



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MED SHOP DISPENSARY, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No.:
ALABAMA MEDICAL CANNABIS)	
COMMISSION, a State Agency,)	
)	
Defendant.)	

MED SHOP DISPENSARY, LLC’S VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff MED Shop Dispensary, LLC (“MED Shop”) states as follows for its Complaint for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief against Defendant Alabama Medical Cannabis Commission:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff MED Shop is an Alabama limited liability company.
2. Defendant Alabama Medical Cannabis Commission (“AMCC”) is an agency of the State of Alabama created to oversee the production, transportation, dispensation, testing, and use of medical cannabis in the state. The AMCC reviews applications for various cannabis licenses, including dispensary business licenses.
3. “[W]here an officer of the state is a defendant, as in this case, or where an agency of the state is a defendant, venue is proper only in Montgomery County, absent specific statutory authority to the contrary or waiver of objection to venue.” *Ex Parte Neely*, 653 So. 2d 945, 946 (Ala. 1995).
4. The relief sought herein is declaratory and requested pursuant to Alabama Code §§ 6-6-220 through 6-6-232.

FACTS

5. MED Shop seeks to become licensed as a medical cannabis dispensary pursuant to the Darren Wesley “Ato” Hall Compassion Act, Ala. Code § 20-2A-64, and the administrative rules promulgated by the AMCC.

6. On or around October 17, 2022, MED Shop initiated the application process by submitting a Request for Application to the AMCC.

7. MED Shop received its Application Form thereafter. Over the ensuing weeks, MED Shop worked with its counsel, its principals, and various of its advisors to prepare and perfect its Application Form and all of the required exhibits and supporting documentation.

8. As part of this process, MED Shop reviewed the Application Guide, “Frequently Asked Questions” Tab of the AMCC’s website, Schedule of Fees, Penalties, and Fines, as well as the regulations pertaining to dispensary applicants. None of these materials specify that only particular brands of credit cards can be used to pay the \$2,500 non-refundable application fee.

9. On Friday, December 30, 2022, MED Shop, with the assistance of counsel, spent several hours uploading its application materials to the AMCC Portal (“the Portal”).

10. The Portal reflects that MED Shop’s application materials were uploaded to and saved in the Portal prior to the 4:00 p.m. deadline for doing so on that date.

11. However, unbeknownst to MED Shop, the AMCC had imposed a ten-megabyte (10 MB) size limitation on all exhibits. The AMCC provided no notice of that size limitation. During the application process on December 30, MED Shop faced repeated, lengthy delays due to the fact that a number of its exhibits exceeded 10 MB. To address that issue, MED Shop had to repeatedly interrupt its process of uploading its application materials in order to attempt to comply with the unpublished size limitation.

12. Upon information and belief, MED Shop asserts that the AMCC allowed some applicants to use a placeholder workaround to avoid the 10 MB size restriction and, for those exhibits, circumvent the portal process altogether. Such an alternative process was not announced to all applicants or contained in any public notice from the AMCC.

13. Had MED Shop similarly been allowed to address the 10 MB limit, it would have saved hours of its application process and had more than sufficient time to perfect its payment prior to the 4:00 p.m. deadline.

14. Because of the delays, MED Shop did not reach the final stage of the application process—submitting the application fee—until minutes before 4:00 p.m. deadline. At that time, MED Shop entered the information associated with the American Express brand credit card that it intended to use to pay the \$2,500 application fee.

15. MED Shop's attempted payment was met with an error message indicating that the AMCC's third-party payment processor did not accept American Express brand credit cards.

16. MED Shop did not have another brand of credit card available to complete the payment before the 4:00 p.m. deadline.

17. MED Shop's counsel immediately contacted the AMCC through the Portal and asked whether there was another way for an applicant to submit payment.

18. On Tuesday, January 3, 2023—the first business day after MED Shop knew that the AMCC's third-party payment processor did not accept American Express—MED Shop's counsel communicated, in full, the events of December 30, 2022, to the AMCC and provided additional information at the AMCC's request.

19. On January 10, 2023, MED Shop hand-delivered a cashier's check to the AMCC in the amount of \$2,500, along with two USB flash drives loaded with the information contained in the Application Form, which had already been uploaded into the portal.

20. On January 13, 2023, the AMCC returned the cashier's check and the USB drives, informing MED Shop that "[n]o exception or extension will be made for the application to be filed beyond the deadline." In connection with its rejection of MED Shop's cashier's check and USB drives, the AMCC provided MED Shop with a "screen shot" from the Portal that presumably appears at the outset of the electronic application uploading process stating that "American Express is not an accepted form of payment."

