

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SILVERLEAF HEALTH ALTERNATIVES
INC,

Plaintiff,

v.

FFD GA HOLDINGS, LLC; THERATRUE
GEORGIA, LLC; NATURES GA, LLC; and
TREEVANA REMEDY, INC; and GEORGIA
ACCESS TO MEDICAL CANNABIS
COMMISSION,

Defendants.

CIVIL ACTION NO.
2023CV374924

FINAL ORDER GRANTING MOTIONS TO DISMISS

This case is before the Court on Motions to Dismiss filed by Defendants.¹ Petitioner Silverleaf Health Alternatives, Inc. (“Silverleaf”) 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.

Prospective Licensees and the Commission have moved to dismiss the case on the

¹ This case was originally filed in the Superior Court of Elbert County (Case No. SUEV20220003570). Prospective Licensees moved to dismiss or transfer the case to Fulton County on forum *non conveniens* grounds. The Elbert County Court ordered the transfer but did not reach the Motion to Dismiss. After transfer, Prospective Licensees renewed their Motion to Dismiss (Dkt. 21) and the Commission appeared specially and filed a Motion to Dismiss, as amended (Dkt. 24).

grounds that this Court lacks subject matter jurisdiction. Specifically, the Commission asserts that it enjoys 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). But, the APA does not apply to the Department of Administrative Services. 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, Silverleaf 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. Silverleaf’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.