and, together with the Class 2 Motion to Dismiss, the “Motions to Dismiss”). Having considered the Motions to Dismiss, all papers in opposition and in support, and having heard oral argument on the Motions to Dismiss on October 4, 2022, the Motions to Dismiss are hereby **GRANTED** and this action is **DISMISSED** for the following reasons:

Petitioner is an unsuccessful applicant for a Class 1 and 2 license to produce and sell low-THC oil pursuant to Georgia’s Hope Act, O.C.G.A. § 16-12-200 *et seq.* Under procedures adopted

by the Georgia Access to Medical Cannabis Commission (the “Commission”), Petitioner asserted post-award protests of the Commission’s Notices of Intent to Award dated July 24, 2021. Administrative Law Judge Stephanie Howells, as the designated Hearing Officer pursuant to the Commission’s Post-Award Protest Procedures (the “Procedures”), held hearings on Petitioner’s protests and issued Final Decisions dated September 16, 2022 (the “Decisions”) denying Petitioner’s requested relief and affirming the Commission’s decisions as to Class 1 and Class 2 licenses. Petitioner then filed this action seeking judicial review of the Decisions.

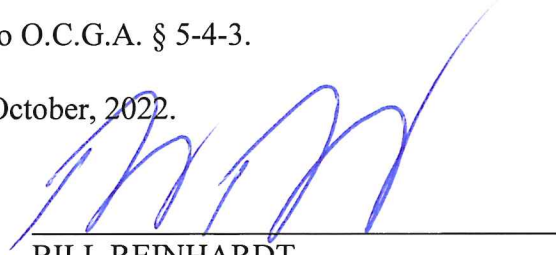
Petitioner contends that this Court has subject-matter jurisdiction pursuant to provisions of the Georgia Administrative Procedure Act (the “APA”). Respondents disagree.

The APA provides that only a petitioner “who is aggrieved by a final decision in a contested case is entitled to judicial review under [the APA].” O.C.G.A. § 50-13-19(a). The APA defines “contested case” as “a proceeding, including, but not restricted to, rate making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” O.C.G.A. § 50-13-2(2). The APA further provides that, in contested cases, “[t]he rules of evidence as applied in the trial of civil nonjury cases in the superior courts shall be followed” and “[a] party may conduct such cross-examination as shall be required for a full and true disclosure of the facts.” O.C.G.A. § 50-13-15(1), (3).

In the protest proceedings held before the Hearing Officer, the Commission’s Procedures governed, not the rules of evidence. Unlike the rules of evidence, the Procedures did not permit live testimony or cross-examination. *Compare* Procedures, § 3.3 (describing admission of only affidavit testimony and allowing no live testimony or cross-examination during hearing) *with, e.g.*, O.C.G.A. § 24-6-611 (setting forth procedures for live interrogation of witnesses and cross-examination); O.C.G.A. § 24-13-21 (procedure for securing presence of live testimony). Given

the very limited evidentiary and procedural parameters of the proceedings held before the Commission, the Court finds that they did not qualify as contested cases. The APA therefore does not apply to these matters, and this Court lacks subject matter jurisdiction to review the Decisions because Tift County is not the county in which the underlying proceedings were held and Petitioner has not obtained a writ of certiorari pursuant to O.C.G.A. § 5-4-3.

SO ORDERED, this 12 day of October, 2022.



BILL REINHARDT
Chief Judge, Superior Court of Tift County
Tifton Judicial Circuit

Prepared and presented by:

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