21. The MED Shop principal who submitted the application was unaware until the payment step of the Application uploading process that American Express was not among the brands of credit cards that could be used to pay the Application filing fee.

22. MED Shop did not have time to obtain an alternate form of payment before the deadline because of the delay it encountered with the 10 MB size limitation.

23. MED Shop relied at all times on the posted communications and instruction from the AMCC and had no occasion to be made aware that the Portal did not accept American Express. The AMCC rules published in the Alabama Administrative Code contemplate the payment of an application fee, but the rules place no restrictions on the brand of credit card and do not preclude the use of American Express.

24. The AMCC Rules provide a mechanism for an applicant to cure any issues with its application. Specifically, under AMCC Rule 538-x-3-.06-10, an applicant may seek additional time to file an amended application if the applicant can show extenuating circumstances. Ala. Admin. Code § 538-X-3-.06(10) ("In the event of extenuating circumstances, an Applicant may

seek permission to extend the time for filing an amendment to its application by means of a written petition to the Commission.”).

25. On January 27, 2023, MED Shop submitted a Petition to Amend its Application pursuant to this provision.

26. In its Petition, MED Shop requested a limited remedy—that the AMCC allow MED Shop one day to submit its payment of the application fee through the AMCC Portal.

27. In support of its Petition, MED Shop demonstrated that none of the posted, publicly-available directions or instructions from the AMCC pertaining to the Application Process made MED Shop aware that American Express brand credit cards were not an accepted form of payment. For example:

a. The “Application Checklist” on page 1 of the Application Guide for Dispensary Applicants requires a “[n]on-refundable application fee (\$2,500) paid electronically (Credit Card or ACH).” It does not state that American Express brand credit cards are not accepted.

b. Paragraph 5 of Section 1 of the Application Guide (found on page 5) states that “[t]he non-refundable application fee of \$2,500 must be paid electronically (Credit Card or ACH) by the applicant at the time of filing the application.” It does not state that American Express brand credit cards are not accepted.

c. The regulations pertaining to dispensary applicants in no way limit the particular brands of credit cards that applicants can use to satisfy the application fee. *See* Ala. Admin. Code § 538-x-8-.05-3-p (“The Dispensary Applicant must provide the application fee required by §20-2A-55(f), Code of Alabama 1975 (as amended). The application fee is nonrefundable and must be submitted

electronically per instructions in the Application Form received in response to the applicant's Request for Application.”).

d. The “Frequently Asked Questions” tab of the Commission’s website say only this regarding the application fee” “[Question] How does an applicant submit the application fee? [Answer] The non-refundable application fee of \$2,500 must be paid, via the online licensing portal, when the applicant files its business application. The deadline to file a business application is December 30, 2022.”).

e. The AMCC Schedule of Fees, Penalties & Fines does not place any limitations on the brand of credit card that can be used to pay the application fee.

28. On February 2, 2023, the AMCC responded to MED Shop’s Petition by deeming it moot and returning MED Shop’s attempted payment.

29. On February 3, 2023, MED Shop again attempted to submit a Petition requesting additional time to amend its application. MED Shop sent the AMCC two forms listed on its website: (1) Form N, a Petition For Amendment Due to Extenuating Circumstances; and (2) Form O, a Requested Amendment Form.

30. On February 7, 2023, the AMCC notified MED Shop that it refused to consider these forms. The AMCC again took the position that the application fee must be submitted at the time of filing, meaning that MED Shop failed to file an application by the deadline and its Petition was moot.

31. By filing the Petition to Amend Based on Extenuating Circumstances, MED Shop exhausted its administrative remedies under the AMCC’s Rules and Regulations.

32. Because the AMCC will not consider MED Shop's Dispensary License Application, MED Shop cannot be considered alongside other dispensary Applicants for a cannabis dispensary license.

COUNT ONE: DECLARATORY RELIEF REGARDING MED SHOP'S APPLICATION SUBMISSION

33. MED Shop incorporates paragraphs 1–32 herein.

34. MED Shop filed corporate, shareholder, legal, and financial data, as well as other application materials, to the Portal before the application deadline.

35. While MED Shop was unable—despite its good faith and reasonable efforts—to complete the last step prior to the deadline, that last step is entirely immaterial to MED Shop's eligibility or suitability for the dispensary license it seeks.

