

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PEACH HEALTH ALTERNATIVES,
LLC.

Petitioner,

v.

GEORGIA ACCESS TO MEDICAL
CANNABIS COMMISSION and
DEPARTMENT OF ADMINISTRATIVE
SERVICES,

Respondents.

CIVIL ACTION NO.
2022CV371638

FINAL ORDER ON MOTION TO INTERVENE AND MOTIONS TO DISMISS

This case is before the Court on a Motion to Intervene (Dkt. 6) and two Motions to Dismiss (Dkt. 7, 10), filed by certain interested parties and Respondents.

Petitioner Peach Health Alternatives, LLC (“Peach Health”) is an unsuccessful applicant for a Class 2 license to produce and sell low-THC oil pursuant to Georgia’s HOPE Act, O.C.G.A. § 16-12-200 *et seq.* The instant case is an appeal of the Georgia Medical Cannabis Commission’s decision to award the available Class 2 licenses to FFD GA Holdings, LLC, TheraTrue Georgia LLC, Natures GA LLC, and Treevana Remedy Inc. (collectively “Prospective Licensees”). Petitioner filed this action seeking “Review of an Agency Decision,” pursuant to O.C.G.A. § 50-13-19.

Motion to Intervene

Prospective Licensees seek to intervene in this case as a matter of right because they claim “an interest relating to the property or transaction which is the subject matter of the action” and are “so situated that the disposition of the action

may as a practical matter impair or impede [their] ability to protect that interest...” O.C.G.A. § 9-11-24(a)(2); *see also DeKalb Cnty. v. Post Props., Inc.*, 245 Ga. 214, 219 (1980). When a timely application is met that satisfies the statutory requirements, the applicant “shall be permitted to intervene in an action....” *Id.* Prospective Licensees made a timely application to intervene, asserting the necessary statutory criteria and Petitioner has not objected. As a result, Prospective Licensees’ Motion to Intervene is GRANTED.

Motions to Dismiss

Prospective Licensees and Respondents have moved to dismiss the case on the grounds that this Court lacks subject matter jurisdiction. Specifically, movants assert that Respondents, as state entities, enjoy sovereign immunity, which has not been waived. Whether sovereign immunity applies “is a threshold determination, and, if it does apply, a court lacks jurisdiction over the case” and therefore “lacks authority to decide the merits of such a claim.” *McConnell v. Ga. Dep’t of Labor*, 302 Ga. 18, 19 (2017). The Administrative Procedures Act (“APA”) provides a limited waiver of sovereign immunity for review by courts of and administrative agency decision in a contested case. *See* O.C.G.A. § 50-13-19(a).

Here, as a matter of law, the Department of Administrative Services is not an agency to which the APA applies. O.C.G.A. § 50-13-2(1). Further, nothing in the HOPE Act (or the State Purchasing Act) indicates the General Assembly intended the APA to apply to this licensing bid process (*compare* O.C.G.A. §§ 16-12-203(17) and 16-12-223(b)) and, even if it did, the prospective license award does not meet the

definition of a contested case. *See* O.C.G.A. §§ 50-13-2; 16-12-221. Because the APA does not apply, Petitioner was required to seek certiorari review, pursuant to the requirements of O.C.G.A. § 5-4-1, *et seq.*, in effect at the time. Petitioner's filing neither attempts to plead nor succeeds in satisfying the specific and detailed procedures for certiorari review.

Therefore, the Motions to Dismiss are GRANTED and this matter is hereby DISMISSED.

IT IS SO ORDERED, this 17th day of July, 2023.



The Honorable Rachel Krause
Fulton County Superior Court
Atlanta Judicial Circuit

Filed and served via eFileGA.