36. AMCC Rule 538-x-3-.14 lists specific conditions disqualifying an applicant from consideration. *See Ala. Admin. Code § 538-x-3-.14* (listing conditions disqualifying an applicant, including its owner pleading guilty to a felony, the applicant knowingly submitting false information, or the applicant's inability to maintain minimum levels of insurance). Failure to pay the application fee electronically at the time of submission is not included as one of these disqualifying deficiencies. *Id.*

37. Further, the AMCC Rules do not contemplate that the AMCC will not consider an application in the event of non-substantive omissions or mistakes in connection with the application.

38. To the contrary, AMCC Rule 538-x-3-.02-1 specifically allows for amended applications on an applicant's own initiative to “correct errors, to more accurately reflect facts relating to the proposed business, to generally revise and improve the quality of its previously filed

application to the Commission, *or for any other valid purpose.*” Ala. Admin. Code § 538-x-3-.02-1. (emphasis added)

39. The use of one particular brand of credit card as opposed to another to perfect the payment of an application fee should be considered an entirely “valid purpose” under the AMCC Rules.

40. Likewise, AMCC Rule 538-x-3-.08 recognizes that the AMCC may issue a Notice of Deficiency to “any Applicant whose original or amended application filing is deficient” and allow it time to correct that deficiency. *See* Ala. Admin. Code § 538-x-3-.08. It provides a non-exhaustive list of curable deficiencies, including “corrupted or illegible file materials, incomplete applications, improperly formatted or labeled materials, typographical errors preventing reasonable understanding of one of more of the Applicants’ statements.” *Id.*

41. An Applicant’s failure to submit payment through the Portal immediately upon filing is not expressly included in this list; presumably because a payment issue is akin to a clerical deficiency in the category of “incomplete applications” that can be cured.

42. Yet, the AMCC refused to consider MED Shop’s Application at all, much less allow MED Shop an opportunity to cure any deficiencies.

43. If the Rules permit Applicants to “generally revise and improve the quality of... previously filed application[s]” on their own initiative (per AMCC Rule 538-x-3-.02-1) or to cure Commission-identified deficiencies based on “incomplete applications,” (per AMCC Rule 538-x-3-.08) then they should allow MED Shop to fix its attempt to pay the application fee with an American Express brand credit card when the AMCC Rules did not provide MED Shop with any notice that form of payment would not be accepted.

44. The AMCC Rules provide that “an Applicant who has been denied a license by the Commission may seek an investigative hearing before the Commission to seek reconsideration of said denial.” Ala. Admin. Code § 538-x-3-.18. However, MED Shop cannot take advantage of this hearing process, because the AMCC contends that MED Shop never submitted an application at all and is not an “Applicant.” In other words, the Commission did not deny MED Shop a license, but instead the AMCC refused to consider MED Shop’s application, deeming it a nullity.

45. Because MED Shop cannot seek relief through this hearing process, the AMCC’s action is not the result of “a final decision” in a “contested case” as required by the Alabama Administrative Practices Act (AAPA). *See* Ala. Code § 41-22-20(a); *see also* Ala. Code § 41-22-3(3) (defining “contested case” as a proceeding “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). Thus, MED Shop cannot seek judicial review of the AMCC decision under the AAPA. Because MED Shop does not have a remedy under the AAPA, and there is a justiciable controversy between the parties, MED Shop may seek declaratory relief.

46. Therefore, MED Shop petitions this Court for a judgment declaring that:

- a. MED Shop timely submitted its Application for a dispensary business license and is an Applicant;
- b. MED Shop is entitled to all rights afforded to Applicants who timely filed their Applications, including the process allowing Applicants to cure Application deficiencies such as the \$2,500 application fee.

COUNT TWO: TEMPORARY RESTRAINING ORDER

47. MED Shop incorporates paragraphs 1–46 herein.

48. To obtain a Temporary Restraining Order (TRO), the plaintiff must show: (1) without the TRO the plaintiff would suffer immediate and irreparable injury; (2) the plaintiff has no adequate remedy at law; (3) the plaintiff has at least a reasonable chance of success on the ultimate merits of his case; and (4) the hardship imposed on the defendant by the TRO would not unreasonably outweigh the benefit accruing to the plaintiff. *Lott v. E. Shore Christian Ctr.*, 908 So. 2d 922, 927 (Ala. 2005).

49. MED Shop is irreparably harmed or threatened with irreparable harm if the Court does not enter a TRO ordering and directing Defendant AMCC to deem MED Shop's Application timely submitted. Without a TRO, the AMCC will not consider MED Shop's Application for a cannabis dispensary license along with the other Applications, thereby preventing MED Shop from competing for a license.

50. MED Shop has no adequate remedy at law because the injury is not easily or readily quantifiable in terms of money damages. The value of a license allowing MED Shop to legally dispense cannabis in the State of Alabama is not readily ascertainable because the legal cannabis market in Alabama is just emerging.

51. MED Shop has at least a reasonable chance of success on the merits. As detailed above, MED Shop has a reasonable chance of success on the underlying declaratory judgment action. MED Shop uploaded its Application materials in compliance with the deadline as contemplated by the AMCC Rules. Although MED Shop was unable to submit its electronic payment before the deadline, this does not render MED Shop's Application moot under the AMCC Rules. Therefore, the AMCC's refusal to consider MED Shop's Application is inconsistent with its own Rules regarding Application requirements.

52. The benefit to MED Shop from a TRO would not unreasonably outweigh the hardship imposed on the AMCC. If the AMCC is required to consider MED Shop's Application timely submitted, the AMCC faces only the minimal hardship associated with reviewing an additional Application. On the other hand, MED Shop faces significant harm because it will not be considered for a dispensary business license, which would afford MED Shop the ability to conduct business in the state.

53. Therefore, MED Shop seeks a TRO ordering Defendant AMCC to:

- a. Deem MED Shop's Application submitted before the December 30, 2022, deadline;
- b. Accept MED Shop's payment for the requisite application fee;
- c. Allow MED Shop the rights and privileges of the AMCC Rules and Regulations applicable to other Applicants, including those Rules allowing an Applicant to cure deficiencies;
- d. If necessary, modify its timeline for reviewing Applications and issuing licenses in order to abide by the Court's order; and
- e. Restrain the AMCC from taking any action regarding Applications that would negatively affect MED Shop's ability to be considered for a cannabis dispensary license on the same grounds as all other Applicants.

COUNT THREE: PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

54. MED Shop incorporates paragraphs 1–53 herein.

55. Under Alabama law, “the elements required for the issuance of a TRO are the same as the elements required for the issuance of a preliminary injunction.” *Lott*, 908 So. 2d at 927.

56. As discussed above, MED Shop has a reasonable chance of success on the merits herein. MED Shop is entitled to declaratory relief because its legal rights are affected by the AMCC's refusal to consider its Application in spite of the AMCC Rules and Regulations.

57. MED Shop faces immediate and irreparable harm without injunctive relief. Specifically, MED Shop is threatened with injury if the AMCC is not ordered to consider MED Shop's Application timely submitted because MED Shop will not be considered for a cannabis dispensary license.

58. MED Shop has no adequate remedy at law because the injury is not easily or readily quantifiable in terms of money damages. The value of a license allowing MED Shop to legally dispense cannabis in the State of Alabama is not readily ascertainable because the legal cannabis market in Alabama is just emerging.

59. MED Shop will provide an injunction bond in such sum as the Court deems proper. Ala. R. Civ. P. 65(c).

60. An injunction is necessary and proper pursuant to Alabama Code § 6-6-230, the inherent power of this Court, and this Court's statutory injunction authority.

61. The harm to MED Shop by the AMCC's denial of its opportunity to be considered for a cannabis business license outweighs any harm injunctive relief may cause the AMCC.

WHEREFORE, MED Shop Dispensary, LLC respectfully requests that the Court enter an order consistent with the requests set forth above.

/s/Brandon K. Essig
Attorney for Plaintiff

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PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL AT THE FOLLOWING ADDRESS:

The Alabama Medical Cannabis Commission
c/o John McMillan, Director
P. O. Box 309585
Montgomery, Alabama 36130

VERIFICATION

In accordance with Alabama Rule of Civil Procedure 65(b), Jeffrey A. Rabren
principal MED Shop LLC, being first duly sworn in accordance with the law, being
informed of and familiar with the facts set forth and the statements made in the introduction and
paragraphs 1-28 of the foregoing verified complaint, which set forth
specific facts that immediate and irreparable injury, loss, or damage will result, make oath that
the foregoing averments are true to the best of my knowledge and where stated my information
and belief.

Given under my hand and official seal this 17th day of March, 2023.

Jeffrey A. Rabren
[NAME]

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and for said State and County, do hereby
certify that Jeffrey A. Rabren, who is known to me, acknowledged before me, on this
day, that, being informed of the contents of the instrument, he has signed, sealed, and delivered
the same voluntarily, and with full authority for said entity.

Given under my hand and official seal this 17 day of March, 2023.

Jeffrey W. Abbett
NOTARY PUBLIC

My Commission Expires: January 11, 2027

